INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF HIV-POSITIVE INDIVIDUALS IN TANZANIA

<table>
<thead>
<tr>
<th>TAB</th>
<th>SUMMARY</th>
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<tr>
<td></td>
<td>• “The 2013 People Living with HIV Stigma Index Report indicated persons with HIV/AIDS experienced significant levels of stigma countrywide (39 percent), with stigma particularly high in Dar es Salaam (50 percent). The most common forms of stigma and discrimination experienced were gossip, verbal insults, and exclusion from social, family, and religious activities. More than one in five persons with HIV/AIDS experienced a forced change of residence or inability to rent accommodations. In Dar es Salaam, nearly one in three of these persons experienced the loss of a job or other source of income.” (p. 36)</td>
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### SUMMARY

- “In September 2017 police arrested 20 persons in Zanzibar who participated in an HIV/AIDS education training course provided by an officially registered international NGO.” (p. 20)
- “The 2013 People Living with HIV Stigma Index Report indicated persons with HIV/AIDS experienced significant levels of stigma countrywide (39.4 percent), with stigma particularly high in Dar es Salaam (49.7 percent). The most common forms of stigma and discrimination experienced were gossip, verbal insults, and exclusion from social, family, and religious activities. More than one in five persons with HIV/AIDS experienced a forced change of residence or inability to rent accommodations. In Dar es Salaam, nearly one in three of these persons experienced the loss of a job or other source of income.” (p. 30)

### INTERGOVERNMENTAL SOURCES

   - [https://www.justice.gov/eoir/country/tanzania-topical](https://www.justice.gov/eoir/country/tanzania-topical)
   - [https://www.justice.gov/eoir/page/file/1056556/download](https://www.justice.gov/eoir/page/file/1056556/download)

- “The 2013 People Living with HIV Stigma Index Report indicated persons with HIV/AIDS experienced significant levels of stigma countrywide (39.4 percent), with stigma particularly high in Dar es Salaam (49.7 percent). The most common forms of stigma and discrimination experienced were gossip, verbal insults, and exclusion from social, family, and religious activities. More than one in five persons with HIV/AIDS experienced a forced change of residence or inability to rent accommodations. In Dar es Salaam, nearly one in three of these persons experienced the loss of a job or other source of income.” (p. 27)


- “Women with HIV from . . . Tanzania . . . have reported being subjected to forced or coerced sterilization.” (p. 81)
- “In . . . Tanzania (Zanzibar) . . . 26.8% of respondents, respectively, reported having lost a job or another source of income.” (p. 67)
- “. . . HIV meetings organised for key populations in . . . Tanzania are often raided by police, with those attending detained or harassed.” (p. 76)
- “. . . mandatory pre-marital HIV testing has been reported in several countries, including . . . Tanzania . . . ” (p. 7)
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<td></td>
<td>“People Living with HIV (PLWH) still suffer from stigma and discrimination both at the society and Workplace. This is manifested in many ways including denying PLWH the right to work.”</td>
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<td>“The existence of Pre – employment HIV testing as a ground for confirming person employment is still practiced in most of private sector companies. In some circumstances, it has been done mandatory, secretly and without the prior consent or knowledge of the tested.”</td>
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<td>“Stigma and discrimination is also a major challenge. In 2016/17, around 25% of those surveyed for the country’s HIV Impact Assessment demonstrated discriminatory attitudes towards people living with HIV.” (p. 12)</td>
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<td>“The Tanzania Stigma Index 2013 Report by the National Council of People Living with HIV shows clear infringements on the rights of people living with HIV in health, work and school settings. For example, 13% of people living with HIV reported being told not to have children by health care providers. Others reported being coerced into sterilisation and termination of pregnancy due to their HIV positive status.” (p. 12)</td>
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<td>“This type of stigma means that many people living with HIV practise self-censorship and experience guilt that affect their quality of life. Indeed, around 44% of those surveyed for the Stigma Index had low self-esteem, and 30% felt ashamed.” (p. 12)</td>
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<td>“Studies conducted in various regions of Tanzania have reported low linkage to care for people who test HIV-positive. For example a study following around 1,000 people newly diagnosed with HIV in Mbeya, a rural area, found just 28% were successfully linked to care. Under-resourced, poorly coordinated health services, as well as high levels of HIV-related stigma were the main reasons these people did not begin treatment.” (p. 10)</td>
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<td>7.</td>
<td><strong>Human Rights Watch, If We Don’t Get Services, We Will Die: Tanzania’s Anti-LGBT Crackdown and the Right to Health (Feb. 3, 2020), available at:</strong>&lt;br&gt;<a href="https://www.hrw.org/report/2020/02/03/if-we-dont-get-services-we-will-die/tanzanias-anti-lgbt-crackdown-and-right">https://www.hrw.org/report/2020/02/03/if-we-dont-get-services-we-will-die/tanzanias-anti-lgbt-crackdown-and-right</a></td>
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<td>“… the Ministry of Health has prohibited community-based organizations from conducting outreach on HIV prevention to men who have sex with men and other key populations, based on the pretext that such organizations are engaged in the ‘promotion of homosexuality.’”</td>
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| • The Ministry closed drop-in centers that provided HIV testing and other services to key populations, run in many cases by international agencies, asserting that these centers, too, were involved in ‘homosexuality promotional activities.’ It banned the distribution of lubricant, an essential HIV prevention tool for key populations and for much of the wider public, including post-partum women.”  
| • “The authorities have also undermined the right to health through a series of police raids on meetings and trainings organized by health and rights activists and their allies, arresting participants, including foreign lawyers, in an effort to silence and instill fear within activist communities as well as service provision groups and their beneficiaries. Among the activities shut down by police have been HIV education sessions, leading LGBT people to fear attending these potentially lifesaving workshops.” |

https://ilga.org/state-sponsored-homophobia-report  
| • “In February, Deputy Health Minister Hamisi Kigwangalla ordered three men accused of ‘advocating for sodomy’ through social networks to report to police. The following week, the government banned 40 private health centres providing HIV-related services because, according to Health Minister Ummy Mwalimu, they were ‘promoting homosexuality.”” (p. 374)  
| • “On September 15, Zanzibar police arrested 20 people for alleged ‘homosexuality’ at a workshop aimed at addressing stigma and discrimination in the family with regard to HIV/AIDS.” (p. 375) |

https://www.humanrights.or.tz/assets/attachments/1557832171.pdf  
| • “In May 2018, a senior nurse at Mkuranga District Hospital in Pwani Region, Rosemary Magombora, was reportedly killed by her husband by hitting her with a hard object. It was reported that the husband was accusing his late wife of infecting him with HIV.” (p. 169)  
| • “Major challenges faced by PLHIVs are discrimination, including when accessing HIV-related services, and social stigma. This makes them uncomfortable to reveal their status and freely enjoy their human rights.” (p. 214) |

**MEDIA SOURCES**

10. **Cassell, H., Bay Area Reporter, Being gay in Tanzania still perilous (Apr. 22, 2020), available at:**  
| • “Anti-gay sentiment has been on the rise since President John Magufuli came to power in 2015 on the strength of his “morality campaign.” The government has targeted LGBT groups; banned lubricants; suspended HIV/AIDS services, accusing
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<td>them of promoting homosexuality; and threatened to deport and prosecute LGBT rights activists.”</td>
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- “But Tanzanian authorities have delivered mixed messages [about COVID-19] to the public. While the health ministry has promoted social distancing, Tanzanian President John Magufuli has encouraged the public to continue gathering in places of worship to “pray” the virus away, referring to the highly contagious disease as ‘the devil.’”
- “Tanzanians living with HIV-AIDS, meanwhile, feel left in the dark by their government. “We feel abandoned,” Thomas said. “We’re not seen and our struggle is not being acknowledged. They tell us to keep washing our hands. But that’s not enough. We are going to die. They need to do more to protect us.”


- “‘It was sad to be isolated by my colleagues and my teachers because I am living with HIV. I was physically fine and loved to play with friends, but they discriminated me in all activities including sitting in classroom.’”
- “‘We also have cases of stigma and discrimination hospitals by some unethical medical practitioners such as revealing patient's HIV status and compulsory testing or forced HIV check-up; and also in religious institutions where people with HIV are sidelined and blamed.’”
- “The Awareness Manager of the Zanzibar Aids Commission (ZAC), Mr Saadat Haji, says that although in overall, HIV prevalence has declined with increased education level for both males and females, stigma and discrimination are still challenges that hamper campaign to control the spread of HIV.”


- “TACAIDS (Tanzania Commission for AIDS) Director of Advocacy and Information, Mr Jumanne Isango, said that one of the commission’s findings in 2016/17 showed that 31 percent of 100 respondents showed stigmatization perception in rural areas, and 17 percent (of 100 respondents) in urban areas.”
- “It was further noted that some people in rural areas feared even to buy the daily basic needs like vegetables, believing that touching whatever has been touched by a person living with HIV/Aids might lead to transmissions.”
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<td>• “Previous presenters here have told us that stigmatization is at high level especially in rural areas…”</td>
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<td>• “In October 2016, a Ministry of Health directive suspended provision of HIV/AIDS services and ordered the closure of some clinics for providing services to LGBTI people.”</td>
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<td>• “For Mariam, living with HIV in rural Tanzania is difficult. She was stigmatised because of a lack of understanding about the disease.”</td>
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<td>• “UNAIDS data shows that in 2015 there were 780,000 Tanzanian women living with HIV/AIDS. The disease affects just under 5% of the population compared to 2% of Kenyans, 12% of Zambians and 3% of Rwandans. In Tanzania two thirds are women.”</td>
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<td>• “These women face a range of challenges: stigma from the community, self stigma, access and adherence to treatment, disclosure to partners, and prevention of mother to child transmission.”</td>
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<td>• “This year, police raided two U.S.-funded HIV/AIDS organizations and seized confidential patient information and supplies, officials said.”</td>
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<td></td>
<td>• “In September, the deputy minister of health, Hamisi Kigwangalla, accused HIV treatment organizations of ‘promoting homosexuality.’”</td>
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|     | • “When . . . a South African feminist lawyer, got on a plane to travel to Tanzania to convene a meeting of human rights lawyers and activists, she knew she might come "under the scrutiny of Tanzanian authorities…what she did not expect was for
Tanzanian police to raid the October 17 workshop at the Peacock Hotel and arrest her and 12 of her colleagues for ‘promoting homosexuality.’”

- “…the meeting, which had been organized by the Initiative for Strategic Litigation in Africa (ISLA), a Pan African organization whose mandate is to advance women’s and sexual rights, was not even about homosexuality. It’s aim was to explore the possibility of mounting legal challenges to the government’s ban on drop-in centers serving key populations at risk of HIV, as well as the ban on importation of water-based lubricants, an essential HIV prevention tool.”
- “The recent arrests follow a disturbing pattern, in which several dozen people have been arrested since December 2016 for ‘homosexuality’ or ‘promoting homosexuality’. In most of these cases police have not presented any evidence whatsoever suggesting that those detained have engaged in same-sex conduct.”
- “The truth is that the lawyers and activists are not being held for promoting homosexuality, but for challenging absurd, reactionary policies that could cost many HIV positive people their lives.”

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- “... stigma remains a key barrier to achieving optimal testing rates.” (p. 358)  
- “Among women, stigma is experienced across multiple contexts, including community members, family, and healthcare professionals.” (p. 358)


- “When we reach here [clinic], they look at us like we are not normal human beings, they discriminate against us. They tell us to come very early but you see they start attending to us at 01:00 in the afternoon and sometimes you end up not getting the drugs” [FGD2].” (p. 8)  
- “‘They do not like going to the hospital; some fear that other people will see them at the clinic and know that they are infected’ [FGD1].” (p. 6)  
- “‘Most of them is because they fear that people will see them at CTC and start pointing fingers’ [IDI-HCP2].” (p. 7)  
- “Stigma related to attending HIV care clinics or CTCs was the most frequent factor described by the PLHIV and health care providers as a barrier to being registered (linked) into HIV care and treatment.” (p. 6)

- “Fourteen percent of respondents reported having experienced recent enacted HIV related stigma and 12.7% reported recent medium or high levels of internalized stigma.” (p. 147)
- “… almost two-thirds (63.5%) of respondents indicated concern that people might gossip about them if they knew or suspected that they were HIV-positive.” (p. 147)
- “Almost half (46.4%) of respondents with children worried that their children might become upset or fearful if they knew or suspected that the respondent was HIV-positive.” (p. 147)


- “With regard to personal and cultural beliefs about HIV, 23.1% of all participants believed that HIV is a punishment for bad behavior and 30.8% believed that people who got HIV from drug use or sex deserved to become infected.” (p. 90)
- “… more participants cited that they would feel ashamed if they themselves became infected with HIV than if someone close to them was infected.” (p. 90)
- “… despite an overall high HIV education subscore among participants, 69.2% believed that individuals who are HIV positive could have avoided infection if they wanted to and 26.0% believed that HIV-positive patients have had many sexual partners.” (p. 90)


- “Like other studies, we found that men who perceived higher levels of HIV stigma in their networks were less likely to have HIV tested [35, 52]. This suggests that despite efforts to reduce HIV stigma in Tanzania, the negative influence of HIV stigma on testing persists.” (p. 10)


- “Participants highlighted the pervasive nature of HIV stigma and discrimination by reporting on occurrences in diverse spaces such as families, government offices, religious organizations, schools, and workplaces.” (p.5)
- “… Imani, a male chairperson, spoke of stigma and discrimination in workplaces, “if you are found to be positive while in the job, they sometimes create an unconducive environment so that you can leave.” (p. 5)
Juma, a male executive director, recounted his challenges with government [when registering his organization for people living with HIV/AIDS]: We struggled for around one year because [government] did not get our vision. When we talk about we are positive living, we need to be registered, they said, ‘why do you ask to be registered? Because you are going to be buried very soon. Why should we give you registration because you are going to die? It was a terrible environment.’ (p. 5)

PLWHA were denied economic opportunities such as businesses and jobs. Imani spoke of this denial, ‘In communities, some people who are entrepreneurs, who have small businesses. They are making fish or selling bananas, foodstuffs. If they [potential clients] know you are infected, they don’t come to buy at your place simply because you are infected.’ (p. 5)

. . . participants described situations where HIV-positive children attending schools were being marked. Omary explained, ‘Because it happened that one of the primary schools in this country, they were forcing to put red ribbons on children with HIV.’ This type of marking, in turn, led to the social alienation and isolation of PLWHA.” (p. 5)

“Everybody ran away and . . . I have nobody. I used to have a friend who would buy me soap. Now I can’t even get soap. I have nobody and nothing,” (age 30…).” (p. 9)

“Several women described sitting in social settings while friends, who were unaware of their HIV status, ridiculed and mocked other women who were known to be HIV-infected using labels such as: “ruined one,” “hit,” “devalued,” “rotten,” “empty,” “promiscuous,” “sinful,” “a hooligan” (wahuni), “a prostitute,” or “the one that stepped on a wire.” These comments left respondents panicked about their fate (should their HIV serostatus become known) and distraught about how to reconcile their view of themselves with an altered, stigmatizing construction.” (p. 11)

While stigma could take economic forms (for example, no longer being able to sell foods at a market or being financially exiled by spouses or family members), women’s narratives suggest that a more fundamental concern was that they could be socially isolated. Women described how spouses, family, and friends could abandon them and their children upon learning their status, out of fear of being associated with a PLHIV (Person Living with HIV).” (p. 8)

“Several women felt that they would no longer be part of the community if their status became known; they said community members would say things like “she inherited what she deserved” for ‘showing off’ or ‘sleeping around,’ and thus she ‘deserves to die’ or ‘does not belong.’” (p. 9)
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<td>10</td>
<td>“Women living with HIV/AIDS (LWHA) are 10 times more likely to experience IPV than HIV-negative women.” (p. 2)</td>
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<td>“HIV serostatus disclosure may be an initiating or contributing factor for partner violence. HIV-positive women may experience abuse that is more frequent and more severe.” (p. 2)</td>
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<tr>
<td>10</td>
<td>“HIV-positive women are frequently blamed for transmitting HIV infection to their male partners.” (p. 2)</td>
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<td>26</td>
<td><strong>Raja, S., Aggarwal, S., Raman, K., et. al., AIDS, From business woman to banana vendor, mental health implications of HIV stigma in Tanzania (Nov. 13, 2016), available at:</strong> <a href="https://journals.lww.com/aidsonline/fulltext/2016/11130/From_businesswoman_to_banana_vendor_mental.1.aspx">https://journals.lww.com/aidsonline/fulltext/2016/11130/From_businesswoman_to_banana_vendor_mental.1.aspx</a></td>
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<td>26</td>
<td>“Shortly after community members became aware of her HIV status, Anne was forced to close her restaurant because of declining business. She attributed her restaurant's decline to public fear of HIV transmission via food and utensils. This irrational fear resulted in institutional stigmatization, or treatment in an institutional setting that identifies a person as having HIV and results in negative outcomes for the person such as loss of livelihood and damaging depiction in the media.” (p. N33)</td>
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<td>“The findings of this study indicate that the respondents experienced different forms of HIV-related stigma, including verbal, social, and perceived stigma (the fear of stigma associated with disclosing HIV status). This suggests that both intrapersonal and interpersonal fears still exist, despite nearly a decade of increasing the provision of ARV.” (p. 8)</td>
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<td>“At Mwananyamala CTC some nurses delay in attending to patients and use offensive statements. One day, a nurse told me “take your ‘bomb’” - meaning my file - and she continued, saying ‘I am not the one who gave you HIV’. Whenever I see that nurse or remember those words - it hurts a lot [the participant cried after narrating that painful experience]. (Female respondent, 49 years old).” (p. 7)</td>
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<td>“Respondents experienced changes in relationships when spouses, family members, friends, and neighbours discovered that a particular person was on ART.” (p. 6)</td>
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<td>“Respondents complained of blame and less support from their partners once diagnosed with HIV and because of the fact that they were on ART. In spite of a reduction of internalised stigma, some respondents experienced blame-related stigma from their spouses and their communities.” (p. 6)</td>
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<td>“Respondents reported that sometimes they experienced discrimination from health care providers, manifested by neglect, verbal abuse, overusing protective materials such as gloves, and paying little attention to their concerns.” (p. 6)</td>
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Dated: [DATE]                     Respectfully submitted,

[CITY, STATE]                     [FIRM]

Pro Bono Counsel for Respondent _________

By: _____________________________

[NAME]
[FIRM]
[ADDRESS]
[PHONE NUMBER]
[FAX NUMBER]
Tab 1
EXECUTIVE SUMMARY

The United Republic of Tanzania is a multiparty republic consisting of the mainland region and the semiautonomous Zanzibar archipelago, whose main islands are Unguja (Zanzibar Island) and Pemba. The union is headed by a president, who is also the head of government. Its unicameral legislative body is the National Assembly (parliament). Zanzibar, although part of the union, exercises considerable autonomy and has its own government with a president, court system, and legislature. In 2015 the country held its fifth multiparty general election. Voting in the union and Zanzibari elections was judged largely free and fair, resulting in the election of a union president (John Magufuli). The chair of the Zanzibar Electoral Commission, however, declared the parallel election for Zanzibar’s president and legislature nullified after only part of the votes had been tabulated, precipitating a political crisis on the islands. New elections in Zanzibar in 2016 were neither inclusive nor representative, particularly since the main opposition party opted not to participate; the incumbent (Ali Mohamed Shein) was declared the winner with 91 percent of the vote.

Under the union’s Ministry of Home Affairs, the Tanzanian Police Force (TPF) has primary responsibility for maintaining law and order in the country. The Field Force Unit, a special division of the TPF, has primary responsibility for controlling unlawful demonstrations and riots. The Tanzanian People’s Defense Forces includes the Army, Navy, Air Command, and National Service. They are responsible for external security but also have some domestic security responsibilities and report to the Ministry of Defense. Civilian authorities maintained effective control over the security forces and directed their activities.

Significant human rights issues included: torture; arbitrary detention; harsh and life-threatening prison conditions; political prisoners; arbitrary or unlawful interference with privacy; the worst forms of restrictions on free expression, the press, and the internet; violence, threats of violence, or unjustified arrests or prosecutions against journalists, censorship, and site blocking; the existence of criminal libel laws; substantial interference with the rights of peaceful assembly and freedom of association, such as overly restrictive nongovernmental organization (NGO) laws; refoulement of refugees to a country where they would face a threat to their life or freedom on account of their race, religion, nationality, membership in a particular social group, or political opinion, or other mistreatment of refugees that would constitute a human rights abuse; restrictions on political
participation where the government is unelected or elections have not been found to be genuine, free, or fair; pervasive corruption; trafficking in persons; criminal violence against women and girls, in which the government took little action to prevent or prosecute; crimes involving violence or threats of violence targeting persons with disabilities, members of national/racial/ethnic minorities, or indigenous people; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, or intersex (LGBTI) persons; the existence or use of laws criminalizing consensual same-sex sexual conduct between adults; use of forced or compulsory child labor, as listed in the Department of Labor’s report on the Worst Forms of Child Labor.

In some cases the government took steps to investigate and prosecute officials who committed human rights abuses, but impunity in the police and other security forces and civilian branches of government was widespread.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports that the government or its agents committed arbitrary or unlawful killings.

In June, John Lucas Lihambalimu, an official of the opposition Party of Democracy and Development (CHADEMA) in Morogoro, was shot in the head by unknown persons who invaded his house. Three individuals were arrested in connection with his death.

b. Disappearance

In 2017 Mwananchi Communication journalist Azory Gwanda disappeared in Kibiti District in Pwani Region while reporting on unexplained killings in the area and remained missing. Some media and civil society observers claimed Gwanda might have been silenced for reporting on a sensitive security topic. On July 10, Foreign Minister Palamagamba Kabudi stated during a BBC interview that Gwanda is dead; however, later the minister recanted his statement. The government did not make any known efforts to investigate Gwanda’s disappearance, nor are there reports of anyone arrested in connection with his disappearance.
c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices; however, the law does not reflect this constitutional restriction nor define torture. There were reports that police officers, prison guards, and soldiers abused, threatened, and otherwise mistreated civilians, suspected criminals, and prisoners. These abuses often involved beatings.

On May 4, Mdude Nyagali, a critic of President Magufuli, was kidnapped in Mbozi, Songwe, by armed masked men. He was found beaten and unconscious five days later at a village near Mbeya. His release came after a public outcry and massive online campaign with the hashtag #BringBackMdudeAlive.

The law allows caning. Local government officials and courts occasionally used caning as a punishment for both juvenile and adult offenders. Caning and other corporal punishment were also used routinely in schools.

In August 2018 a 13-year-old student from Kagera Region, who was mistakenly accused of theft, died after being severely beaten by a teacher. In October 2018 court proceedings began against two teachers, who were both accused of murdering the student. On March 6, the court issued a death sentence to one of the teachers, Respicius Patrick, after convicting him of the murder, while the second teacher was set free.

In October a video circulated online showing the regional commissioner (RC) of Mbeya caning more than 12 boys who were lying on the ground. This was punishment because allegedly some of the boys had burned their dormitories after their mobile phones were confiscated. President Magufuli praised the RC for the punishment, and said the students got what they deserved.

Prison and Detention Center Conditions

Prisons and prison conditions remained harsh and life threatening. Inadequate food, overcrowding, poor sanitation, and insufficient medical care were pervasive.

Physical Conditions: Prisons continued to hold more inmates than their capacity. For example, in July, President Magufuli visited Butimba Prison and found that it held more than 1,000 inmates while it has the capacity for only 900 prisoners. Pretrial detainees and convicted prisoners were held together. Convicts were not separated according to the level of their offenses or age. After the president’s visit
to Butimba Prison, 300 prisoners were paroled. The Federal Parole Board continued to pardon prisoners as a means to reduce overcrowding, and 648 prisoners were paroled during the last three years. Meanwhile, during his presidency, Magufuli has paroled 3,530 prisoners, continuing the tradition of pardoning prisoners during each Union Day celebration on April 26. On December 9, Tanzanian Independence Day, President Magufuli pardoned 5,533 prisoners and ordered their release beginning the following day.

Authorities held minors together with adults in several prisons due to lack of detention facilities. During the year an independent government department, the Commission for Human Rights and Good Governance (CHRAGG), visited selected prisons and detention facilities. CHRAGG’s draft report on the prison conditions, however, was not yet public and was being reviewed and vetted by the Ministry of Legal Affairs.

Information on the prevalence of deaths in prisons was not available.

Physical abuse of prisoners was common. For example, political prisoner and opposition parliamentarian Peter Lijualikali said he was beaten after his sentencing while he was in prison in 2017.

Prison staff reported food and water shortages, a lack of electricity, inadequate lighting, and insufficient medical supplies. Prisons were unheated, but prisoners in cold regions of the country reportedly received blankets and sweaters. Sanitation was insufficient. In July 2018 President Magufuli publicly told the commissioner general of prisons that the government would no longer feed prisoners and that they should cultivate their own food. While some prisons still provided prisoners with food, the Ministry of Home Affairs reported that prisoners were cultivating land to grow food for themselves. Other prisoners reported receiving no food from the prison authorities, relying solely on what family members provided. In March, President Magufuli designated 10 prisons for strategic agricultural production. In May the state inaugurated the Board of Prison Force Production Agency to ensure prisons have sufficient food supply from their own projects. Moreover, prisons have continued to cultivate hundreds of acres of food crops. For instance, Kitee Prison cultivated 282 acres of beans, while Songwe Prison cultivated 1,853 acres of corn.

Medical care was inadequate. The most common health concerns were malaria, tuberculosis, HIV/AIDS, respiratory illnesses, and diseases related to poor sanitation. Prison dispensaries offered only limited treatment, and friends and
family members of prisoners generally had to provide medications or the funds to purchase them. Transportation to referral health centers and hospitals was limited. In addition requests were often met with bureaucracy, which resulted in further delays for prisoners to access health care when requested. While doctors conducted routine check-ups in the prison clinics, they did not have testing equipment or access to adequate medicine.

On March 15, opposition members Freeman Mbowe and Esther Matiko criticized prison conditions when they were released after four months of detention. Mbowe said that in addition to overcrowded conditions, some inmates contracted infectious diseases such as scabies after spending up to two weeks without bathing. Matiko said in the women’s prison mentally ill individuals were locked up with criminal offenders.

In August 2018 female prisoners told visiting members of the Zanzibar Female Lawyers Association that they were subject to sexual harassment and beatings by prison authorities.

Administration: Judges and magistrates conducted regular visits to inspect prisons and hear concerns from convicts and detainees. In addition relatives of inmates made complaints to the CHRAGG, which investigated reports of abuse, but the results of those investigations were not public.

On the mainland, prisoners could submit complaints to judicial authorities. The CHRAGG also served as the official ombudsman. The union Ministry of Home Affairs’ Public Complaints Department and a prison services public relations unit responded to public complaints and inquiries about prison conditions sent to them directly or through media.

Prisoners and detainees usually had reasonable access to visitors and could worship freely, with some exceptions. Seventh-day Adventists reported they had to work on Saturday. The mainland authorities often moved prisoners to different prisons without notifying their families.

In February 2018 the Court of Appeal upheld a Dar es Salaam High Court decision by overruling the powers of the director of public prosecution (DPP) to object to the granting of bail with no reason to the accused except in economic sabotage cases. This was contested because the DPP had previously objected to granting bail during investigations; however, these investigations can take years. The High
Court has jurisdiction to consider bail applications in cases involving more than 10 million Tanzanian shillings (TZS) ($4,400).

On September 20, President Magufuli signed legislation approving plea agreements designed to reduce case backlogs and ensure timely delivery of justice as well as reduce inmate congestion. Terrorism and serious drug offenses are excluded from this new legislation, so prosecutors do not have discretion to entertain plea agreements in these types of cases.

**Independent Monitoring:** The law prohibits members of the press from visiting prisons. Generally, access to prisoners was difficult for outside organizations, and the process for obtaining access was cumbersome.

**d. Arbitrary Arrest or Detention**

The constitution prohibits arbitrary arrest and detention, although regional and district commissioners have discretionary authority to order someone detained for up to 48 hours without charge. This authority was used frequently to detain opposition members or persons expressing criticism of the government. On July 29, an investigative journalist and government critic, Erick Kabendera, was arrested by plainclothes police officers who did not inform him of the charges. At first, his family was not informed as to which police station he was taken. After seven days in detention, Kabendera was charged with money-laundering offenses. As of December he remained in prison after his case was adjourned several times on the grounds that the court investigation was incomplete.

The law allows persons arrested or detained, regardless of whether on criminal or other grounds, the right to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been unlawfully detained. The law requires, however, that a civil case must be brought to make such a challenge, and this was rarely done.

The independence of the judiciary allows individuals to challenge government officials. For example, in March, Mdude Nyagali filed a malicious prosecution case against Mbeya’s regional police commander and the attorney general following his winning of the sedition case in November 2018.

**Arrest Procedures and Treatment of Detainees**
On the mainland the law requires that an arrest for most crimes, other than crimes committed in the presence of an officer, be made with an arrest warrant based on sufficient evidence; however, authorities did not always comply with the law. Police often detained persons without judicial authorization. The law also requires that a person arrested for a crime, other than a national security detainee, be charged before a magistrate within 24 hours of arrest, excluding weekends and holidays, but authorities failed to comply consistently with this requirement. For example, when Erick Kabendera was arrested on July 29, his family did not know which police station he was taken to and on what charges he was being held. Authorities usually informed detainees of the charges against them promptly, but there were several instances when this did not happen. There were reports of police using a rolling process of releasing and immediately rearresting individuals so that they would remain in custody while police completed their investigation and developed the required information for the accused to be charged. There were also reports of police detaining individuals without charge for short periods on the orders of local authorities.

The law does not allow bail for suspects in cases involving charges of murder, treason, terrorism, drugs, armed robbery, human trafficking, money laundering and other economic crimes, or other offenses where the accused might pose a public safety risk. In some cases courts imposed strict conditions on freedom of movement and association when they granted bail. In the primary and district courts, persons sometimes bribed officials to grant bail. Members of parliament sometimes bribed the DPP to pressure them in the performance of their duties. The law gives accused persons the right to contact a lawyer or talk with family members, but police often failed to inform detainees of this right. Indigent defendants and suspects charged with murder or treason could apply to the registrar of the court to request legal representation. Prompt access to counsel was often limited by the lack of lawyers in rural areas, lack of communication systems and infrastructure, and accused persons’ ignorance of their rights. As a result most criminal defendants were not represented by counsel, even for serious offenses being tried before a high court. The government often did not provide consular notification when foreign nationals were arrested and did not provide prompt consular access when requested.

The government conducted some screening at prisons to identify and assist trafficking victims imprisoned as smuggling offenders; however, screenings were not comprehensive, potentially leaving some trafficking victims unidentified in detention centers. In 2018 the government reported there were approximately 1,200 Ethiopians in detention centers, some of whom may have been trafficking
victims. In June and July, at the requests of the Ethiopian embassy, the International Organization for Migration (IOM) verified 1,354 Ethiopians in 27 prisons in 20 regions. Among the migrants were only one woman and 219 minors. During the year the Immigration Department, in collaboration with IOM, assisted the voluntary return and repatriation of 573 Horn of Africa migrants. Between January 2015 and June, the IOM provided assisted voluntary returns for 1,406 Ethiopian irregular migrants. The Ethiopians who remained in prison were either in pretrial detention (“remanded”), convicted, or postconviction but not released because of a lack of funds to deport them.

Arbitrary Arrest: By law the president may order the arrest and indefinite detention without bail of any person considered dangerous to the public order or national security. The government must release such detainees within 15 days or inform them of the reason for their continued detention. The law also allows a detainee to challenge the grounds for detention at 90-day intervals. The mainland government has additional broad detention powers under the law, allowing regional and district commissioners to arrest and detain anyone for 48 hours who is deemed to “disturb public tranquility.”

Pretrial Detention: Arrests often precede investigations, and accused persons often remained in pretrial detention--known as “remand”--for years before going to trial, usually with no credit for pretrial confinement at the time of sentencing. There is no speedy trial clock or statute of limitations. Prosecutors obtain multiple continuances based merely on a general allegation that the investigation is not yet complete. According to the Ministry of Home Affairs, approximately 50 percent of the prison population consisted of pretrial detainees. Detainees charged with crimes generally waited three to four years for trial due to a lack of judges to hear cases, an inadequate judicial budget, and the lengthy time required to complete police investigations.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, but many components of the judiciary remained underfunded, corrupt, inefficient (especially in the lower courts), and subject to executive influence. Judges and senior court officers are all political appointees of the president. The need to travel long distances to courts imposes logistical and financial constraints that limit access to justice for persons in rural areas. There were fewer than two judges per million persons. Court clerks reportedly continued to take bribes to open cases, or hide or misdirect the files of
those accused of crimes. Magistrates of lower courts occasionally accepted bribes to determine the outcome of cases.

Civil society organizations (CSOs) and politicians relied on the court to challenge government decisions. For example, in May the High Court of Dar es Salaam annulled the constitutional provision that empowered presidential appointees to supervise elections. This was significant because 80 percent of the supervising officials belong to the ruling party. At first, this indicated the court provided an avenue to contest the ruling party, but the outcome of the decision was not upheld in practice. In addition on October 16, the Court of Appeal, the country’s highest court, overturned the May High Court decision.

On September 20, the High Court of Dar es Salaam suspended Fatma Karume from practicing law in relation to a case that challenged the appointment of Adelardus Kilangi as the attorney general. The case was filed by ACT-Wazalendo’s Ado Shaibu and the respondent is President John Magufuli. The court suspended Karume from practicing law on the mainland over alleged misconduct, stating that her written arguments were “inappropriate.”

**Trial Procedures**

The law provides for the right to a fair and public trial, but a weak judiciary often failed to protect this right. All trials are bench trials; there are no jury trials. Trials are not held continuously from start to finish. Instead, a trial may start one day, break for an uncertain amount of time, and resume multiple times thereafter. As a result trials were often inefficient and could last for months or even years. In 2016 President Magufuli called for judicial reform, stating the judiciary is critical for foreign investment and economic growth. With the support of the World Bank, in 2016 the judiciary initiated a five-year project, *Citizen-Centric Judicial Modernization and Justice Service Delivery Project*, which allows lawyers to register cases in an online database.

The law provides for the presumption of innocence, and the standard for conviction in criminal cases is “beyond a reasonable doubt.” In most cases authorities informed detainees in detail of the charges against them once they had been taken to the police station. Charges were generally presented in Kiswahili or English with needed interpretation provided when possible. With some exceptions, criminal trials were open to the public and the press. Defendants have the right to be present at their trial. Courts that hold closed proceedings (for example, in cases of drug trafficking or sexual offenses involving juveniles) generally are required to
provide reasons for closing the proceedings. In cases involving terrorism, the law states that everyone, except the interested parties, may be excluded from court proceedings, and witnesses may be heard under special arrangements for their protection.

The law requires legal aid in serious criminal cases, although in practice only those accused of murder and treason were provided with free representation. Most other defendants could not afford legal representation and represented themselves in court. Defendants in criminal matters are entitled to legal representation of their choice. In practice legal representation was unavailable to defendants without the means to pay. NGOs represented some indigent defendants in large cities, such as Dar es Salaam and Arusha. For example, the Tanganyika Law Society provides free legal services upon request because its lawyers are encouraged to take at least one pro bono case per year.

In Zanzibar the government sometimes provided public defenders in manslaughter cases. The law prohibits lawyers from appearing or defending clients in primary-level courts whose presiding officers are not degree-holding magistrates. Human rights groups criticized reported cases where lawyers attempting to represent clients in sensitive cases were themselves threatened with arrest.

Authorities did not always allow detainees sufficient time to prepare their defense, and access to adequate facilities was limited. Defendants have the right to free interpretation as necessary from the moment charged through all appeals. Defendants or their lawyers have the right to confront prosecution witnesses and the right to present evidence and witnesses on the defendant’s behalf. Prosecutors, however, have no disclosure obligations in criminal cases, and often the defense does not know what evidence the prosecutor will rely upon when the trial begins. Defendants were not compelled to testify or confess guilt.

All defendants charged with civil or criminal matters, except parties appearing before Zanzibari qadi courts (traditional Muslim courts that settle issues of divorce and inheritance), could appeal decisions to the respective mainland and Zanzibari high courts. All defendants can appeal decisions to the union Court of Appeal.

Judicial experts criticized the practice of police acting as prosecutors because of the risk police might manipulate evidence in criminal cases. The mainland Ministry of Constitutional and Legal Affairs continued hiring and training state prosecutors to handle the entire mainland caseload, although staffing shortages continued.
Political Prisoners and Detainees

Several opposition politicians and individuals critical of the government were arrested or detained during the year. These individuals were usually charged with sedition, incitement, or unlawful assembly. For example, two opposition members of parliament, Freeman Mbowe and Esther Matiko of CHADEMA, served four months in jail after the court arbitrarily revoked their bail in November 2018. The High Court of Dar es Salaam upon appeal, however, ruled the bail revocation was invalid, and they were released in March. Mbowe and Matiko were part of a group of nine CHADEMA members who were charged in 2018 with 11 crimes, including conspiracy, sedition, and inciting the commission of offenses. The case was pending, as the defense team began its inquiry on September 16.

Civil Judicial Procedures and Remedies

Persons may bring civil lawsuits seeking damages for or the cessation of human rights violations and can appeal those rulings to the Court of Appeal on the mainland and other regional courts. Civil judicial procedures, however, were often slow, inefficient, and corrupt. Individuals and organizations with observer status have the right to bring complaints to the African Court on Human and Peoples’ Rights. The East African Court of Justice (EACJ) has been a preferred route to bring human rights cases because it admits cases and eases the burden on local courts. For example, the case concerning the 2017 government-led evictions of villagers in Loliondo was brought before the EACJ in September 2018; the EACJ ruled in the villagers’ favor. The implementation of this ruling, however, has yet to take place. According to a witness, individuals were beaten daily when they bring their cattle through the buffer zone to reach grazing lands. In August the district commissioner of Ngorongoro sent a message to all the Masai in Loliondo village that they had to vacate within 21 days or look for another place to live.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The law generally prohibits such actions without a search warrant, but the government did not consistently respect these prohibitions. While only courts may issue search warrants, the law also authorizes searches of persons and premises without a warrant if necessary to prevent the loss or destruction of evidence or if circumstances are serious and urgent. The owners of social online platform JamiiForums were facing a court case for allegedly preventing a police force
investigation, in violation of the Cybercrimes Act. The police had no search warrant but still requested the IP addresses of the platform’s users. The owners claimed that this request was a breach of privacy. The case continued at year’s end.

The law relating to terrorism permits police officers at or above the rank of assistant superintendent or in charge of a police station to conduct searches without a warrant in certain urgent cases, but there were no reports these cases occurred.

It was widely believed government agents monitored the telephones and correspondence of some citizens and foreign residents. The nature and extent of this practice were unknown. In July there were leaked mobile conversations of ruling Party of the Revolution (CCM) leaders who were challenging internal CCM discussions. Abdulrahman Kinana, Nape Nnauye, and Benard Membe blamed the Tanzania Communications Regulatory Authority (TCRA) for the leak. In a July 18 Mwananchi newspaper interview, TCRA executive director James Kilaba distanced the authority from rumors of leaked information and having the ability to tap into private mobile communications.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides for freedom of speech but does not explicitly provide for freedom of the press. There were criminal penalties for libel.

Freedom of Expression: Public criticism of the government resulted in punitive action in some cases. Authorities used the Cybercrimes Act to bring criminal charges against individuals who criticized the government on a variety of electronic media. In March 2018 the Electronic and Postal Communications (Online Content) Regulations became law, requiring the TCRA to certify all bloggers and operators of online forums through a licensing process.

On July 19, three students from Kampala International University in Tanzania were sentenced on counts of distributing pictures through WhatsApp groups showing President Magufuli wearing a hijab. The students were sentenced to four years in prison.
Press and Media, Including Online Media: Independent media on the mainland were active and generally expressed varying views, although media outlets often practiced self-censorship to avoid conflict with the government.

Registering or licensing new media outlets, both print and broadcast, continued to be difficult. Newspaper registration was at the discretion of the registrar of newspapers at the information ministry on both the mainland and Zanzibar. Acquiring a broadcasting license from the TCRA took an estimated six months to one year, and the TCRA restricted the area of broadcast coverage. The TCRA imposes mandatory registration and annual fees for commercial and community radio stations. The fee structure disproportionately disadvantages the existence and creation of small community radio stations.

On February 27, the government suspended publication of the Citizen newspaper and website for seven days, following the publication of a story titled “Closely Monitor Falling of Shilling, Experts Caution.” The director of information services alleged that the Citizen published false and misleading information about the devaluation of the country’s currency.

On August 22, Joseph Gandye, an investigative journalist for Watetezi television was arrested for “spreading fake news” after his story on police brutality in Iringa aired. On August 24, he was released on bail.

In 2017 the TCRA clarified a requirement that all broadcast stations receive approval from the Tanzania Film Board for locally produced content, including music videos, films, cartoons, and other video content. In June the government passed an amendment to the Films and Stage Plays Act (Amendment 3), providing the Tanzania Film Board the authority to regulate, monitor and determine if foreign and local motion pictures, television, radio and stage plays and performances are approved for exhibition.

The Zanzibari government-owned daily newspaper, Zanzibar Leo, had an estimated circulation of 25,000. There was one privately owned weekly newspaper with a much smaller circulation. The government of Zanzibar controlled content on the radio and television stations it owned. There were government restrictions on broadcasting in tribal languages, and broadcasts in Kiswahili or English were officially preferred. The nine private radio stations on Zanzibar operated independently, often reading the content of national dailies, including articles critical of the Zanzibari government.
Lack of access to information from government sources continued despite changes to the Statistics Act.

**Violence and Harassment:** Law enforcement authorities attacked, harassed, and intimidated journalists during the year. Journalists and media outlets have also begun to self-censor to avoid government retribution. Investigative journalist Erick Kabendera’s July 29 arrest was marked by irregularities, including denial of access to a lawyer in the early stages of his detention.

On September 27, the TCRA fined three online television channels--Kwanza Television, Millard Ayo Television, and Watetezi Television--five million TZS ($2,200 each and suspended Kwanza Television for six months. All three channels have been described as being critical of President Magufuli.

**Censorship or Content Restrictions:** The law authorizes police to raid and seize materials from newspaper offices and authorizes the minister of information to “prohibit or otherwise sanction the publication of any content that jeopardizes national security or public safety.”

According to Reporters without Borders, since President Magufuli came to office in 2015, the laws regulating media have been tightened, and there have been cases of newspapers and radio stations being suspended for “incitement.”

A September 3 *Time Magazine* article on the world’s most urgent cases threatening press freedom cited Erick Kabendera and Azory Gwanda among their examples.

A permit was required for reporting on police or prison activities, both on the mainland and in Zanzibar, and journalists needed special permission to cover meetings of the National Assembly or attend meetings in the Zanzibar House of Representatives. Anyone publishing information accusing a Zanzibari representative of involvement in illegal activities was liable to a fine of not less than TZS 250,000 ($110), three years’ imprisonment, or both. The government may fine and suspend newspapers without warning.

There were examples of the government repressing information, extending to online newspapers and journals. In June parliament passed amendments to the 2015 Statistics Act that lifted some restrictions on publishing statistical information. It now allows individuals and organizations to conduct surveys and collect research data; however, Amnesty International stated that under these amendments, authorities still maintain control over who is able to gather and
publish information, as well as to determine what is factual. While the World Bank stated the amended Statistics Act is in line with international norms, many observers continued to self-censor because of possible personal and professional repercussions, including the government’s ability to use media services and cybercrime acts against individuals who publish or share data that does not align with the government’s messaging.

In March the EACJ ruled in favor of CSOs who challenged the country’s Media Services Act of 2016. Three NGOs, the Media Council of Tanzania, the Legal and Human Rights Center (LHRC) and the Tanzania Human Rights Defenders Coalition (THRDC) filed the case in 2017. The court found that sections on sedition, criminal defamation, and false news publication restrict press freedom and freedom of expression and thereby breach the EACJ Treaty.

Libel/Slander Laws: The law provides for arrest, prosecution, and punishment for the use of seditious, abusive, or derogatory language to describe the country’s leadership. Section 36 of the Media Services Act of 2016 makes defamation a criminal act. Defamation is defined as any matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

In February, CHADEMA Member of Parliament (MP) Halima Mdee was called in for questioning related to a 2017 charge of insulting the president, for which she was detained for six days. The case is pending in court and is postponed until 2020. The court has expressed interest in dismissing the case due to a lack of cooperation from prosecutors.

On April 24, the Kisutu Resident Magistrates Court continued with the criminal case against opposition MP Zitto Kabwe. The case alleges that Zitto made several seditious remarks against the TPF, accusing it of killing more than 100 civilians in Kigoma. On October 23, the case was heard and adjourned until 2020.

On March 10, Minister for Home Affairs Kangi Lugola ordered regional police commanders throughout the country to arrest leaders of opposition parties who insult the president. On September 26, Lugola also warned CSOs against insulting the government.

National Security: In March 2018 the Electronic and Postal Communications (Online Content) Regulations were passed, requiring online content providers to
monitor and filter content that threatens national security or public health and safety.

**Internet Freedom**

The government restricted access to the internet and monitored websites and internet traffic. The Electronic and Postal Communications (Online Content) Regulations tighten control of internet content through registration requirements and licensing fees. Bloggers and persons operating online forums, including online television and radio streaming services, must obtain certification from the TCRA by submitting a license application requiring information such as the nature of services offered, estimated cost of investment, staff qualifications, and plans. In addition all online content providers must pay application and licensing fees totaling more than two million TZS ($880) in initial costs. Licenses are valid for three years and must be renewed annually for one million TZS ($440). Prohibitive costs led some citizens to stop blogging or posting content on online forums, including international social media platforms.

Under the regulations internet cafes must install surveillance cameras to monitor persons online. Online material deemed “offensive, morally improper” or that “causes annoyance,” is prohibited, and those charged with violating the regulations face a minimum fine of TZS five million ($2,200) or a minimum sentence of 12 months in prison. The Cybercrimes Act of 2015 criminalizes the publication of false information, defined as “information, data or facts presented in a picture, texts, symbol, or any other form in a computer system where such information, data, or fact is false, deceptive, misleading, or inaccurate.” Individuals who made critical comments about the government on electronic media were charged under the act, even when remarks reflected opinions or were factually true.

In 2018 Bob Wangwe appealed to the High Court of Dar es Salaam a Kisutu court conviction and sentence imposing a fine of five million TZS ($2,200) or a jail term of 18 months for publishing inaccurate information on Facebook. In March he won his appeal. The court ruled that the government would have to prove that the information posted online by Wangwe was authentic, and what its intent was.

On September 7, Sebastien Atilio was arrested for publishing false news and practicing journalism without accreditation under the Media Services Act in connection with messages he sent in a WhatsApp Group called Mufindi Media Group. The original bail hearing set for September 18 was postponed several times. On October 28, Atilio was released on bail and the judge instructed the
public prosecutor to complete the investigation within 61 days or the judge would withdraw the case until the investigation is completed. The case remained pending as of December.

**Academic Freedom and Cultural Events**

In June parliament passed amendments for the second time in two years to the 2015 Statistics Act, which had required individuals and organizations to obtain permission from the National Bureau of Statistics before conducting surveys, collecting research data, or publicizing results. The amendment removed the threat of prison for civil society groups if they publish independent statistical information. It also states people have the right to collect and disseminate statistical information, and puts a system in place for people who want to access and/or publish national data.

**b. Freedoms of Peaceful Assembly and Association**

**Freedom of Peaceful Assembly**

The government restricted freedom of peaceful assembly and association, including through bans decreed by authorities but not supported by law. The government requires organizers of rallies to obtain police permission. Police may deny permission on public safety or security grounds or if the permit seeker belongs to an unregistered organization or political party. The government and police continued to limit the issuance of permits for public demonstrations and assemblies to opposition political parties, NGOs, and religious organizations. The only political meetings allowed in principle are by MPs in their constituencies; outside participants, including party leaders, are not permitted to participate. Restrictions were also applied to nonpolitical gatherings deemed critical of the government.

The ruling CCM is the only party that may legally conduct public rallies. It uses the umbrella of the implementing party manifesto to inform members when it is time to register to vote.

Opposition political parties continued to be harassed and detained by law enforcement and have unsuccessfully sought redress in the courts. For example, on May 27, the former minister for tourism and natural resources Lazaro Nyalandu and two opposition members from CHADEMA were arrested in Itagi Ward in Sigida during a closed-door meeting. They were released on bail the next day,
after being questioned by the Prevention and Combating of Corruption Bureau (PCCB) for more than two hours.

In July, Zanzibar police arrested Seif Hamad Sharif during a commemoration event for the 10th anniversary of political reconciliation in Zanzibar. The police questioned Seif before releasing him and canceling the event.

**Freedom of Association**

The constitution provides for freedom of association, and the government generally respected this right. Thousands of NGOs and societies operated in the country. Political parties were required to register and meet membership and other requirements. Freedom of association for workers was limited (see section 7.a.).

According to The International Center for Not-for-Profit Law and the LHRC midyear report, the freedom of association for NGOs has been jeopardized by amendments of the NGO act, which reduces the autonomy of NGOs and provides for excessive regulation of the NGO sector. The registrar stated that the process of deregistering underscored the need for NGOs to comply with the law and provide for transparency and accountability in their activities. Under existing law, however, the registrar of NGOs is granted sweeping powers to suspend and deregister NGOs, leaving loopholes which could be used to obstruct opposition and human rights NGOs. For example, the registrar deregistered 158 NGOs in August. Community Health Education Services and Advocacy, Kazi Busara na Hekima (KBH Sisters), and AHA Development Organization Tanzania were deregistered for supposedly promoting acts in society which violate ethics and culture because they supported LGBTI protection and rights. Others that withdrew were Pathfinder Green City, Hamasa Poverty Reductions (Hapore), and Hope.

The law makes a distinction between NGOs and societies and applies different registration procedures to the two. It defines a society as any club, company, partnership, or association of 10 or more persons, regardless of its purpose, and notes specific categories of organizations not considered societies, such as political parties. The law defines NGOs to include organizations whose purpose is to promote economic, environmental, social, or cultural development; protect the environment; or lobby or advocate on issues of public interest. Societies and organizations may not operate until authorities approve their applications. In August the government began a verification exercise that required all NGOs to reregister. Registration of new NGOs was suspended until December 1.
The government rarely registered societies within the legally required 14-day period. In April the minister of home affairs stated that from July 2018 to March, the registrar of societies received 150 registration applications, 77 from religious institutions and 73 from CSOs. The registrar registered 69 applications: 38 CSOs and 31 religious institutions. Of the applicants, 81 were still working on their applications.

NGOs in Zanzibar apply for registration with the Zanzibar Business and Property Registration Agency. While registration generally took several weeks, some NGOs waited months if the registrar determined additional research was needed.

In July an NGO said Zanzibar has an outdated NGO policy and that local authorities are unable to catch up with the changing requirements of NGOs and operations countrywide. According to some NGOs, security and government organizations were interfering with the work of NGOs. As an example the Office of the Second Vice President suspended implementation of a project for youth, explaining it needed more time to examine the scope of the project. The government, however, views any youth group as the opposition organizing.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights; however, there were cases of political opposition leaders being barred from leaving the country.

In-country Movement: Refugees are confined to camps and are subject to arrest if they leave them. Under its more restrictive approach to hosting refugees, the government limited refugee movement and enforced its encampment policy more strictly during the year, including the arrest of refugees caught moving outside the camps without official permission. With permits more difficult to obtain and livelihood opportunities inside the camps heavily constrained, refugees compelled to leave the camps in search of work were apprehended by police and arrested. Usually these persons were prosecuted and sentenced in local courts to six months’ detention or payment of a fine.
Foreign Travel: On June 12, immigration officials in Zanzibar detained opposition leader and MP Zitto Kabwe, who was en route to Kenya for a retreat with leaders of his Alliance for Change and Transparency (ACT) Party. Acting on instructions from the PCCB not to permit Kabwe to leave the country due to pending charges under the Media Services Act, immigration officials transferred Kabwe to police custody. The police later released Kabwe but confiscated his mobile phone and laptop.

In February the travel of migrant workers overseas for employment was temporarily suspended, ostensibly to allow time for the government to strengthen migrant-worker protection mechanisms.

Citizenship: There were no reports of revocation of citizenship on an arbitrary or discriminatory basis.

e. Internally Displaced Persons

There were no reports of large numbers of internally displaced persons.

f. Protection of Refugees

Abuse of Migrants, Refugees, and Stateless Persons: Despite government assurances that its borders remained open to refugees, during the year authorities closed the borders to new refugee arrivals from the Democratic Republic of the Congo (DRC) and Burundi. In January 2018 the government withdrew from the UN’s Comprehensive Refugee Response Framework, announced it would no longer provide citizenship to Burundian refugees, and stated it would encourage refugees to return home. At that time the government assured the Office of the UN High Commissioner for Refugees (UNHCR) it would respect the choice of refugees on whether or not to return to their country of origin. While nearly 75,000 Burundian refugees had been repatriated with assistance between September 2017 and September 2019, there were numerous accounts of refugees facing intimidation or pressure by Tanzanian authorities to return home. Some refugees who were pressured into returning to Burundi became refugees in other countries or returned to Tanzania.

In August, Minister of Home Affairs Lugola announced a bilateral agreement with Burundi to repatriate 2,000 Burundians per week, whether voluntary or not. Although the government of Tanzania subsequently restated its commitment to
voluntary repatriation, UNHCR remained concerned about validating the voluntariness of the returns. In addition the government suspended livelihood options for refugees, including the closure of businesses operating inside the camps and common markets outside the camps where refugees and the surrounding communities could exchange goods. According to NGOs working in the camps, there has been an increase in gender-based violence and other concerns due to the loss of livelihoods.

Refugees apprehended more than 2.5 miles outside their camps without permits are subject by law to sentences ranging from a fine up to a three-year prison sentence. In addition there have been reports of refugees found outside the camps being detained, beaten, tortured, raped, or killed by officials or citizens.

On April 5, Deputy Minister of Home Affairs Hamad Yusuph Masauni reported that 13,393 illegal immigrants were arrested in the country. Of this number, 2,815 were charged for illegally entering the country, 117 paid fines, and 429 were sentenced to a jail term. Of those arrested, 6,316 were deported and 1,313 were released after confirming residency. The Department of Immigration is the lead agency in the government on identifying immigrant status and subsequent action. According to one report, 39 illegal farmers from neighboring countries were arrested in the Kagera region.

Sex- and gender-based violence against refugees continued, including allegations against officials who worked in or around refugee camps. UNHCR worked with local authorities and residents in the three refugee camps to strengthen coordination and address violence, including sexual violence, against vulnerable persons. The public prosecutor investigated, prosecuted, and punished perpetrators of abuses in the camp, while international NGOs provided assistance to the legal team when requested by a survivor. Local authorities and the public prosecutor handled most cases of refugee victims of crime and abuse outside the camp. Residents of the refugee camps suffered delays and limited access to courts, common problems also faced by citizens.

Refoulement: The government closed the last of the country’s official refugee reception centers in 2018, and during the year there were credible reports of push backs at the border as well as instances of obstructions to access for Congolese and Burundian asylum seekers following requests for international protection in the country. In addition the Burundian refugees who had been assisted by UNHCR during the year to return voluntarily to Burundi, but were forced to flee again and seek asylum for a second time, were unable to register with the authorities. This
prevent them from being able to access humanitarian assistance or basic services.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has an established system for providing protection to refugees. The National Eligibility Committee is required to meet regularly and make determinations on asylum applications.

Despite the government’s strict encampment policy, authorities continued to permit a small population of urban asylum seekers and refugees to reside in Dar es Salaam; this group consisted principally of persons in need of international protection arriving from countries that are not contiguous as well as individuals with specific reasons for being unable to stay in the refugee camps in the western part of the country. While access to formal employment opportunities remained limited for urban refugees, they did enjoy access to government health services and schools. UNHCR continued to intervene in cases of irregular migrants in need of international protection following their arrest by authorities in Dar es Salaam or other urban centers to ensure that the migrants had access to national asylum procedures and were protected from forced return to their country of origin.

During the year the government and the IOM continued to support training for law enforcement officers on the use of biometric registration equipment intended to provide irregular migrants a basis for either regularizing their status or voluntarily returning to their places of origin.

Safe Country of Origin/Transit: No policy for blanket or presumptive denials of asylum exists for applicants arriving from a “safe country of origin” or through a “safe country of transit.” All asylum applications are evaluated individually. The law provides that, unless the transit country is experiencing a serious breach of peace, an asylum claim can be refused upon failure to show reasonable cause as to why asylum was not claimed in the transit country prior to entry into Tanzania.

Freedom of Movement: Policy restrictions limiting refugee freedom of movement and access to livelihoods left the refugee population almost totally dependent on humanitarian assistance and vulnerable to a range of protection risks, including sexual and gender-based violence. Interpartner violence continued to be reported as the leading category of sexual and gender-based violence, accounting for approximately 75 percent of incidents. Observers attributed this level of violence to the difficult living conditions in refugee camps, split-family decisions resulting from government pressure to return and substance abuse; closure of larger markets,
which undermined women’s self-reliance; and restrictions on freedom of movement, which placed women and girls in a precarious situation when they left the camps to collect firewood and seek other foods to diversify their family’s diet.

Durable Solutions: During the year the government focused on repatriation and did not support local integration as a durable solution. The government maintained pressure on Burundian refugees to return to Burundi, promoting repatriation as the only durable solution for Burundian refugees. UNHCR continued to assist voluntary returns under the framework of a tripartite agreement between the governments of Burundi and Tanzania and UNHCR, stressing that conditions inside Burundi were not yet conducive for large-scale returns because many Burundian refugees remained in need of international protection. Nonetheless, in August the government increased pressure on Burundian refugees to sign up for returns, agreeing with the government of Burundi to return 2,000 Burundians a week, but also saying that all Burundian refugees would be returned by the end of the year. The government implemented measures to make life more difficult for refugees, including closing the shared refugee and host community markets in February and restricting camp exit permits.

According to the Ministry of Home Affairs, from July 2018 to March 28,h a total of 662 Burundian refugees repatriated voluntarily. According to UNHCR, nearly 75,000 Burundian refugees have returned with assistance since 2017. The government granted 162,000 former Burundian refugees citizenship in 2014-15. During the year, 1,350 refugees from the DRC and 82 from other countries were resettled in other countries.

g. Stateless Persons

Not applicable.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage, but it allows parliament to restrict this right if a citizen is mentally infirm, convicted of certain criminal offenses, or omits or fails to prove or produce evidence of age, citizenship, or registration as a voter. Citizens residing outside the country are not allowed to vote. The National Electoral Commission is responsible for mainland and union electoral affairs, while the Zanzibar Electoral Commission (ZEC) manages elections in Zanzibar.
Elections and Political Participation

Recent Elections: The country held its most recent multiparty general election in 2015, when a new president and legislative representatives were elected. The union elections were judged largely free and fair, although some opposition and civil society figures alleged vote rigging. The CCM benefited from vastly superior financial and institutional resources. There were also reports that the use of public resources in support of the CCM increased, as well as many reports of regional and district commissioners campaigning for the ruling party.

In the presidential election the CCM candidate, John Magufuli, was elected with 58 percent of the vote to replace Jakaya Kikwete, who was not eligible to run for a third term. Four opposition parties combined in the Coalition for the People’s Constitution to support a single candidate, who ran under the CHADEMA banner, as the law at the time did not recognize coalitions. In February the amended Political Parties Act officially recognized coalitions. In parliamentary elections, the CCM retained a supermajority in parliament, with nearly 73 percent of the seats.

Separate elections are held for the union and for Zanzibar, ordinarily on the same day, in which citizens of the two parts of the union elect local officials, members of the national parliament, and a union (national) president. Additionally, Zanzibar separately elects a president of Zanzibar and members of the Zanzibar House of Representatives. The voting in Zanzibar in 2015 was judged largely free and fair. Following the vote, however, when tabulation of the results was more than half completed, the chairperson of the ZEC announced he had nullified the Zanzibar elections. According to the constitution and law, the commission does not have the authority to do so. This decision precipitated a political crisis in the semiautonomous archipelago, with the opposition candidate declaring he had won. New elections in 2016 were neither inclusive nor representative. The new elections were boycotted by the opposition, which claimed they would not be fair. Following the new elections, the ZEC announced President Ali Mohammed Shein had won with 91 percent of the vote, with the ruling CCM party sweeping nearly all seats in the Zanzibar House of Representatives. Official voter turnout was announced at 68 percent, although numerous sources estimated actual turnout at closer to 25 percent.

Between November 2017 and July 13, by-elections were conducted on short notice for ward councilor and parliamentary seats that became vacant due to the death,
party defection, resignation, or expulsion of the incumbents. In several cases an opposition member who defected to the ruling party subsequently was named as the ruling party’s candidate for the same seat the individual had just vacated. By-elections were marked by irregularities, including denying designated agents access to polling stations, intimidation by police of opposition party members, and unwarranted arrests. In many cases opposition candidates were prevented from registering, resulting in many races being declared uncontested for the ruling party.

In March the speaker of parliament removed opposition CHADEMA MP Joshua Nassari from his seat due to absenteeism. A court upheld the removal when Nassari challenged the decision. In June the speaker also removed opposition CHADEMA MP Tundu Lissu for absenteeism and failing to submit required disclosure statements in a timely manner. Lissu survived an assassination attempt in 2017 and since then has been abroad for medical care. The court dismissed Lissu’s challenge to his removal, and a new CCM member was sworn in on September 3 to represent his constituency.

On October 16, the Court of Appeal overturned a May High Court of Dar es Salaam decision to prohibit district executive directors from supervising elections on the grounds that their supervision violates a constitutional ban on political parties from running elections. The district executive directors are presidentially appointed to act as the secretary of district councils, and many are active members of the ruling CCM party.

Political Parties and Political Participation: The constitution requires that persons running for office must represent a registered political party. The law prohibits unregistered parties. There are 22 political parties with full registration and one with provisional registration. To secure full registration, parties must submit lists of at least 200 members in 10 of the country’s 31 regions, including two of the five regions of Zanzibar.

The registrar of political parties has sole authority to approve registration of any political party and is responsible for enforcing regulations. In February an amendment of the Political Parties Act expanded the registrar’s powers, a move opposition MPs asserted would cement one-party rule. Under the amended act the registrar may prohibit any individual from engaging in political activities and request any information from a political party, including minutes and attendees of party meetings. In March the registrar of political parties threatened to deregister ACT for contravening the Political Parties Act. The deregistration threat came a week after Seif Sharif, a popular Zanzibari opposition politician, announced his
defection from his Civil United Front (CUF) Party to join ACT. Sharif’s supporters burned CUF flags during the announcement, in contravention of the law.

The law requires political parties to support the union between Tanganyika (mainland Tanzania) and Zanzibar; parties based on ethnic, regional, or religious affiliation are prohibited.

MPs were sanctioned for expressing criticism of the government, including for speeches on the floor of parliament. In late March and early April 2018, police arrested nine top CHADEMA leaders and charged them with unlawful assembly and disobeying an order to disperse after demonstrating with supporters to demand the issuance of credentials for party polling agents on the eve of a February 2018 by-election. Of those arrested, CHADEMA chairman Freeman Mbowe faced additional charges, including sedition. CHADEMA leaders were involved in a protracted legal battle that was pending.

The election law provides for a “gratuity” payment of TZS 235 million to TZS 280 million ($103,000 to $123,000) to MPs completing a five-year term. Incumbents can use these funds in re-election campaigns. Several NGOs and opposition parties criticized this provision for impeding aspiring opposition parliamentary candidates from mounting effective challenges.

The mainland government allowed political opponents unrestricted access to public media, but the ruling party had far more funding to purchase broadcast time.

The National Electoral Commission (NEC) was updating the voter register in preparation for the 2020 general elections. The law requires that voter registration drives be carried out twice every five years. The amendment to the Political Parties Act, however, restricted political parties’ ability to offer civic education and outreach on voter registration and voting rights, as they had done in the past. Instead, 24 CSOs were accredited for civic education. None of the accredited CSOs has the financial or technical capacity to carry out effective national voter education campaigns. In addition the NEC scheduled only seven days for registration in each region, a time frame stakeholders asserted was inadequate to ensure a proper voter registry before 2020 elections.

**Participation of Women and Minorities:** No laws limit participation of women or members of minorities in the political process, and they did participate. Some observers believed cultural and financial constraints limited women’s participation
in politics. In the 2015 election, voters elected a woman as vice president. There were special women’s seats in both parliament and the Zanzibar House of Representatives, which, according to World Bank data, brought total female representation to 36 percent.

Section 4. Corruption and Lack of Transparency in Government
The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity. After taking office President Magufuli took several high-profile steps to signal a commitment to fighting corruption. These included surprise inspections of ministries, hospitals, and the port of Dar es Salaam, often followed by the immediate dismissal of officials. In implementing Phase III (2017-22) of the National Anticorruption Strategy and Action Plan, President Magufuli introduced a new High Court Division of Economic, Corruption, and Organized Crime in 2016. Critics and observers noted that President Magufuli has used the anticorruption platform to go after those who opposed him.

Corruption: While efforts were being made to reign in corruption, it remained pervasive; however, Transparency International’s Corruption Perception Index released in February shows improvement in the perception of corruption. The PCCB reported that most corruption investigations concerned government involvement in mining, land matters, energy, and investments.

Afrobarometer findings published in July indicated citizens perceive an overall drop in corruption, with only 10 percent of citizens reporting that corruption has increased in the past year, and 71 percent of citizens feeling the government is doing a good job combatting corruption. Government entities were still considered the most corrupt entities, led by police, judges and magistrates, the Tanzania Revenue Authority, and local government. NGOs continued to report allegations of corruption involving the Tanzania Revenue Authority, local government officials, police, licensing authorities, hospital workers, and media.

Corruption featured in newspaper articles, civil complaints, and reports of police corruption from the PCCB and from the Ministry of Home Affairs.

The PCCB’s mandate excludes Zanzibar. In July the Zanzibar Anti-Corruption and Economic Crime Authority reported it had been able to reduce corruption, citing one conviction and a pending investigation into corruption cases in the Ministry of Finance.
Financial Disclosure: Government ministers and MPs, as well as certain other public servants, are required to disclose their assets upon assuming office, annually at year’s end, and upon leaving office. The Ethics Secretariat distributes forms each October for collection in December. As of 2017, 98 percent of government leaders had submitted their forms to the secretariat (16,064 out of 16,339). When Tundu Lissu, former CHADEMA MP, was removed from his seat in June, one of the reasons cited was that he did not file financial disclosure forms. The president submitted his forms and urged other leaders to do the same. Although penalties exist for noncompliance, there was no enforcement mechanism or sufficient means to determine the accuracy of such disclosures. Information on compliance was considered sensitive and available only on request to the commissioner of the secretariat. Secretariat officials previously stated the individuals who failed to meet the deadline were asked to show cause for the delay. Any declaration forms submitted or filed after the deadline must explain the failure to observe the law. Asset disclosures are not public.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups have generally operated without government restriction, investigating and publishing their findings on human rights cases. The overall climate for NGOs, however, has shifted in the last few years. Some human rights NGOs complained of a negative government reaction when they challenged government practice or policy. Many NGOs are concerned the government is using the NGO registration laws passed in June to deregister NGOs that focus on human rights. In August the registrar of NGOs deregistered 158 NGOs for “unaccepted” behavior, alleging they were used for profit sharing and benefiting their members, which is outside the permitted NGO activities.

In May the registrar of societies in the Ministry of Home Affairs issued a public notice requesting that all religious institutions and community-based organizations registered under the ministry verify their registration status with all the required documentation. The countrywide process began with Dar es Salaam and the coastal regions in May and continued at year’s end. There are similar concerns about how the government can use this process to deregister organizations that make any statements related to human rights.

The United Nations or Other International Bodies: The government generally cooperated with visits from UN representatives, such as special rapporteurs, as
well as those from UN specialized agencies such as the International Labor Organization or other international organizations (but not including NGOs) that monitor human rights.

**Government Human Rights Bodies:** The union parliamentary Committee for Constitutional, Legal, and Public Administration is responsible for reporting and making recommendations regarding human rights.

The Commission for Human Rights and Good Governance (CHRAGG) operated on both the mainland and Zanzibar, but low funding levels and lack of leadership limited its effectiveness. The commission has no legal authority to prosecute cases but can make recommendations to other offices concerning remedies or call media attention to human rights abuses and violations and other public complaints. It also has authority to issue interim orders preventing actions in order to preserve the status quo pending an investigation. The CHRAGG also issued statements and conducted public awareness campaigns on several issues. These included the need for regional and district commissioners to follow proper procedures when exercising their powers of arrest, the need for railway and road authorities to follow laws and regulations when evicting citizens from their residences, and calling on security organs to investigate allegations of disappearances or abductions, including of journalists, political leaders, and artists.

On September 19, President Magufuli appointed a CHRAGG chairman and five commissioners.

**Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

**Women**

**Rape and Domestic Violence:** The law provides for life imprisonment for persons convicted of rape, including spousal rape during periods of legal separation. The law stipulates a woman wishing to report a rape must do so at a police station, where she must receive a release form before seeking medical help. This process contributed to medical complications, incomplete forensic evidence, and failure to report rapes. Victims often feared that cases reported to police would be made public.

On May 21, MP Zitto Kabwe criticized the government’s failure to apprehend rape culprits in the Kigoma Region. He referred to a practice known as *teleza*, when perpetrators apply dirty oil over their bodies to become slippery to make them
harder to catch. Kabwe received a report of three raped women in his constituency who were admitted to the Kigoma Hospital. The NGO Tamasha was the first to expose the cases and reported a total of 43 rape cases. Tamasha later engaged human rights NGOs such as the LHRC, THRDC, and Twaweza, which collectively raised the issue in a letter to the government.

The law prohibits assault but does not specifically prohibit domestic violence. Domestic violence against women remained widespread, and police rarely investigated such cases. The LHRC Mid-Year Human Rights Report covering January through June stated that sexual violence against children remained an issue of concern. The LHRC, however, was not able to obtain data on reported cases of violence against children on the mainland. Media surveys and human rights-monitoring NGOs showed that many children continued to be subjected to sexual violence, especially rape. According to the LHRC report, 66 percent of reported major violence against children incidents were sexual violence, of which 90 percent were rape: 30 percent of such incidents were reported in Lake Zone (Geita, Mwanza, Shinyanga, Mara, Simiyu and Kagera Regions), while the Southern Highlands Zone accounted for 32 percent.

Authorities rarely prosecuted persons who abused women. Persons close to the victims, such as relatives and friends, were most likely to be the perpetrators. Many who appeared in court were set free because of corruption in the judicial system, lack of evidence, poor investigations, and poor evidence preservation.

There were some government efforts to combat violence against women. Police maintained 417 gender and children desks in regions throughout the country to support victims and address relevant crimes. In Zanzibar, at One Stop Centers in both Unguja and Pemba, victims could receive health services, counseling, legal assistance, and a referral to police. In August, Kagera Regional Police reported they had registered 88 cases of gender-based violence between January and July that are pending in court. These included 46 cases of rape, while the rest were related to school pregnancies.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C from being performed on girls younger than age 18, but it does not provide for protection to women ages 18 or older. For information on the incidence of FGM/C, see Appendix C.

Prosecutions were rare. Many police officers and communities were unaware of the law, victims were often reluctant to testify, and some witnesses feared reprisals
from FGM/C supporters. Some villagers reportedly bribed local leaders not to enforce the law in order to carry out FGM/C on their daughters. The Ministry of Health reported that approximately 10 percent of women had undergone FGM/C. The areas with the highest rates of FGM/C were Manyara (58 percent), Dodoma (47 percent), Arusha (41 percent), Mara (32 percent), and Singida (31 percent).

**Sexual Harassment:** The law prohibits sexual harassment of women in the workplace. There were reports women were asked for sexual favors in return for promotions or to secure employment. According to the Women’s Legal Aid Center, police rarely investigated reported cases. Those cases that were investigated were often dropped before they got to court—in some instances by the plaintiffs due to societal pressure and in others by prosecutors due to lack of evidence. There were reports women were sexually harassed when campaigning for office, and one MP said that women MPs were subjected to sexual harassment frequently. The LHRC released a report in 2018 stating female students were frequently sexually harassed in higher-learning institutions, a point reiterated by a professor at the University of Dar es Salaam in a Tweet calling on President Magufuli to intervene because there were so many incidents of harassment on campus.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization.

**Discrimination:** The law provides the same legal status and rights for women and men, including in matters such as employment, housing, or access to education and health care; however, the law also recognizes customary practices that often favored men.

While women faced discriminatory treatment in the areas of marriage, divorce, inheritance, and nationality, overt discrimination in areas such as education, credit, business ownership, and housing was uncommon. Nevertheless, women, especially in rural areas, faced significant disadvantages due to cultural, historical, and educational factors. According to the 2018 World Economic Forum *Global Gender Gap Report*, men earn 39 percent more than do women.

**Children**

**Birth Registration:** Citizenship is derived by birth within the country or abroad if at least one parent is a citizen. Registration within three months of birth is free; parents who wait until later must pay a fee. Public services were not withheld.
from unregistered children. The Registration, Insolvency and Trusteeship Agency, in collaboration with Tigo telecommunication company, facilitated birth registrations of more than 3.5 million children younger than age five over the last six years in 13 regions. For additional information, see Appendix C.

**Education:** Tuition-free primary education is compulsory and universal on both the mainland and Zanzibar until age 15. Secondary school is tuition free but not compulsory.

Girls represented approximately one-half of all children enrolled in primary school but were absent more often than boys due to household duties and lack of sanitary facilities. At the secondary level, child marriage and pregnancy often caused girls to be expelled or otherwise prevented girls from finishing school.

Under the Education and Training Policy launched by the government in 2015, pregnant girls may be reinstated in schools. In 2017, however, President Magufuli declared that girls would not be allowed to return to school after giving birth. Human rights NGOs criticized the policy as contrary to the country’s constitution and laws. This policy led to girls being blamed and excluded from educational opportunities, while the fathers of the babies were often their teachers or other older men who frequently did not suffer any consequences.

**Child Abuse:** Violence against and other abuse of children were major problems. Corporal punishment was employed in schools, and the law allows head teachers to cane students. The National Violence against Children Survey, conducted in 2009 (the most recent data available), found almost 75 percent of children experienced physical violence prior to age 18. In April the Maswa Simiyu Regional Court sentenced a teacher to 30 years in prison after he was convicted of raping two former students.

On October 3, video clips appeared on social media showing the regional commissioner of Songwe beating a group of male secondary school students contrary to established procedure. The following day, President Magufuli publicly urged parents and schoolteachers to do the same.

**Early and Forced Marriage:** The law sets the legal age for marriage at 18. A 2016 amendment to the Law of the Child makes it illegal to marry a primary or secondary school student. To circumvent these laws, individuals reportedly bribed police or paid a bride price to the family of the girl to avoid prosecution. According to Human Rights Watch, girls as young as age seven were married.
Zanzibar has its own law on marriage, but it does not specifically address early marriage. The government provided secondary school-level education campaigns on gender-based violence, which, in one reported case in 2018, led to one girl using that knowledge to escape a forced marriage. For additional information, see Appendix C.

On October 23, the Court of Appeal rejected a government appeal to retain provisions in the Marriage Act of 1971, which would permit girls as young as 14 to marry with parental consent, ruling that the act was unconstitutional and discriminatory towards girls. The government must now remove the parental consent exceptions provision for marriage before the age of 18.

Sexual Exploitation of Children: The law criminalizes child sex trafficking and child pornography. Those convicted of facilitating child pornography are subject to a fine ranging from TZS one million ($440) to TZS 500 million ($220,000), a prison term of one to 20 years, or both. Those convicted of child sex trafficking are subject to a fine ranging from TZS five million ($2,200) and TZS 150 million ($66,000), a prison term of 10 to 20 years, or both. There were no prosecutions based on this law during the year.

The law provides that sexual intercourse with a child younger than 18 is rape unless within a legal marriage. The law was not always enforced because of cases not being reported or because girls facing pressure dropped charges. For example there were accounts of rapes of girls that went unreported in Zanzibar.

Infanticide or Infanticide of Children with Disabilities: Infanticide continued, especially among poor rural mothers who believed themselves unable to afford to raise a child. Nationwide statistics were not available.

Displaced Children: According to the Ministry of Health, Community Development, Gender, Elderly, and Children, large numbers of children were living and working on the street, especially in cities and near the borders. The ministry reported 6,132 children were living in hazardous conditions during the year. These children had limited access to health and education services, because they lacked a fixed address or money to purchase medicines, school uniforms, and books. They were also vulnerable to sexual abuse. According to the Ministry of Health, Community Development, Gender, Elderly, and Children, from July 2018 to March, 13,420 displaced children were given necessities including food, clothing, education, and health from a combination of government and private organizations.

Anti-Semitism

The Jewish population is very small, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities, but the government did not effectively enforce these provisions.

Few public buildings were accessible to persons with disabilities. New public buildings, however, were built in compliance with the law. The law provides for access to information and communication, but not all persons with disabilities had such access.

There were six members of the union parliament with disabilities. Persons with disabilities held three appointed seats in the Zanzibar House of Representatives. The Prime Minister’s Office includes a ministerial position that covers disabilities. The country defines persons with albinism as disabled and appointed a person with albinism as its ambassador to Germany in 2017.

Limits to the political participation of persons with disabilities included inaccessible polling stations, lack of accessible information, limited inclusion in political parties, the failure of the National Electoral Commission to implement directives concerning disability, and prejudice toward persons with disabilities.
According to the 2008 Tanzanian Disability Survey, an estimated 53 percent of children with disabilities attended school. There were no significant reported patterns of abuse in educational or mental health facilities.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

Consensual same-sex sexual conduct is illegal in the country. The law on both the mainland and Zanzibar punishes “gross indecency” by up to five years in prison or a fine. The law punishes any person convicted of having “carnal knowledge of another against the order of nature or permits a man to have carnal knowledge of him against the order of nature” with a prison sentence of 30 years to life on the mainland and imprisonment up to 14 years in Zanzibar. In Zanzibar the law also provides for imprisonment up to five years or a fine for “acts of lesbianism.” In the past courts charged individuals suspected of same-sex sexual conduct with loitering or prostitution. The law does not prohibit discrimination based on sexual orientation and gender identity. Police often harassed persons believed to be LGBTI based on their dress or manners.

During the year the government opposed improved safeguards for the rights of LGBTI persons, which it characterized as contrary to the law of the land and the cultural norms of society. Senior government officials made several anti-LGBTI statements. On September 20, the deputy minister of home affairs instructed police in Zanzibar to arrest members of the LGBTI communities, accusing them of being unethical, unaccepted, and against the law, and of bringing a bad image to the island and being linked to drug use. During the year there was one report that police arrested two suspects for alleged homosexual activity and subjected them to forced anal examinations. There were also reports of arrests and detentions to harass known LGBTI activists.

LGBTI persons continued to be afraid to report violence and other crimes, including those committed by state agents, due to fear of arrest. LGBTI persons faced societal discrimination that restricted their access to health care, including access to information about HIV, housing, and employment. There were no known government efforts to combat such discrimination.

In January, after being arrested for allegedly engaging in same-sex activity, 17 individuals were reportedly subjected to anal exams in Kigongoni Public Hospital, Arusha, by medical personnel in the presence of armed police. The victims had no lawyer or representative present, and the “results” were never shared.
In 2017 authorities filed a case against two women in Mwanza who were recorded on a video posted on social media exchanging rings in an engagement ceremony. The case was withdrawn without being heard in 2018 and then reopened as a new case in June.

In April a 19-year-old student at Katoro Islamic Seminary died after being beaten by a teacher and fellow students. They reportedly beat him because of his alleged same-sex activity. He was buried without his family being informed; they contacted police when they realized he was missing. Following an investigation, police arrested four teachers and 11 students. Police also obtained a court order to exhume the remains for further investigation.

**HIV and AIDS Social Stigma**

The 2013 *People Living with HIV Stigma Index Report* indicated persons with HIV/AIDS experienced significant levels of stigma countrywide (39 percent), with stigma particularly high in Dar es Salaam (50 percent). The most common forms of stigma and discrimination experienced were gossip, verbal insults, and exclusion from social, family, and religious activities. More than one in five persons with HIV/AIDS experienced a forced change of residence or inability to rent accommodations. In Dar es Salaam, nearly one in three of these persons experienced the loss of a job or other source of income.

The law prohibits discrimination against any person “known or perceived” to be HIV-positive and establishes medical standards for confidentiality to protect persons with HIV/AIDS. Police abuses of HIV-positive persons, particularly in three key populations (sex workers, drug users, and LGBTI persons), included arbitrary arrest, extortion, and refusal to accept complaints from victims of crime. In the health sector, key populations experienced denial of services, verbal harassment and abuse, and violations of confidentiality. In 2017 the government allowed community-based services for key populations to be reinstated following the release of revised guidelines, although the distribution of lubricants is still banned. NGOs and CSOs serving these key populations continued to face occasional backlash and harassment from law enforcement. There was continuing fear among these NGOs to operate freely and openly, as well as among LGBTI persons to seek health services, including HIV prevention and treatment.

Gender desks at police stations throughout the country were established to help address mistrust between members of key populations and police.
Other Societal Violence or Discrimination

Despite efforts by the government and NGOs to reduce mob violence through educational outreach and community policing, mob violence continued. According to the LHRC *Mid-Year Report*, 385 were killed in mob violence. For example, in June, in the town of Shinyanga, Esther Samwel was killed by an angry mob after being accused of stealing some greens and vegetables at the market place.

Witchcraft-related killings continued to be a problem. According to the LHRC *Mid-Year Report*, there were 106 witchcraft-related killings from January to June. Major victims or targets of such killings continued to be elderly women and children. The regions with the greatest number of killings were Mbeya, Iringa, Dar es Salaam, and Shinyanga. For example, in Dar es Salaam, police arrested a man for selling his six-year-old daughter to be killed so that her body parts could be used in a potion to make him rich. The child’s body was found decapitated in the Mbeya Region with the right foot amputated.

From January to June, 10 children in Njombe Region were reported missing and later found dead with some body parts missing. In connection to this case, 28 suspects were arrested.

In 2015 the government outlawed witchdoctors in an attempt to curtail killings of persons with albinism. Attacks on persons with albinism were declining, and from January through June, there were no reported cases of persons with albinism being killed or attacked. Persons with albinism remained at risk of violence, however, especially during election times, as some ritual practitioners sought albino body parts in the belief they could be used to bring power, wealth, and good fortune. Schools used as temporary shelters in some cases evolved into long-term accommodations, with many students with albinism afraid to return to their homes. One shelter in Buhangija, however, had almost 470 children with albinism living there, but it was reported that 350 of these children have been reunited with their families. Widespread discrimination against persons with albinism still existed. During the year a woman with albinism was reportedly harassed at her place of work in Mwanza by other workers. She lost her job as a hotel restaurant hostess and was told to work cleaning the rooms instead.

Farmers and pastoralists sometimes argued over traditional animal grazing areas, and violence continued to break out during some disputes.
Section 7. Worker Rights

a. Freedom of Association and the Right to Collective bargaining

The mainland and Zanzibari governments have separate labor laws. Workers on the mainland, except for workers in the categories of “national service” and prison guards, have the right to form and join independent trade unions, bargain collectively, and conduct legal strikes. The law prohibits antunion discrimination. The government nevertheless restricted these rights. Reinstatement of workers fired for trade union activity is not mandatory.

Trade unions in the private sector must consist of more than 20 members and register with the government, while public-sector unions need 30 members. Five organizations are required to form a federation. Trade union affiliation with nonunion organizations can be annulled by the Labor Court if it was obtained without government approval, or if the union is considered an organization whose remit is broader than employer-worker relations. A trade union or employers association must file for registration with the Registrar of Trade Unions in the Ministry of Labor within six months of establishment. The law, however, does not provide for specific time limits within which the government must register an organization, and the registrar has the power to refuse registration on arbitrary or ambiguous grounds. The government prescribes the terms of office of trade union leaders. Failure to comply with government requirements is subject to fines, imprisonment, or both.

The law requires unions to submit financial records and a membership list to the registrar annually and to obtain government approval for association with international trade unions. The registrar can apply to the Labor Court to deregister or suspend unions if there is overlap within an enterprise or if it is determined the union violated the law or endangered public security.

Collective bargaining agreements must be registered with the Labor Commission. Public-service employees, except for limited exceptions, such as workers involved in “national service” and prison guards, may also engage in collective bargaining.

Employers have the right to initiate a lockout provided they comply with certain legal requirements and procedures. For a strike to be declared legal, the law requires three separate notifications of intent, a waiting period of at least 92 days, and a union vote in the presence of a Ministry of Labor official that garners approval by at least 75 percent of the members voting. All parties to a dispute may
be bound by an agreement to arbitrate, and neither party may then engage in a strike or a lockout until that process has been completed. Disputes regarding adjustments to or the terms of signed contracts must be addressed through arbitration and are not subject to strikes.

The law restricts the right to strike when a strike would endanger the life and health of the population. Picketing in support of a strike or in opposition to a lawful lockout is prohibited. Workers in sectors defined as “essential” (water and sanitation, electricity, health services and associated laboratory services, firefighting, air traffic control, civil aviation, telecommunications, and any transport services required for the provision of these services) may not strike without a pre-existing agreement to maintain “minimum services.” Workers in other sectors may also be subject to this limitation as determined by the Essential Services Committee, a tripartite committee composed of employers, workers, and government representatives with the authority periodically to deem which services are essential.

According to the 2004 Labor Relations Act, an employer may not legally terminate an employee for participating in a lawful strike or terminate an employee who accedes to the demands of an employer during a lockout.

Penalties for violations were not sufficient to deter violations. Disputes on the grounds of antiunion discrimination must be referred to the Commission for Mediation and Arbitration, a governmental department affiliated with the Ministry of Labor. There was no public information available regarding cases of antiunion discrimination.

There were no reports of sector-wide strikes or any other major strikes in the country.

In Zanzibar the law requires any union with 50 or more members to be registered, a threshold few companies could meet. The law sets literacy standards for trade union officers. The law provides the registrar considerable powers to restrict registration by setting forth criteria for determining whether an organization’s constitution contains suitable provisions to protect its members’ interests. The law applies to both public- and private-sector workers and bans Zanzibari workers from joining labor unions on the mainland. The law prohibits a union’s use of its funds, directly or indirectly, to pay any fines or penalties incurred by trade union officials in the discharge of their official duties. In Zanzibar both government and private sector workers have the right to strike as long as they follow procedures outlined in
the labor law. For example, workers in essential sectors may not strike; others must give mediation authorities at least 30 days to resolve the issue in dispute and provide a 14-day advance notice of any proposed strike action.

The law provides for collective bargaining in the private sector. Public-sector employees also have the right to bargain collectively through the Trade Union of Government and Health Employees; however, members of the police force and prison service, and high-level public officials (for example, the head of an executive agency) are barred from joining a trade union. Zanzibar’s Dispute Handling Unit addresses labor disputes. In Zanzibar judges and all judicial officers, members of special departments, and employees of the House of Representatives are excluded from labor law protection.

In Zanzibar the courts are the only venue in which labor disputes can be heard. According to the Commission of Labor in Zanzibar, 16 workers used the courts for labor disputes. Labor enforcement in Zanzibar is insufficient, especially on the island of Pemba.

The government did not effectively enforce the law protecting the right to collective bargaining. On both the mainland and in Zanzibar, private-sector employers adopted antiunion policies or tactics, although discriminatory activities by an employer against union members are illegal. The Trade Union Congress of Tanzania (TUCTA)’s 2018 annual report claimed that international mining interests bribed government officials to ignore workers’ complaints and write false favorable reports on work conditions in mines. TUCTA also reported that employers discouraged workers from collective bargaining and retaliated against workers’ rights activists via termination of employment and other measures. The Tanzania Mines, Energy, Construction, and Allied Workers’ Union met in June to discuss how to improve organizing in the mining sector.

TUCTA also expressed concern over the proposal of a new computation formula for pensions. Under the new formula, 25 percent would be issued as a lump sum while the remaining 75 percent would be paid in monthly installments. TUCTA called for the government to revert to the old formula, under which workers received a 50 percent lump sum payment upon retirement. By the end of December 2018, President Magufuli announced the new formula would not go into effect until 2023 to provide more time to reach consensus.

b. Prohibition of Forced or Compulsory Labor
The law prohibits most forms of forced or compulsory labor. The law allows prisoners to work without pay on construction and agriculture projects within prisons. The law deems such work acceptable as long as a public authority ensures the work is not for the benefit of any private party. The law also allows work carried out as part of compulsory national service in certain limited circumstances. The constitution provides that no work shall be considered forced labor if such work forms part of compulsory national service in accordance with the law, or “the national endeavor at the mobilization of human resources for the enhancement of society and the national economy and to ensure development and national productivity.”

The law establishes criminal penalties for employers using forced labor, but penalties are not sufficient to deter violations. The government did not effectively enforce the law. Neither the government nor the International Labor Organization (ILO) provided statistics on government enforcement. The ILO reported unspecified instances of forced labor, including those involving children from the southern highlands forced into domestic service or labor on farms, in mines, and in the informal business sector. Forced child labor occurred (see section 7.c.). In late 2018 the government drafted a national child labor strategy, which has yet to be formally launched.

Prisoners perform unpaid and nonvoluntary labor on projects outside of the prison, such as road repair, agriculture, and government construction projects. The Ministry of Home Affairs reported that prisoners perform labor on a joint sugar plantation project, including planting 2,000 acres of sugar under an agreement between the National Social Security Fund and the Parastatal Pension Fund (PPF). The Moshi Prison Department, in collaboration with PPF, installed leather manufacturing equipment, and prisoners produce shoes and handbags.

Also see the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the exploitation of children in the workplace. By law the minimum age for contractual employment is 14 on the mainland; in Zanzibar the minimum age is 15. Children older than 14 but younger than 18 may be employed to do only nonhazardous work that is not likely to be harmful to the child’s health and development or attendance at school. The government published regulations to define hazardous work for children in several sectors, including in agriculture,
fishery, mining, and quarrying, construction, service, informal operations, and the transport sectors. The law specifically limits working hours for children to six hours a day. Penalties were not sufficient to deter violations, and there were no reported cases of prosecutions under this law.

The government did not adequately enforce the law. The lack of enforcement left children vulnerable to exploitation and with few protections. Child labor was prevalent in agriculture, mining, industry, fishing, and domestic work. The ILO previously worked with the government to train labor inspectors on child labor, but there were no such activities reported during the year.

Child labor cases were brought to court in the mainland. Zanzibar’s Ministry of Labor, Youth Development, Women, and Children did not take legal action related to child labor.

Government measures to ameliorate child labor included verifying that children of school age attended school, imposing penalties on parents who did not enroll their children in school, and pressing employers in the formal sector not to employ children younger than 18. In September 2018 President Magufuli appointed a new labor commissioner who reportedly listed reducing child labor as one of his priorities. The country developed a national strategy for child labor in 2018; however, the government has yet to launch the strategy.

On the mainland children worked as domestic workers, street vendors, and shopkeepers as well as in small-scale agriculture, family-based businesses, fishing, construction, and artisanal mining of gold and tanzanite. According to Human Rights Watch, children as young as eight worked in mining. In Zanzibar children worked primarily in fishing, clove picking, domestic labor, small businesses, and gravel making.

In Zanzibar the government’s endeavors to contain child labor were minimal. In Micheweni and Mwambe villages, for example, children were engaged in stone crushing. In fishing villages such as Matemwe, children would not go to school but go to work at the fish market.

Also see the Department of Labor’s *Findings on the Worst Forms of Child Labor* at [https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings](https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings) and the Department of Labor’s *List of Goods Produced by Child Labor or Forced Labor* at [https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods](https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods).
d. Discrimination with Respect to Employment and Occupation

The employment and labor relations law prohibits workplace discrimination, directly or indirectly, against an employee based on color, nationality, tribe, or place of origin, race, national extraction, social origin, political opinion or religion, sex, gender, pregnancy, marital status or family responsibility, disability, HIV/AIDS, age, or station in life. The law does not specifically prohibit discrimination based on sexual orientation or gender identity, language, citizenship, or other communicable disease status. The law distinguishes between discrimination and an employer hiring or promoting based on affirmative action measures consistent with the promotion of equality, or hiring based on an inherent requirement of the job. The government in general did not effectively enforce the law, and penalties were insufficient to deter violations.

Women have the same status as men under labor law on the mainland. According to TUCTA, gender-based discrimination in terms of wages, promotions, and legal protections in employment continued to occur in the private sector. It was difficult to prove and often went unpunished. While employers in the formal sector were more attentive to laws against discrimination, problems were particularly acute in the informal sector, in which women were disproportionately employed. Women often were employed for low pay and in hazardous jobs, and they reported high levels of bullying, threats, and sexual harassment. A 2015 study by the LHRC found that women faced particular discrimination in the mining, steel, and transport industries. The 2017 LHRC human rights and business report shows women still experienced discrimination.

Discrimination against migrant workers also occurred. They often faced difficulties in seeking documented employment outside of the informal sector. The Noncitizens Employment Regulation Act of 2015 gives the labor commissioner authority to deny work permits if a citizen with the same skills is available. During the year foreign professionals, including senior management of international corporations, frequently faced difficulties obtaining or renewing work permits. Because refugees lived in camps and could not travel freely (see section 2.d.), few worked in the formal sector. While efforts by nongovernment and government actors had been made to curb discrimination and violence against persons with albinism, the LHRC reported that this population still lived in fear of their personal security and therefore could not fully participate in social, economic, and political activities. The LHRC also stated that persons with disabilities also faced discrimination in seeking employment and access to the workplace.
Inspections conducted since the enactment of the law in 2015 revealed 779 foreign employees working without proper permits. Of these, 29 were repatriated and 77 were arraigned in court. Because legal refugees lived in camps and could not travel freely (see section 2.d.), few worked in the formal sector.

e. Acceptable Conditions of Work

The government established minimum wage standards in 2015 for employees in both the public and private sectors on the mainland, and it divided those standards into nine employment sectors. The minimum wage was above the government poverty line, but in many industries, it was below World Bank standards for what constitutes extreme poverty. The government’s poverty line has not been updated since 2012. The law allows employers to apply to the Ministry of Labor for an exemption from paying the minimum wage. The labor laws cover all workers, including foreign and migrant workers and those in the informal sector. The minimum wage on Zanzibar was above the poverty line.

The standard work week is 45 hours, with a maximum of nine hours per day or six days per week. Any work in excess of these limits should be compensated with overtime pay at one-and-a-half times the employee’s regular wage. Under most circumstances, it is illegal to schedule pregnant or breastfeeding women for work between 10 p.m. and 6 a.m.

The law states employees with 12 months of employment are entitled to 28 days of paid annual leave, and it requires employee compensation for national holidays. The law prohibits excessive or compulsory overtime, and it restricts required overtime to 50 hours in a four-week period or in accordance with previously negotiated work contracts. The law requires equal pay for equal work.

Several laws regulate occupational safety and health (OSH) standards in the workplace. According to TUCTA, OSH standards are appropriate for the main industries and enforcement of these standards had been improving, but challenges remained in the private sector. In March the National Audit Office released a follow-up report on a 2013 performance audit on the management of occupational health and safety in the country. The audit found the vast majority of recommendations had been fully implemented.

OSH standards, however, were not effectively enforced in the informal economy. The Occupational Safety and Health Authority did not employ sufficient inspectors. By law workers can remove themselves from situations that endanger
health or safety without jeopardy to their employment, but authorities did not effectively enforce this protection.

Workers may sue an employer if their working conditions do not comply with the Ministry of Labor’s health and environmental standards. Disputes were generally resolved through the Commission for Mediation and Arbitration. There were no exceptions for foreign or migrant workers.

Many workers did not have employment contracts and lacked legal protections. The LHRC reported many workers did not have written contracts, and those who did were often not provided with written copies of their contract. Additionally, employers often kept copies of the contracts that differed from the versions given to the employees. Companies frequently used short-term contracts of six months or less to avoid hiring organized workers with labor protections.

The government did not effectively enforce labor standards, particularly in the informal sector, where the majority of workers were employed. Penalties were insufficient to deter violations. The number of inspectors was insufficient to deter violations.

In dangerous industries such as construction, employees often worked without protective equipment such as helmets, gloves, or harnesses. According to a 2008 Accident Notification Survey (latest available), the sectors with the highest rates of fatal accidents were construction and building, transport, and mining and quarrying. Domestic workers were reportedly frequent victims of abuse.
Tab 2
EXECUTIVE SUMMARY

The United Republic of Tanzania is a multiparty republic consisting of the mainland region and the semiautonomous Zanzibar archipelago, whose main islands are Unguja (Zanzibar Island) and Pemba. The union is headed by a president, who is also the head of government. Its unicameral legislative body is the National Assembly (parliament). Zanzibar, although part of the union, has its own government with a president, court system, and legislature and exercises considerable autonomy. In 2015 the country held its fifth multiparty general election. Voting in the union and Zanzibari elections was judged largely free and fair, resulting in the election of a union president (John Magufuli). The chair of the Zanzibar Electoral Commission, however, declared the parallel election for Zanzibar’s president and legislature nullified after only part of the votes had been tabulated, precipitating a political crisis on the islands. New elections in Zanzibar in 2016 were neither inclusive nor representative, particularly since the main opposition party opted not to participate; the incumbent (Ali Mohamed Shein) was declared the winner with 91 percent of the vote. By-elections for ward councilor and parliamentary seats that became vacant due to the death, defection, resignation, or expulsion of the incumbents had egregious irregularities and obstructions that prevented opposition party members from registering and resulting in many races being declared uncontested for the ruling party. On September 19, the opposition Party of Democracy and Development (CHADEMA) announced it was boycotting the by-elections until further notice, saying there had been an “excessive militarization” of the electoral process.

Union security forces reported to civilian authorities, who directed security forces and their activities.

Human rights issues included reports of unlawful or arbitrary killings by state security forces; torture; harsh and life-threatening prison conditions; arbitrary detention; political prisoners; arbitrary or unlawful interference with privacy; censorship, site blocking, and criminal libel; substantial interference with the rights of peaceful assembly and freedom of association; unlawful arrests and intimidation of civil society organizations, including organizations working to uphold the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons; restrictions on political participation; corruption; lack of accountability in cases involving gender-based violence and child abuse; and criminalization of adult consensual same-sex conduct.
In some cases the government took steps to investigate and prosecute officials who committed human rights abuses, but impunity in the police and other security forces and civilian branches of government was widespread.

**Section 1. Respect for the Integrity of the Person, Including Freedom from:**

**a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were some reports that the government or its agents committed arbitrary or unlawful killings. For example, on February 17, police attempting to disperse an opposition gathering on the eve of by-elections unintentionally shot and killed Akwilina Akwiline, who was aboard a passing commuter bus. Six police officers were arrested and later released with no charges filed. In the same month Daniel John, a member of the opposition CHADEMA party, who had been campaigning, was abducted and beaten to death by unknown assailants. Fellow party supporter Reginald Mallya was also abducted and found unconscious with a head wound and a broken arm. Godfrey Luena, a CHADEMA party official, was also killed in February. According to a press release by the Tanzania Human Rights Defenders Coalition, Luena had been working on the protection of land rights in the Morogoro Region when he was hacked to death with machetes by unknown assailants. The deaths of John and Luena came a few months after the September 2017 attempted killing of Tundu Lissu, a well-known CHADEMA politician and then president of the Tanganyika Law Society. Lissu was shot multiple times but survived. No charges were made in connection with these crimes. The leaders of CHADEMA and the Alliance for Change and Transparency (ACT-Wazalendo) opposition parties alleged these killings were politically motivated.

**b. Disappearance**

In November 2017 Mwananchi Communication journalist Azory Gwanda disappeared in Kibiti district in Pwani Region while reporting on a spate of unexplained killings in the area and remained missing at year’s end. Some media and civil society observers claimed Gwanda may have been silenced for reporting on a sensitive security topic. In July 2017 Kibondo District Council Chairman Simon Kanguye was abducted by unknown persons while leaving his office. His family alleged that his disappearance was politically motivated and related to his stance on certain council issues. Ben Saanane, a CHADEMA policy analyst, also disappeared in late 2016. Investigations were ongoing, as the men remained missing at year’s end.
c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices; however, the law does not reflect this constitutional restriction nor define torture. There were reports that police officers, prison guards, and soldiers abused, threatened, and otherwise mistreated civilians, suspected criminals, and prisoners. These abuses often involved beatings. On August 8, police officers severely beat Wapo Radio sports journalist Sillas Mbise while he was covering a soccer match at the national stadium in Dar es Salaam; a video of the incident went viral on social media. According to the Legal and Human Rights Center’s (LHRC’s) 2018 Mid-Year Human Rights Report, the brother of a parliamentarian was stabbed to death in April while in police custody; a police officer was arrested for the crime.

The law allows caning. Local government officials and courts occasionally used caning as a punishment for both juvenile and adult offenders. Caning and other corporal punishment were also used routinely in schools. On August 27, a 13-year-old student from Kagera Region died after being severely beaten by a teacher after mistakenly being accused of theft. On October 22, court proceedings began in a case involving two teachers accused of murdering the student.

Prison and Detention Center Conditions

Prison conditions remained harsh and life threatening. Inadequate food, overcrowding, poor sanitation, and insufficient medical care were pervasive.

Physical Conditions: As of 2015 the prisons, whose total designed capacity was for 29,552 inmates, held 31,382, 6 percent above designed capacity. Pretrial detainees and convicted prisoners were held together.

Authorities held minors together with adults in several prisons due to lack of detention facilities. In 2013 the independent government department, the Commission for Human Rights and Good Governance (CHRAGG), visited selected prisons and detention facilities and found 452 minors detained in the adult prisons visited. Among these, 101 were convicts and 351 were pretrial detainees. In several adult prisons, minors were placed in a separate cell but mixed with adults during the day and while being transported to court. In other prisons children and adults mixed at all times.
Information on the prevalence of deaths in prisons, whether deliberate or unintended, was not available.

Physical abuse of prisoners was common. Witnesses noted prisoners were routinely beaten.

Prison staff reported food and water shortages, a lack of electricity, inadequate lighting, and insufficient medical supplies. Prisons were unheated, but prisoners in cold regions of the country reportedly received blankets and sweaters. Sanitation was insufficient. In July President Magufuli publicly told the commissioner general of prisons that the government would no longer feed prisoners, who should cultivate their own food. While some prisons still provided prisoners with food, the Ministry of Home Affairs reported that prisoners were cultivating land to grow food for themselves. Other prisoners reported receiving no food from the prison authorities, relying solely on what family members provided.

Medical care was inadequate. The most common health complaints by prisoners concerned malaria, tuberculosis, HIV/AIDS, and diseases related to poor sanitation. Prison dispensaries offered only limited treatment, and friends and family members of prisoners generally had to provide medications or the funds to purchase them. Limited transportation also affected the ability of prison staff to take prisoners to health centers and hospitals.

In August female prisoners told visiting members of the Zanzibar Female Lawyers Association that they were subject to sexual harassment and beatings by prison authorities.

**Administration:** Judges and magistrates conducted regular visits to inspect prisons and hear concerns from convicts and detainees. In addition, relatives of inmates made complaints to the CHRAGG, which investigated reports of abuse, but the results of those investigations were not public.

On the mainland, prisoners could submit complaints to judicial authorities. The CHRAGG also served as the official ombudsman. The union Ministry of Home Affairs’ Public Complaints Department and a prison services public relations unit responded to public complaints and inquiries sent to them directly or through the media about prison conditions.

Prisoners and detainees usually had reasonable access to visitors and could worship freely, with some exceptions. Seventh-day Adventists reported they had to work
on Saturday. The mainland authorities often moved prisoners to different prisons without notifying their families.

Independent Monitoring: The law prohibits members of the press from visiting prisons. Generally, access to prisoners was difficult for outside organizations, and the process for obtaining access was cumbersome.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, although regional and district commissioners have discretionary authority to order someone detained for up to 48 hours without charge. This authority was used frequently to detain opposition members or persons expressing criticism of the government. The law allows persons arrested or detained, regardless of whether on criminal or other grounds, the right to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been unlawfully detained. The law requires that a civil case must be brought in order to make such a challenge. In practice this was rarely done.

Role of the Police and Security Apparatus

Under the union’s Ministry of Home Affairs, the Tanzanian Police Force (TPF) has primary responsibility for maintaining law and order in the country. The Field Force Unit (FFU), a special division of the TPF, has primary responsibility for controlling unlawful demonstrations and riots. During the year there were reports of use of excessive force, police corruption, and impunity. As an example, an FFU officer beat a motorcyclist in front of a diplomatic mission in Dar es Salaam for failing to stop when requested. Mainland police sometimes acted as prosecutors in lower courts. Although the TPF stated this practice was being phased out, the Ministry of Justice reported police continued to act as prosecutors in all districts except for Monduli and regional headquarters. Police reported to civilian authorities (regional commissioners, district commissioners, and police leadership) appointed by the president. These authorities sometimes directed police to act in the interest of the ruling party, contravening the constitution.

Sungusungu, or citizens’ patrols, and traditional neighborhood anticrime groups existed throughout the mainland. The law grants them the power to make arrests. In general these groups provided neighborhood security at night. Sungusungu members are not permitted to carry firearms or machetes but may carry sticks or clubs. They coordinated with municipal governing authorities as well as police but
operated independently from police. They formed or disbanded based on the perceived local need. In areas surrounding refugee camps, sungusungu members have authority to arrest refugees found outside the camps without permission. Within the camp, groups composed of refugees provided security, supplementing the police.

The Ministry of Defense and National Service oversees the Tanzania People’s Defense Force (TPDF) and the People’s Militia. The TPDF is responsible for external security and includes an army, air force, and navy; it also has some limited domestic security responsibilities. The National Service, a branch of military service similar to a national guard, is a paramilitary and parastatal organization that provides military and vocational training to volunteers. Its service is primarily domestic. After the completion of training, the National Service absorbs some of the volunteers into its economic wing, which is engaged in a wide variety of commercial activities. Others join the TPDF or return home and join the People’s Militia force in their respective areas. Both the National Service and the People’s Militia act as a reserve force for the TPDF.

Police and other security forces acted with impunity in many cases. While legal mechanisms exist for investigation and prosecution of security forces, authorities did not always use them. In February authorities decided not to file charges against police officers deemed responsible for the unintended killing of Akwilina Akwilina, a passenger on a commuter bus, while trying to disperse an opposition demonstration on the eve of by-elections. The bus conductor was injured by a stray bullet. Police continued to hold educational seminars for officers to combat corruption and sometimes took disciplinary action against officers implicated in wrongdoing.

The mainland community policing initiative to improve community relations with police and enhance police effectiveness continued. Community police received standardized training, and police conducted awareness campaigns for citizens on how to assist community-policing units. Between January and August in Zanzibar, the government conducted two community-policing training sessions, focusing on providing local leaders with capacities to identify criminals, terrorists, and thieves. Officials noted increases in assistance provided to police by civilians in areas where the program had been implemented, leading to arrests and improved law enforcement.

A group of security units, referred to collectively as the “Zanzibar Special Forces,” was deployed at the district level for activities that would fall under police
jurisdiction on the mainland. These forces report to the government of Zanzibar and are not affiliated with the TPF or the Tanzanian People’s Defense Forces. Recruitment, training, and actual command and control of the “special units” were opaque, although all units officially report to a top ruling-party minister in Zanzibar. These units, including the fire brigade and prison guards, were often activated during political activities, such as voter registration or voting.

**Arrest Procedures and Treatment of Detainees**

On the mainland the law requires that an arrest for most crimes other than crimes committed in the presence of an officer be made with an arrest warrant based on sufficient evidence, although authorities did not always comply with the law. Police often detained persons without judicial authorization. The law also requires that a person arrested for a crime, other than a national security detainee, be charged before a magistrate within 24 hours of arrest, excluding weekends and holidays, but authorities failed to comply consistently with this requirement. Authorities usually informed detainees of the charges against them promptly, but there were several instances when this did not happen. There were reports of police using a rolling process of releasing and immediately rearresting individuals so that they would remain in custody while police completed their investigation and developed the required information for the accused to be charged. There were also reports of police detaining individuals without charge for short periods on the orders of local authorities.

The law does not allow bail for suspects in cases involving charges of murder, treason, terrorism, drugs, armed robbery, human trafficking, money laundering, or other offenses where the accused might pose a public safety risk. In some cases courts imposed strict conditions on freedom of movement and association when they granted bail. In the primary and district courts, persons sometimes bribed officials to grant bail. The law gives accused persons the right to contact a lawyer or talk with family members, but police often failed to inform detainees of this right. Indigent defendants and suspects charged with murder or treason could apply to the registrar of the court to request legal representation. Prompt access to counsel was often limited by the lack of lawyers in rural areas, lack of communication systems and infrastructure, and accused persons’ ignorance of their rights. The government often did not provide consular notification when foreign nationals were arrested and did not provide prompt consular access when requested.
The government conducted some screening at prisons and identified and assisted at least four trafficking victims imprisoned as smuggling offenders; however, screenings were not comprehensive, potentially leaving some trafficking victims unidentified in detention centers. The government also reported there were approximately 1,200 Ethiopians in detention centers, some of whom could be trafficking victims.

**Arbitrary Arrest:** By law the president may order the arrest and indefinite detention without bail of any person considered dangerous to the public order or national security. The government must release such detainees within 15 days or inform them of the reason for their continued detention. The law also allows a detainee to challenge the grounds for detention at 90-day intervals. The mainland government has additional broad detention powers under the law, allowing regional and district commissioners to arrest and detain for 48 hours anyone who “disturb[s] public tranquility.”

**Pretrial Detention:** According to the Ministry of Home Affairs, approximately 50 percent of the prison population consisted of pretrial detainees in 2015 (the latest available data). Detainees charged with crimes generally waited three to four years for trial due to a lack of judges to hear cases, an inadequate judicial budget, and the lengthy time required to complete police investigations.

e. **Denial of Fair Public Trial**

The constitution provides for an independent judiciary, but many components of the judiciary remained underfunded, corrupt, inefficient (especially in the lower courts), and subject to executive influence. Judges and senior court officers are all political appointees of the president. The need to travel long distances to courts imposes logistical and financial constraints that limit access to justice for persons in rural areas. There were fewer than two judges per million persons. Court clerks reportedly continued to take bribes to open cases or hide or misdirect the files of those accused of crimes. Magistrates of lower courts occasionally accepted bribes to determine the outcome of cases.

**Trial Procedures**

The law provides for the right to a fair public trial, but a weak judiciary often failed to protect this right.
The law provides for the presumption of innocence. In most cases authorities informed detainees in detail of the charges against them once they had been brought to the police station. Charges were generally presented in Kiswahili or English with needed interpretation provided when possible. With some exceptions criminal trials were open to the public and the press. Defendants have the right to be present at their trial. Courts that hold closed proceedings (for example, in drug trafficking cases and sexual offenses involving juveniles) generally are required to provide reasons for closing the proceedings. In cases involving terrorism, the law provides that everyone, except the interested parties, may be excluded from court proceedings and witnesses may be heard under special arrangements for their protection.

The law requires legal aid in serious criminal cases, although in practice only those accused of murder and treason were provided with free representation. Most other defendants could not afford legal representation and represented themselves in court. Defendants in criminal matters are entitled to legal representation of their choice. In practice legal representation was unavailable to defendants without the means to pay. Nongovernmental organizations (NGOs) represented some indigent defendants in large cities, such as Dar es Salaam and Arusha. In Zanzibar the government sometimes provided public defenders in manslaughter cases. The law prohibits lawyers from appearing or defending clients in primary-level courts whose presiding officers are not degree-holding magistrates. Human rights groups criticized reported cases where lawyers attempting to represent clients in sensitive cases were themselves threatened with arrest.

Authorities did not always allow detainees sufficient time to prepare their defense, and access to adequate facilities was limited. Defendants have the right to free interpretation as necessary from the moment charged through all appeals. Defendants or their lawyers have the right to confront prosecution witnesses and the right to present evidence and witnesses on the defendant’s behalf. Defendants were not compelled to testify or confess guilt.

All defendants charged with civil or criminal matters, except parties appearing before Zanzibari qadi courts (traditional Muslim courts that settle issues of divorce and inheritance), could appeal decisions to the respective mainland and Zanzibari high courts. All defendants can appeal decisions to the union Court of Appeal.

Judicial experts criticized the practice of police acting as prosecutors because of the risk police might manipulate evidence in criminal cases. The mainland Ministry of Constitutional and Legal Affairs continued hiring and training state
prosecutors to handle the entire mainland caseload, although staffing shortages continued.

**Political Prisoners and Detainees**

Several opposition politicians and individuals critical of the government were arrested or detained during the year. Such individuals were usually charged with sedition, incitement, or unlawful assembly. For example, in February two opposition leaders, one a lawmaker, were sentenced to five months in prison for insulting President Magufuli in a move Freedom House said was “aimed at intimidating critics of the government.”

On October 31, opposition ACT-Wazalendo member of parliament (MP) Zitto Kabwe was arrested after publicly alleging that clashes between police and herdsmen in Kigoma had killed more than 100 persons. Kabwe was charged two days later with sedition and inciting hatred and released on a 10 million Tanzanian Shillings (TZS) ($4,400) bond. A preliminary hearing was set for December 13.

**Civil Judicial Procedures and Remedies**

Persons may bring civil lawsuits seeking damages for or the cessation of human rights violations and can appeal those rulings to the Court of Appeal on the mainland and other regional courts. Civil judicial procedures, however, were often slow, inefficient, and corrupt. Individuals and organizations with observer status have the right to bring complaints to the African Court on Human and Peoples’ Rights.

**Property Restitution**

Between July and December 2017, the government demolished 2,000 houses along the Kimara-Kiluvya Road in Dar es Salaam without providing sufficient compensation, contending that the distance between the structures and the road did not meet setback standards required by law. During a June budget session in parliament, MP Saed Kubenea requested that the government compensate the affected persons, who had filed an unsuccessful injunction in court against the demolition before it occurred.

**f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**
The law generally prohibits such actions without a search warrant, but the government did not consistently respect these prohibitions. While only courts may issue search warrants, the law also authorizes searches of persons and premises without a warrant if necessary to prevent the loss or destruction of evidence or if circumstances are serious and urgent. The law relating to terrorism permits police officers at or above the rank of assistant superintendent or in charge of a police station to conduct searches without a warrant in certain urgent cases, but there were no reports this occurred.

It was widely believed government agents monitored the telephones and correspondence of some citizens and foreign residents. The nature and extent of this practice were unknown.

Authorities in Dar es Salaam demolished numerous homes built within reserved areas alongside rivers, roadways, and railways. Many demolitions along the Morogoro road occurred without prior notice; authorities stated they were enforcing a court order issued in 2005. Some residents had subsequently received title deeds for their property, and others had court injunctions or had cases in court challenging the demolitions when they occurred.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides for freedom of speech but does not explicitly provide for freedom of the press.

Freedom of Expression: Public criticism of the government was unwelcome and resulted in punitive action in some cases. Authorities used the Cybercrimes Act to bring criminal charges against individuals who criticized the government on a variety of electronic media. In March the Electronic and Postal Communications (Online Content) Regulations became law, requiring the Tanzania Communications Regulatory Authority (TCRA) to certify all bloggers and operators of online forums through a licensing process. On May 29, the government won a court case against bloggers and activists who sought to block the enforcement of the new regulations because they require disclosure of information about members, shareholders, and staff. Several bloggers shut down their websites to avoid punishment under the new regulation. Analysts conducting research for a civil society organization (CSO) reported that respondents in Dar es Salaam and Dodoma said they did not feel free to express their political beliefs for
fear of being kidnapped or tortured for expressing views at odds with the ruling party’s agenda.

Press and Media Freedom: Independent media on the mainland were active and generally expressed varying views, although media outlets often practiced self-censorship to avoid conflict with the government.

Two mainland newspapers (Daily News and Habari Leo) were owned by the government, one (Uhuru) by the ruling Party of the Revolution (CCM), another (Tanzania Daima) by the chair of the CHADEMA opposition party, and another (Mwanahalisi) by a CHADEMA parliamentarian. The remaining newspapers were independent, although close associates of political party members owned some of them. Registering or licensing new media outlets, both print and broadcast, continued to be difficult. Newspaper registration was at the discretion of the registrar of newspapers at the information ministry on both the mainland and Zanzibar. Acquiring a broadcasting license from the TCRA took an estimated six months to one year, and the TCRA restricted the area of broadcast coverage. The TCRA imposes mandatory registration and annual fees for commercial and community radio stations. The fee structure disproportionately disadvantages the existence and creation of small community radio stations.

In June 2017 the TCRA also clarified a requirement that all broadcast stations receive approval from the Tanzania Film Board for locally produced content, including music videos, films, cartoons, and other video content.

The Zanzibari government-owned daily newspaper had an estimated circulation of 25,000. There was one privately owned weekly newspaper with a much smaller circulation. The government of Zanzibar controlled content on the radio and television stations it owned. There were government restrictions on broadcasting in tribal languages; broadcasts in Kiswahili or English were officially preferred. The nine private radio stations on Zanzibar operated independently, often reading the content of national dailies, including articles critical of the Zanzibari government.

The government also threatened to close down TV service providers for failing to comply with free-to-air licensing regulations. In August the TCRA demanded a cessation of broadcasting Free-to-Air (FTA) public channels for close to one month. FTA content included several local news channels.
On the mainland the government generally did not restrict the publication of books. The publication of books on Zanzibar was uncommon.

Violence and Harassment: Law enforcement authorities attacked, harassed, and intimidated journalists during the year. For example, on August 9, Tanzania Daima journalist Sitta Tuma was arrested and accused of unlawful assembly while covering the opposition by-election campaign in Tarime district in Mara Region.

Censorship or Content Restrictions: The law authorizes police to raid and seize materials from newspaper offices without a warrant and authorizes the minister of information to “prohibit or otherwise sanction the publication of any content that jeopardizes national security or public safety.”

A permit was required for reporting on police or prison activities, both on the mainland and in Zanzibar, and journalists needed special permission to cover meetings of the Tanzanian National Assembly or attend meetings in the Zanzibar House of Representatives. Anyone publishing information accusing a Zanzibari representative of involvement in illegal activities was liable to a fine of not less than TZS 250,000 ($110), three years’ imprisonment, or both. The government may fine and suspend newspapers without warning.

There were examples of the government repressing information, extending to online newspapers and journals. In November newspapers did not publish an international statement critical of the government for fear of reprisal. In January management of the weekly Swahili newspaper Nipashe voluntarily suspended the Sunday edition of its own newspaper for three months after being chastised by the Ministry of Information for publishing an article critical of the government. In June the East African Court of Justice (EACJ) ruled that the government’s June 2017 ban of weekly tabloid Mawio for two years for publishing an article implicating two former presidents in corruption was illegal; the EACJ ruling had not been implemented. In September parliament passed amendments to the 2015 Statistics Act that require individuals and organizations to obtain permission from the National Bureau of Statistics before conducting surveys, collecting research data, or publicizing results.

Libel/Slander Laws: The law provides for arrest, prosecution, and punishment for the use of seditious, abusive, or derogatory language to describe the country’s leadership. The Media Services Act of 2016 makes defamation a criminal act. Defamation is defined as any matter likely to injure the reputation of any person by
exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

In July CHADEMA MP Halima Mdee was arrested and accused of insulting the president during a press conference after she criticized him for barring teenage mothers from school. In February a court in the southern highlands sentenced CHADEMA MP Joseph Mbilinyi and local CHADEMA leader Emmanuel Masonga to two months in prison for insulting the president at a public rally held in December 2017.

In November 2017 the government ordered Channel Ten to apologize publicly for broadcasting the name and residence of a student allegedly sodomized by a motorcycle driver.

**National Security:** In March the Electronic and Postal Communications (Online Content) Regulations were passed, requiring online content providers to monitor and filter content that threatens national security or public health and safety.

**Internet Freedom**

The government restricted access to the internet and monitored websites and internet traffic. The Electronic and Postal Communications (Online Content) Regulations tighten control of internet content through registration requirements and licensing fees. Bloggers and persons operating online forums, including online television and radio streaming services, must obtain certification from the TCRA by submitting a license application requiring information such as the nature of services offered, estimated cost of investment, staff qualifications, and future plans. In addition, all online content providers must pay application and licensing fees totaling more than two million TZS ($924) in initial costs. Licenses are valid for three years and must be renewed annually for one million TZS ($440). Prohibitive costs led some citizens to stop blogging or posting content on online forums, including international social media platforms.

Under the regulations internet cafes must install surveillance cameras to monitor persons online; online material deemed “offensive, morally improper” or that “causes annoyance,” is prohibited; and those charged with violating the regulations face a minimum fine of TZS five million ($2,200) or a minimum sentence of 12 months in prison. According to the TCRA’s Telecommunication Statistics, in June 22.9 million persons (45 percent of the population) used the internet in 2017.
According to the International Telecommunication Union, 16 percent of the population used the internet that year.

The Cybercrimes Act of 2015 criminalizes the publication of false information, defined as “information, data or facts presented in a picture, texts, symbol, or any other form in a computer system where such information, data, or fact is false, deceptive, misleading, or inaccurate.” Individuals who made critical comments about the government on electronic media were charged under the act, even when remarks reflected opinions or were factually true. University of Dar es Salaam student and human rights activist Abdul Nondo was charged with publishing false information and providing false information to police in March after he sent a private WhatsApp message to friends saying he had been abducted by unknown assailants.

**Academic Freedom and Cultural Events**

In September parliament passed amendments to the 2015 Statistics Act that require individuals and organizations to obtain permission from the National Bureau of Statistics before conducting surveys or collecting research data, and before publicizing results. Academics were concerned that the new amendments would stifle independent research in universities.

**b. Freedoms of Peaceful Assembly and Association**

**Freedom of Peaceful Assembly**

The government restricted freedom of peaceful assembly and association, including through bans decreed by authorities but not supported by law. The government requires organizers of rallies to obtain police permission. Police may deny permission on public safety or security grounds or if the permit seeker belongs to an unregistered organization or political party. The government and police continued to limit the issuance of permits for public demonstrations and assemblies to political parties, NGOs, and religious organizations. The only political meetings allowed in principle are by MPs in their constituencies; outside participants, including party leaders, are not permitted to participate. Restrictions are also applied to nonpolitical gatherings deemed critical of the government.

In August police arrested members of an opposition coalition for holding a public rally in Turwa Buyungi ward in advance of by-elections. During a June speech at the State House, the president declared the opposition should confine its political
opinions to appropriate platforms, such as parliament, until the next elections in 2020.

**Freedom of Association**

The constitution provides for freedom of association, and the government generally respected this right. Thousands of NGOs and societies operated in the country. Political parties were required to register and meet membership and other requirements. Freedom of association for workers was limited (see section 7.a.).

The registration process for associations outside Zanzibar was slow. The law makes a distinction between NGOs and societies and applies different registration procedures to the two. It defines a society as any club, company, partnership, or association of 10 or more persons, regardless of its purpose, and notes specific categories of organizations not considered societies, such as political parties. The law defines NGOs to include organizations whose purpose is to promote economic, environmental, social, or cultural development; protect the environment; or lobby or advocate on issues of public interest. Societies and organizations may not operate until authorities approve their applications. In August the government began a verification exercise that required all NGOs to reregister. Registration of new NGOs was suspended until December 1.

Religious organizations are registered as societies and wait the longest--an average of four years--for registration. From July 2017 to March, the Registrar of Societies received 252 registration applications, 74 of which came from religious institutions. The registrar registered 136 organizations and rejected five applications; 111 applications remained unprocessed. The government rarely registered societies within the legally required 14-day period.

NGOs in Zanzibar apply for registration with the Zanzibar Business and Property Registration Agency. While registration generally took several weeks, some NGOs waited months if the registrar determined additional research was needed.

c. Freedom of Religion

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

d. Freedom of Movement
The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights; however, there were cases of political opposition leaders being barred from leaving the country. For example, in September a member of an opposition political party was prevented from boarding a plane while attempting to travel to an international conference on political party development. After the July release of survey results by independent East African NGO Twaweza showing that the president’s approval rating had dropped 41 percent over the past two years, immigration officials confiscated the passport of Twaweza’s executive director.

In February the travel of migrant workers overseas for employment was temporarily suspended to allow time for the government to strengthen migrant worker protection mechanisms.

Abuse of Migrants, Refugees, and Stateless Persons: In January the government withdrew from the UN’s Comprehensive Refugee Response Framework, announced that it would no longer provide citizenship to Burundian refugees, and would encourage refugees to return home. The government assured the Office of the UN High Commissioner for Refugees (UNHCR) that it would respect the choice of refugees on whether or not to return to their country of origin. While many Burundian refugees had been successfully repatriated, there were several accounts of refugees facing intimidation or pressure to return home by Tanzanian authorities. Some refugees who were pressured into returning to Burundi became refugees in other countries or returned to Tanzania.

Refugees apprehended more than 2.5 miles outside their camps without permits are subject by law to sentences ranging from a fine up to a three-year prison sentence. In July immigration officials reported that 1,470 undocumented immigrants employed as agricultural laborers were arrested in Kagera Region, including 994 Burundian, 223 Ugandans, 193 Rwandans, 19 Ethiopians, 39 Congolese, and two Kenyans. Immigration also reported the arrest of 156 Burundians in Kasulu Kigoma. UNHCR reported that when police apprehended refugees outside the camp without permits, they were normally held in the prison nearest to where they were arrested. Usually these persons were prosecuted and sentenced in local courts. Some were only given warnings and advised to return to the camp. UNHCR advocated for the return of refugees to the camp, but the response was dependent on the officer handling the case.

Sexual- and gender-based violence against refugees continued, including allegations against officials who worked in or around refugee camps. UNHCR
worked with local authorities and residents in the three refugee camps to strengthen coordination and address violence, including sexual violence, against vulnerable persons. UNHCR reported the most frequent gender-based violence crimes were rape and physical assault, followed by psychological and emotional abuse. The public prosecutor investigated, prosecuted, and punished perpetrators of abuses in the camp, although international NGOs provided assistance to the legal team when requested by a survivor. Local authorities and the public prosecutor handled most cases of refugee victims of crime and abuse outside the camp. Residents of the refugee camps suffered delays and limited access to courts, common problems also faced by citizens.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has an established system for providing protection to refugees. The National Eligibility Committee is mandated to meet regularly and make determinations on asylum applications.

The international NGO Asylum Access reported many persons with refugee claims were living in Dar es Salaam. The government often treated these individuals as undocumented immigrants, deporting or imprisoning them if they faced criminal charges. Arrest was often the only situation in which urban asylum seekers were exposed to the government. Observers believed many urban asylum seekers, if given the opportunity, would be able to demonstrate a need for international protection that would qualify them for refugee status. Since urban asylum seekers were not formally registered with UNHCR and the government, however, they had very little access to health care and education, and employment opportunities were limited to the informal sector. There was no policy or infrastructure to serve this group.

UNHCR processed irregular migrants arrested by authorities when the persons in custody were asylum seekers or were in the process of accessing the asylum process at the time they were apprehended.

During the year the government and the International Organization for Migration continued to support training for law enforcement officers on the use of biometric registration equipment intended to provide irregular migrants a basis for either regularizing their status or voluntary return to their places of origin.
Safe Country of Origin/Transit: No policy for blanket or presumptive denials of asylum exists for applicants arriving from “safe country of origin” or through a “safe country of transit.” All asylum applications are evaluated individually. The law provides that, unless the transit country is experiencing a serious breach of peace, an asylum claim can be refused upon failure to show reasonable cause as to why asylum was not claimed in the transit country prior to entry into the country.

Freedom of Movement: Encampment policy does not allow refugees to travel more than 2.5 miles outside the boundaries of official refugee camps without permission of the Ministry of Home Affairs. The ministry generally granted permission for purposes such as medical referrals and court appearances.

Authorities sometimes imprisoned irregular migrants before releasing them to UNHCR if there was a pending asylum claim. Other irregular migrants were occasionally arrested if they bypassed refugee transit sites and attempted to work in border towns without permission.

Employment: The government generally did not permit refugees to pursue employment and restricted refugees’ attempts to farm land within the camps.

Durable Solutions: In 2017 the Ministry of Home Affairs granted citizenship to 135 persons, an increase of 10 percent from 2016 to 2017. More than 48,000 returns were facilitated under a tripartite agreement between Tanzania, Burundi, and UNHCR. The government, however, increased pressure on Burundians to sign up for returns, often under duress, thus bringing into question the claimed voluntary nature of the returns. There were reports of the government closing markets used jointly by camp and host communities; a reduction in camp exit permits; reduced health and education benefits; and forcible loading of persons into return convoys without proper safeguards.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage, but it allows parliament to restrict this right if a citizen is mentally infirm, convicted of certain criminal offenses, or omits or fails to prove or produce evidence of age, citizenship, or registration as a voter. Citizens residing outside the country are not allowed to vote. The National Electoral Commission is responsible for mainland and union electoral affairs, while the Zanzibar Electoral Commission (ZEC) manages elections in Zanzibar.
Elections and Political Participation

Recent Elections: The country held its most recent multiparty general election in 2015, whereby a new president and legislative representatives were elected. The union elections were judged largely free and fair, although some opposition and civil society figures alleged vote rigging. CCM benefited from vastly superior financial and institutional resources. There were also reports that the use of public resources in support of CCM increased, as well as many reports of regional and district commissioners campaigning for the ruling party.

In the presidential election, John Magufuli, the CCM candidate, was elected with 58 percent of the vote to replace Jakaya Kikwete, who was not eligible to run for a third term. Four opposition parties combined in the Coalition for the People’s Constitution to support a single candidate, who ran under the CHADEMA banner, as the law does not recognize coalitions. In parliamentary elections CCM retained its majority in parliament with nearly 73 percent of the seats.

Separate elections are held for the union and for Zanzibar, ordinarily on the same day, in which citizens of the two parts of the union elect local officials, members of the national parliament, and a union (national) president. Additionally, Zanzibar separately elects a president of Zanzibar and members of the Zanzibar House of Representatives. The voting in Zanzibar in 2015 was judged largely free and fair. Following the vote, however, when tabulation of the results was more than half completed, the chairperson of the ZEC announced he had nullified the Zanzibar elections, although according to the constitution and law, the commission does not have the authority to do so. This decision precipitated a political crisis in the semiautonomous archipelago, with the opposition candidate declaring he had won. New elections in 2016 were neither inclusive nor representative. They were boycotted by the opposition, which claimed they would not be fair. Following the new elections, the ZEC announced President Ali Mohammed Shein had won with 91 percent of the vote, with the ruling CCM party sweeping nearly all seats in the Zanzibar House of Representatives. Official voter turnout was announced at 68 percent, although numerous sources estimated actual turnout at closer to 25 percent.

Between November 2017 and December, seven by-elections were conducted on short notice for ward councilor and parliamentary seats that became vacant due to the death, defection, resignation, or expulsion of the incumbents. In several cases an opposition member who defected to the ruling party subsequently was named as
the ruling party’s candidate for the same seat the individual had just vacated. By-elections were marked by egregious irregularities, including denying designated agents access to polling stations, intimidation by police of opposition party members, unwarranted arrests, and obstruction that prevented opposition candidates from registering and resulted in many races being declared uncontested for the ruling party.

In September CHADEMA announced it was boycotting the by-elections until further notice, saying there had been an “excessive militarization” of the electoral process. The ACT-Wazalendo party occasionally boycotted by-elections. The Civic United Front (the main opposition party in Zanzibar) continued to abide by the boycott it announced after the Zanzibar Electoral Commission’s October 2015 election annulment.

Political Parties and Political Participation: The constitution requires that persons running for office must represent a registered political party. The law prohibits unregistered parties. There were 19 political parties with full registration and one with provisional registration.

The registrar of political parties has sole authority to approve registration of any political party and is responsible for enforcing regulations on registered parties. Parties granted provisional registration may hold public meetings and recruit members. To secure full registration, parties must submit lists of at least 200 members in 10 of the country’s 31 regions, including two of the five regions of Zanzibar.

The law requires political parties to support the union between Tanganyika (mainland Tanzania) and Zanzibar; parties based on ethnic, regional, or religious affiliation are prohibited.

MPs were sanctioned for expressing criticism of the government, including for speeches on the floor of parliament. In late March and early April, police arrested nine top CHADEMA leaders and charged them with unlawful assembly and disobeying an order to disperse after demonstrating with supporters to demand the issuance of credentials for party polling agents on the eve of a February 16 by-election. Of those arrested, CHADEMA party chairman Freeman Mbowe faced additional charges, including sedition. On April 3, 24 CHADEMA supporters were arrested for causing chaos while urging their leaders’ release, but they were let go without formal charges. The CHADEMA leaders were involved a protracted legal battle. A court hearing was pending for December 21.
The election law provides for a “gratuity” payment of TZS 235 million to TZS 280 million ($102,000 to $122,000) to MPs completing a five-year term. Incumbents can use these funds in re-election campaigns. Several NGOs and opposition parties criticized this provision for impeding aspiring opposition parliamentary candidates from mounting effective challenges.

The mainland government allowed political opponents unrestricted access to public media, but the ruling party had far more funding to purchase broadcast time.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate. Some observers believed cultural constraints limited women’s participation in politics. In the 2015 election, voters elected a woman as vice president for the first time. There were special women’s seats in both parliament and the Zanzibar House of Representatives, which, according to World Bank data, brought total female representation to 36 percent.

Section 4. Corruption and Lack of Transparency in Government
The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity. After taking office, President Magufuli took several high-profile steps to signal a commitment to fighting corruption. These included surprise inspections of ministries, hospitals, and the port of Dar es Salaam, often followed by the immediate dismissal of officials. In implementing Phase III (2017-22) of the National Anticorruption Strategy and Action Plan, President Magufuli introduced a new High Court Division of Economic, Corruption and Organized Crime in 2016 that had yet to issue any judgments. In September the president appointed a new director general of the Prevention and Combating of Corruption Bureau (PCCB) to empower the PCCB to take action against corrupt leaders.

Corruption: While efforts were being made to reign in corruption, it remained pervasive. According to the PCCB, most corruption investigations concerned government involvement in mining, land matters, energy, and investments. From July 2016 through June 2017, the PCCB reported it had opened 1,150 new investigations, completed 1,082 investigations, and forwarded 657 case files to the director of public prosecutions for action. There were 454 new cases filed and 495 cases underway in court. The PCCB concluded 409 cases, with 168 convictions and 241 acquittals.
Afrobarometer findings for December 2017 indicated a 14 percent drop in corruption across government entities. Government entities were still considered the most corrupt entities, led by the police, judges and magistrates, the Tanzania Revenue Authority, and local government. NGOs continued to report allegations of corruption involving the Tanzania Revenue Authority, local government officials, police, licensing authorities, hospital workers, and the media.

Corruption featured in newspaper articles, civil complaints, and reports of police corruption from the PCCB and from the Ministry of Home Affairs.

The PCCB’s mandate excludes Zanzibar. In Zanzibar the Anticorruption and Economic Crimes Authority received 53 complaints. It investigated 50 cases; of these, one case was closed, seven cases were passed to the director of public prosecutions, and two cases were brought to court between January and September. The remaining cases were under investigation.

Financial Disclosure: Government ministers and MPs, as well as certain other public servants, are required to disclose their assets upon assuming office, annually at year’s end, and upon leaving office. The Ethics Secretariat distributes forms each October for collection in December. As of December 2017, 98 percent of government leaders had submitted their forms to the secretariat (16,064 out of 16,339). The president submitted his forms and urged other leaders to do the same. Although penalties exist for noncompliance, there was no enforcement mechanism or sufficient means to determine the accuracy of such disclosures. Information on compliance was considered sensitive and available only on request to the commissioner of the secretariat. Secretariat officials previously stated the individuals who failed to meet the deadline were asked to show cause for the delay. Any declaration forms submitted or filed after the deadline must explain the failure to observe the law. Asset disclosures are not public.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Some human rights NGOs complained of a negative government reaction when they challenged government practice or policy. The government registered 192 new NGOs from June 2017 to March. Twenty-one
were registered as international organizations, 162 as national, and nine at the
district level.

In January, five television stations were fined for covering a report by a human
rights NGO that cited abductions and violence during a November 2017 by-
election. The TCRA claimed that coverage of the report incited and threatened the
security and peace of the nation in violation of the 2005 Broadcasting Services
Regulation. Human rights NGOs noted that these fines further discouraged media
from covering human rights issues.

Following the release in March of an Easter message addressing domestic concerns
by 27 bishops from the Lutheran Church, the second largest Christian
denomination in the country, the registrar of societies requested that the church
publicly retract its message and refrain from discussing political issues. In
December 2017 the government threatened to revoke the registration of any
religious organization that mixed religion and politics after Zachary Kakobe, head
of the Full Gospel Fellowship Church, criticized the president’s leadership in a
Christmas sermon.

**Government Human Rights Bodies:** The union parliamentary Committee for
Constitutional, Legal, and Public Administration is responsible for reporting and
making recommendations regarding human rights.

The CHRAGG operated on both the mainland and Zanzibar, but low funding levels
and lack of leadership limited its effectiveness. Replacements for the seven
CHRAGG commissioners whose three-year terms ended in January had not been
named. The commission has no legal authority to prosecute cases but can make
recommendations to other offices concerning remedies or call media attention to
human rights abuses and violations and other public complaints. It also has
authority to issue interim orders preventing actions in order to preserve the status
quo pending an investigation. The CHRAGG also issued statements and
conducted public awareness campaigns during the period on several issues. These
included the need for regional and district commissioners to follow proper
procedures when exercising their powers of arrest, the need for railway and road
authorities to follow laws and regulations when evicting citizens from their
residences, and calling on security organs to investigate allegations of
disappearances or abductions, including of journalists, political leaders, and artists.

**Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**
Women

Rape and Domestic Violence: The law provides for life imprisonment for persons convicted of rape, including spousal rape during periods of legal separation. The law stipulates a woman wishing to report a rape must do so at a police station, where she must receive a release form before seeking medical help. This process contributed to medical complications, incomplete forensic evidence, and failure to report rapes. Victims often feared that cases reported to police would be made public.

The law prohibits assault but does not specifically prohibit domestic violence. Domestic violence against women remained widespread, and police rarely investigated such cases.

The LHRC’s 2018 Mid-Year Human Rights Report cited 1,218 incidents of women being raped in the country, and 13,895 incidents of violence against women from January to June. The same report cited 6,376 cases of violence against children.

Authorities rarely prosecuted persons who abused women. Persons close to the victims, such as relatives and friends, were most likely to be the perpetrators. Many who appeared in court were set free because of corruption in the judicial system, lack of evidence, poor investigations, and poor evidence preservation.

There were some government efforts to combat violence against women. Police maintained 417 gender and children desks in regions throughout the country to support victims and address relevant crimes. In Zanzibar, at One Stop Centers in both Unguja and Pemba, victims could receive health services, counseling, legal assistance, and a referral to police.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C from being performed on girls under the age 18, but it does not provide for protection to women ages 18 or older. For information on the incidence of FGM/C, see Appendix C.

Prosecutions were rare. Many police officers and communities were unaware of the law, victims were often reluctant to testify, and some witnesses feared reprisals from FGM/C supporters. Some villagers reportedly bribed local leaders not to enforce the law in order to carry out FGM/C on their daughters. The Ministry of Health reported that approximately 10 percent of women had undergone FGM/C.
Sexual Harassment: The law prohibits sexual harassment of women in the workplace. There were reports women were asked for sexual favors in return for promotions or in order to secure employment. According to the Women’s Legal Aid Center, police rarely investigated reported cases. Those cases that were investigated were often dropped before they got to court--in some instances by the plaintiffs due to societal pressure and in others by prosecutors due to lack of evidence.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: The law provides the same legal status and rights for women and men; the law, however, also recognizes customary practices that often favor men. In particular women faced discriminatory treatment in the areas of marriage, divorce, inheritance, and nationality.

Overt discrimination in areas such as education, credit, business ownership, and housing was uncommon. Nevertheless, women, especially in rural areas, faced significant disadvantages due to cultural, historical, and educational factors.

According to a 2017 report by the World Economic Forum, Tanzanian men earn 39 percent more than women.

Children

Birth Registration: Citizenship is derived by birth within the country if at least one parent is a citizen, or, if abroad, also if at least one parent is a citizen. Registration within three months of birth is free; parents who wait until later must pay a fee. Public services were not withheld from unregistered children. For additional information, see Appendix C.

Education: Tuition-free primary education is compulsory and universal on both the mainland and Zanzibar until age 15. Secondary school is tuition-free, but not compulsory.

Girls represented approximately half of all children enrolled in primary school but were absent more often than boys due to household duties and lack of sanitary facilities. According to the Ministry of Regional Government and Local Governance, primary school enrollment increased in 2018 to 1,751,221 students.
(880,391 males and 870,830 females), up from 1,345,636 in 2017. At the secondary level, child marriage and pregnancy often caused girls to be expelled or otherwise prevented girls from finishing school.

In January authorities arrested five school girls ages 16 to 19 in the southeastern town of Tandahimba for being pregnant. The Center for Reproductive Rights reported in 2013 that more than 55,000 girls over the previous decade had been expelled from school for being pregnant. Regional authorities reported that it was common practice for school administrators to subject girls to hands-on external abdominal examinations for pregnancy. Under the Education and Training Policy launched by the government in 2015, pregnant girls may be reinstated in schools. In June 2017 President Magufuli declared that girls would not be allowed to return to school after giving birth. Human rights NGOs criticized the policy as contrary to the country’s constitution and laws.

Child Abuse: Violence against and other abuse of children were major problems. Corporal punishment was employed in schools, and a 1979 law allows head teachers to cane students. The National Violence against Children Survey, conducted in 2009 (the most recent data available), found that almost 75 percent of children experienced physical violence prior to age 18. According to the Ministry of Health, Community Development, Gender, Elderly, and Children, between July 2017 and June, 18,464 cases were reported through the program’s hotline. In August a 13-year-old student in Kagera Region was beaten to death by a teacher, who erroneously claimed the student stole another teacher’s bag.

Early and Forced Marriage: The law sets the legal age for marriage at 18 for boys but does not set an age for girls. In 2016 the government amended the Law of the Child to make it illegal to marry a primary or secondary school student. To circumvent these laws, individuals reportedly bribed police or paid a bride price to the family of the girl to avoid prosecution. According to Human Rights Watch, girls as young as seven were married. Zanzibar has its own law on marriage, but it does not specifically address early marriage. For additional information, see Appendix C.

Sexual Exploitation of Children: The law criminalizes child sex trafficking and child pornography. Those convicted of facilitating child pornography are subject to a fine ranging from TZS one million ($440) to TZS 500 million ($218,000), a prison term of one to 20 years, or both. Those convicted of child sex trafficking are subject to a fine ranging from TZS five million ($2,180) and TZS 150 million...
($65,400), a prison term of 10 to 20 years, or both. There were no prosecutions based on this law during the year.

The law provides that sexual intercourse with a child younger than 18 is rape unless within a legal marriage. The law was not always enforced.

**Infanticide or Infanticide of Children with Disabilities:** Infanticide continued, especially among poor rural mothers who believed themselves unable to afford to raise a child. Nationwide statistics were not available.

**Displaced Children:** According to the Ministry of Health, Community Development, Gender, Elderly, and Children, large numbers of children were living and working on the street, especially in cities and near the borders. The ministry reported there were 6,132 children living in hazardous conditions during the year. These children had limited access to health and education services, because they lacked a fixed address or money to purchase medicines, school uniforms, and books. They were also vulnerable to sexual abuse.


**Anti-Semitism**

The Jewish population is very small, and there were no reports of anti-Semitic acts.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

**Persons with Disabilities**

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities, but the government did not effectively enforce these provisions.
Few public buildings were accessible to persons with disabilities. New public buildings, however, were built in compliance with the law. The law provides for access to information and communication, but not all persons with disabilities had such access.

There were six members of the union parliament with disabilities. Persons with disabilities held three appointed seats in the Zanzibar House of Representatives. The Prime Minister’s Office includes a ministerial position that covers disabilities.

Limits to the political participation of persons with disabilities included inaccessible polling stations, lack of accessible information, limited inclusion in political parties, the failure of the National Electoral Commission to implement directives concerning disability, and prejudice toward persons with disabilities.

According to the 2008 Tanzanian Disability Survey, an estimated 53 percent of children with disabilities attended school. There were no significant reported patterns of abuse in educational or mental health facilities.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

Consensual same-sex sexual conduct is illegal in the country. The law on both the mainland and Zanzibar punishes “gross indecency” by up to five years in prison or a fine. The law punishes any person convicted of having “carnal knowledge of another against the order of nature or permits a man to have carnal knowledge of him against the order of nature” with a prison sentence of 30 years to life on the mainland and imprisonment up to 14 years in Zanzibar. In Zanzibar the law also provides for imprisonment up to five years or a fine for “acts of lesbianism.” In the past, courts charged individuals suspected of same-sex sexual conduct with loitering or prostitution. The law does not prohibit discrimination based on sexual orientation and gender identity. Police often harassed persons believed to be LGBTI based on their dress or manners.

In November Amnesty International reported that police arrested 10 men in Zanzibar on suspicion of being gay after receiving a tip-off. They were detained for several days before being released.

Authorities filed a case against two women in Mwanza who were recorded on a video posted on social media exchanging rings in an engagement ceremony in December 2017; the case had not been heard. In October 2017 police arrested 12
individuals, including two South African lawyers and a Ugandan, allegedly for preparing a case challenging the government’s decision to ban drop-in centers serving key populations. The manager of the hotel hosting the event was also arrested. In September 2017 police arrested 20 persons in Zanzibar who participated in an HIV/AIDS education training course provided by an officially registered international NGO. There were several reports of tourists being denied entry into Zanzibar if authorities suspected they were LGBTI.

During the year government officials publicly stated opposition to improved safeguards for the rights of LGBTI persons, which it characterized as contrary to the law of the land and the cultural norms of society. Senior government officials made several anti-LGBTI statements. In October the regional commissioner of Dar es Salaam created a government taskforce to round up persons who engage in acts that go against the country’s laws and morals, including same-sex sexual conduct. After widespread international condemnation, the Ministry of Foreign Affairs claimed the commissioner’s comments and taskforce were not reflective of government policy. This crackdown caused widespread fear among the LGBTI community and forced some to move out of the country. In March the deputy minister of health, community development, gender, seniors, and children tweeted, “The war against promotion and normalization of homosexuality in Tanzania is real.” LGBTI persons were often afraid to report violence and other crimes, including those committed by state agents, due to fear of arrest. LGBTI persons faced societal discrimination that restricted their access to health care, including access to information about HIV, housing, and employment. There were no known government efforts to combat such discrimination.

**HIV and AIDS Social Stigma**

The 2013 People Living with HIV Stigma Index Report indicated persons with HIV/AIDS experienced significant levels of stigma countrywide (39.4 percent), with stigma particularly high in Dar es Salaam (49.7 percent). The most common forms of stigma and discrimination experienced were gossip, verbal insults, and exclusion from social, family, and religious activities. More than one in five persons with HIV/AIDS experienced a forced change of residence or inability to rent accommodations. In Dar es Salaam, nearly one in three of these persons experienced the loss of a job or other source of income.

The law prohibits discrimination against any person “known or perceived” to be HIV-positive and establishes medical standards for confidentiality to protect persons with HIV/AIDS. Police abuses of HIV-positive persons, particularly in
three key populations (sex workers, drug users, and LGBTI persons), included arbitrary arrest, extortion, and refusal to accept complaints from victims of crime. In the health sector, key populations experienced denial of services, verbal harassment and abuse, and violations of confidentiality. In 2017 the government allowed community-based services for key populations to be reinstated following the release of revised guidelines, although the distribution of lubricants is still banned. NGOs and CSOs serving these key populations continued to face occasional backlash and harassment from law enforcement. There was continuing fear among these NGOs to operate freely and openly, as well as among LGBTI persons to freely seek health services, including HIV prevention and treatment.

Gender Desks at police stations throughout the country were established to help address mistrust between members of key populations and police.

**Other Societal Violence or Discrimination**

Despite efforts by the government and NGOs to reduce mob violence through educational outreach and community policing, mob violence continued. According to the LHRC, there were 395 cases of mob violence from January to June, a decline from the same period in 2017, when 482 mob-related killings were reported. In June, for example, a man in the Geita Region accused of armed robbery was killed by an angry mob. Human rights groups reported that the prevalence of mob violence in the country resulted from a lack of faith in police and the justice system.

Witchcraft-related killings continued to be a problem. The LHRC reported 106 witchcraft-related killings from January to June, a slight decline from the same period in 2017.

Attacks on persons with albinism were declining, and from January through June there were no reported cases of persons with albinism being killed or attacked. Persons with albinism remained at risk of violence, however, especially during election times, as some ritual practitioners sought albino body parts in the belief they could be used to bring power, wealth, and good fortune. Schools used as temporary shelters in some cases evolved into long-term accommodations, with many students with albinism afraid to return to their homes. In 2015 the government outlawed witchdoctors in an attempt to curtail killings of persons with albinism.
Farmers and pastoralists sometimes argued over traditional animal grazing areas, and violence continued to break out during some disputes.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The mainland and Zanzibari governments have separate labor laws. Workers on the mainland, except for workers in the categories of “national service” and prison guards, have the right to form and join independent trade unions, bargain collectively, and conduct legal strikes. The law prohibits antiunion discrimination. The government nevertheless restricted these rights. Reinstatement of workers fired for trade union activity is not mandatory.

Trade unions in the private sector must consist of more than 20 members and register with the government, while public-sector unions need 30 members. Five organizations are required to form a federation. Trade union affiliation with nonunion organizations can be annulled by the Labor Court if it was obtained without government approval, or if the union is considered an organization whose remit is broader than just employer-worker relations. A trade union or employers association must file for registration with the Registrar of Trade Unions in the Ministry of Labor within six months of establishment. The law, however, does not provide for specific time limits within which the government must register an organization, and the registrar has the power to refuse registration on arbitrary or ambiguous grounds. The government prescribes the terms of office of trade union leaders. Failure to comply with government requirements is subject to fines, imprisonment, or both.

The law requires unions to submit financial records and a membership list to the registrar annually and to obtain government approval for association with international trade unions. The registrar can apply to the Labor Court to deregister or suspend unions if there is overlap within an enterprise or if it is determined the union violated the law or endangered public security.

Collective bargaining agreements must be registered with the Labor Commission. Public service employees, except for limited exceptions, such as workers involved in “national service” and prison guards, may also engage in collective bargaining.

Employers have the right to initiate a lockout provided they comply with certain legal requirements and procedures. For a strike to be declared legal, the law
requires three separate notifications of intent, a waiting period of at least 92 days, and a union vote in the presence of a Ministry of Labor official that garners approval by at least 75 percent of the members voting. All parties to a dispute may be bound by an agreement to arbitrate, and neither party may then engage in a strike or a lockout until that process has been completed. Disputes regarding adjustments to or the terms of signed contracts must be addressed through arbitration and are not subject to strikes.

The law restricts the right to strike when a strike would endanger the life and health of the population. Picketing in support of a strike or in opposition to a lawful lockout is prohibited. Workers in sectors defined as “essential” (water and sanitation, electricity, health services and associated laboratory services, firefighting, air traffic control, civil aviation, telecommunications, and any transport services required for the provision of these services) may not strike without a pre-existing agreement to maintain “minimum services.” Workers in other sectors may also be subject to this limitation as determined by the Essential Services Committee, a tripartite committee composed of employers, workers, and government representatives with the authority periodically to deem which services are essential.

According to the 2004 Labor Relations Act, an employer may not legally terminate an employee for participating in a lawful strike or terminate an employee who accedes to the demands of an employer during a lockout.

Penalties for violations include fines up to TZS five million ($2,180), imprisonment up to one year, or both, but these penalties were not sufficient to deter violations. Disputes on the grounds of antiunion discrimination must be referred to the Commission for Mediation and Arbitration, a governmental department affiliated with the Ministry of Labor. There was no public information available regarding cases of antiunion discrimination.

There were no reports of sector-wide strikes or any other major strikes in the country.

In Zanzibar the law requires any union with 50 or more members to be registered, a threshold few companies could meet. The law sets literacy standards for trade union officers. The law provides the registrar considerable powers to restrict registration by setting forth criteria for determining whether an organization’s constitution contains suitable provisions to protect its members’ interests. The law applies to both public- and private-sector workers and bans Zanzibari workers from
joining labor unions on the mainland. The law prohibits a union’s use of its funds, directly or indirectly, to pay any fines or penalties incurred by trade union officials in the discharge of their official duties. In Zanzibar both government and private sector workers have the right to strike as long as they follow procedures outlined in the labor law. For example, workers in essential sectors may not strike; others must give mediation authorities at least 30 days to resolve the issue in dispute and provide a 14-day advance notice of any proposed strike action.

The law provides for collective bargaining in the private sector. Public-sector employees also have the right to bargain collectively through the Trade Union of Government and Health Employees; however, members of the police force and prison service, and high-level public officials (for example, the head of an executive agency) are barred from joining a trade union. Zanzibar’s Dispute Handling Unit addresses labor disputes. In Zanzibar judges and all judicial officers, members of special departments, and employees of the House of Representatives are excluded from labor law protection.

In Zanzibar the courts are the only venue in which labor disputes can be heard. According to the Commission of Labor in Zanzibar, 16 workers used the courts for labor disputes.

The government did not consistently enforce the law protecting the right to collective bargaining. On both the mainland and in Zanzibar, private-sector employers adopted antiunion policies or tactics, although discriminatory activities by an employer against union members are illegal. The Trade Union Congress of Tanzania (TUCTA)’s 2018 annual report claimed that international mining interests bribed government officials to ignore workers’ complaints and write false favorable reports on work conditions in mines. TUCTA also reported that employers discouraged workers from collective bargaining and retaliated against workers’ rights activists via termination of employment and other measures.

### b. Prohibition of Forced or Compulsory Labor

The law prohibits most forms of forced or compulsory labor. The law allows prisoners to work without pay on construction and agriculture projects within prisons. The law deems such work acceptable as long as a public authority ensures the work is not for the benefit of any private party. The law also allows work carried out as part of compulsory national service in certain limited circumstances. The constitution provides that no work shall be considered forced labor if such work forms part of compulsory national service in accordance with the law, or “the
national endeavor at the mobilization of human resources for the enhancement of society and the national economy and to ensure development and national productivity.”

The law establishes criminal penalties for employers using forced labor. Offenders may be fined up to TZS five million ($2,180), sentenced to one year in prison, or both. The government did not consistently enforce the law. The International Labor Organization (ILO) reported unspecified instances of forced labor, including those involving children from the southern highlands forced into domestic service or labor on farms, in mines, and in the informal business sector. Forced child labor occurred (see section 7.c.).

Prisoners provided labor on projects outside of the prison, such as road repair and government construction projects. According to the 2018 budget speech delivered by the Ministry of Home Affairs, prisoners provide labor at the government-owned Mbigiri Sugar Industry in Morogoro Region and planted 1976 acres of sugar cane.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

**c. Prohibition of Child Labor and Minimum Age for Employment**

The law prohibits the exploitation of children in the workplace. By law the minimum age for contractual employment is 14 on the mainland; in Zanzibar the minimum age is 15. Children older than age 14 but younger than 18 may be employed to do only light work unlikely to harm their health, development, or attendance at school. In addition, the government published regulations to define hazardous work for children in several sectors, including in agriculture, fishery, mining, and quarrying, construction, service, informal operations, and the transport sectors. The law specifically limits working hours for children to three hours a day. Fines ranging from TZS 100,000 to TZS 500 million ($44 to $218,000) and imprisonment ranging from three months to 20 years, or both, may be imposed for violations of the law. Penalties were not sufficient to deter violations, and there were no reported cases of prosecutions under this law.

The government did not effectively enforce the law. The lack of enforcement left children vulnerable to exploitation and with few protections. According to the Ministry of Health, Community Development, Gender, Elderly, and Children, approximately 29 percent of all children were engaged in child labor. Child labor was prevalent in agriculture, mining, industry, fishing, and domestic work. The
ILO previously worked with the government to train labor inspectors on the problem of child labor, but during the year no reported child labor cases were brought to court. During the year’s budget speech, the minister of health reported 6,393 child labor cases (1,528 female and 4,865 male). Officials reported that their authority was limited to the formal economy, and most child labor took place in the family and informal economy.

Government measures to ameliorate child labor included verifying that children of school age attended school, imposing penalties on parents who did not enroll their children in school, and pressing employers in the formal sector not to employ children younger than 18. Ministry of Labor officials reported, however, enforcement of child labor laws was difficult because many children worked in private homes or rural areas. A combination of factors, including distance from urban-based labor inspectors and a lack of understanding by children on how to report the conditions of their employment and when to do so, complicated inspections. Officials reported the problem of child labor was particularly acute among orphans. In cooperation with the government, Plan International operated programs in the mining sector to combat child labor.

In mainland Tanzania, children worked as domestic workers, street vendors, and shopkeepers as well as in small-scale agriculture, family-based businesses, fishing, construction, and artisanal mining of gold and tanzanite. According to Human Rights Watch, children as young as eight worked in mining. In Zanzibar children worked primarily in transportation, fishing, clove picking, domestic labor, small businesses, and gravel making.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

**d. Discrimination with Respect to Employment and Occupation**

The employment and labor relations law prohibits workplace discrimination, directly or indirectly, against an employee based on color, nationality, tribe, or place of origin, race, national extraction, social origin, political opinion or religion, sex, gender, pregnancy, marital status or family responsibility, disability, HIV/AIDS, age, or station in life. The law does not specifically prohibit discrimination based on sexual orientation or gender identity, language, citizenship, or other communicable disease status. The law distinguishes between discrimination and an employer hiring or promoting based on affirmative action measures consistent with the promotion of equality, or hiring based on an inherent
requirement of the job. The government in general did not effectively enforce the law, and penalties were insufficient to deter violations.

Women have the same status as men under labor law on the mainland. According to TUCTA, gender-based discrimination in terms of wages, promotions, and legal protections in employment continued to occur in the private sector. It was difficult to prove and often went unpunished. While employers in the formal sector were more attentive to laws against discrimination, problems were particularly acute in the informal sector, in which women were disproportionately employed. Women often were employed for low pay and in hazardous jobs, and they reported high levels of bullying, threats, and sexual harassment. A 2015 study by the LHRC found that women faced particular discrimination in the mining, steel, and transport industries.

Discrimination against migrant workers also occurred. They often faced difficulties in seeking documented employment outside of the informal sector. The Noncitizens Employment Regulation Act of 2015 gives the labor commissioner authority to deny work permits if a Tanzanian worker with the same skills is available. During the year foreign professionals, including senior management of international corporations, frequently faced difficulties obtaining or renewing work permits. Because refugees lived in camps and could not travel freely (see section 2.d.), few worked in the formal sector. While efforts by nongovernment and government actors had been made to curb discrimination and violence against persons with albinism, the LHRC reported that this population still lived in fear of their personal security and therefore could not fully participate in social, economic, and political activities. The LHRC also stated that persons with disabilities also faced discrimination in seeking employment and access to the workplace.

e. Acceptable Conditions of Work

The government established minimum wage standards in 2015 for employees in both the public and private sectors on the mainland, and it divided those standards into nine employment sectors. The lowest minimum wage was TZS 40,000 ($17.50) per month for the lowest-paid category of domestic workers residing in the household of the employer, who were not addressed in previous legislation. The highest was TZS 400,000 ($175) per month for workers in the telecommunications and multinational mining, energy, and financial sectors. The law allows employers to apply to the Ministry of Labor for an exemption from paying the minimum wage. These monthly wages were above the basic-needs poverty line of TZS 36,482 ($16) per month per person and the food poverty line
of TZS 26,085 ($11.30) per month, which had not changed since being established by the 2011/12 Household Budget Survey. The labor laws cover all workers, including foreign and migrant workers and those in the informal sector. The minimum wage on Zanzibar was TZS 300,000 ($130) per month.

The labor standards laws derive from the international convention on labor standards. According to the law, the ordinary workweek is 45 hours, with a maximum of nine hours per day or six days per week. Any work in excess of these limits should be compensated with overtime pay at one-and-a-half times the employee’s regular wage. Under most circumstances, it is illegal to schedule pregnant or breast-feeding women for work between 10 p.m. and 6 a.m., although employers frequently ignored this restriction.

The law states employees with 12 months of employment are entitled to 28 days of paid annual leave, and it requires employee compensation for national holidays. The law prohibits excessive or compulsory overtime, and it restricts required overtime to 50 hours in a four-week period or in accordance with previously negotiated work contracts. The law requires equal pay for equal work.

Several laws regulate occupational safety and health (OSH) standards in the workplace. According to TUCTA, OSH standards are appropriate for the main industries and enforcement of these standards had been improving, but challenges remained in the private sector. In March the National Audit Office released a follow-up report on a 2013 performance audit on the management of occupational health and safety in the country. The report found that of 27 audit recommendations, 20 had been fully implemented, six had been partially implemented, and only one had not been implemented. OSH standards, however, were not effectively enforced in the informal economy. The Occupational Safety and Health Authority had offices in 25 of the 31 regions and 201 staff members. In Zanzibar the government employed five labor inspectors for the islands and conducted 120 inspections between January and June. The inspection system’s effectiveness was limited due to lack of resources and the insufficient number of labor officers available to conduct inspections. By law workers can remove themselves from situations that endanger health or safety without jeopardy to their employment, but authorities did not effectively enforce this protection.

Workers may sue an employer if their working conditions do not comply with the Ministry of Labor’s health and environmental standards. Disputes were generally resolved through the Commission for Mediation and Arbitration. There were no exceptions for foreign or migrant workers.
Many workers did not have employment contracts and lacked legal protections. The LHRC reported that approximately 38 percent of workers did not have contracts, and of those who did, an estimated 38 percent only had oral contracts. The LHRC also reported that employees who signed written contracts were often not provided copies of the contract, contracts held by employees differed from those maintained by employers, many contracts did not include job descriptions, and companies frequently used short-term contracts of six months or less to avoid hiring organized workers with labor protections.

The government did not effectively enforce labor standards, particularly in the informal sector. According to the 2014 Integrated Labor Force Survey (the latest available), of an active labor force of 22 million, 66 percent worked in the informal sector (including agriculture).

In dangerous industries such as construction, employees often worked without protective equipment such as helmets, gloves, or harnesses. According to a 2008 Accident Notification Survey (latest available), the sectors with the highest rates of fatal accidents were construction and building, transport, and mining and quarrying. Domestic workers were reportedly frequent victims of abuse.
Tab 3
TANZANIA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The United Republic of Tanzania is a multiparty republic consisting of the mainland region and the semiautonomous Zanzibar archipelago, whose main islands are Unguja (Zanzibar Island) and Pemba. The union is headed by a president, who is also the head of government. Its unicameral legislative body is the National Assembly (parliament). Zanzibar, although part of the union, has its own government with a president, court system, and legislature and exercises considerable autonomy. In 2015 the country held its fifth multiparty general election. Voting in the union and Zanzibari elections was judged largely free and fair, resulting in the election of a union president (John Magufuli). The chair of the Zanzibar Electoral Commission, however, declared the parallel election for Zanzibar’s president and legislature nullified after only part of the votes had been tabulated, precipitating a political crisis on the islands. New elections in Zanzibar in March 2016 were neither inclusive nor representative; the incumbent (Ali Mohamed Shein) was declared the winner with 91 percent of the vote.

Union security forces reported to civilian authorities, but civilian authorities at times did not maintain effective control over the security forces.

The most significant human rights issues included: arbitrary deprivation of life and excessive use of force by security forces; lengthy pretrial detention; violence against and harassment of journalists; restrictions on freedom of assembly; lack of accountability in cases involving gender-based violence and child abuse; criminalization and arrest of persons in consensual same-sex sexual relationships; and child labor.

In some cases the government took steps to investigate and prosecute officials who committed abuses, but impunity in the police and other security forces and civilian branches of government was widespread.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

During the year there were several reports police committed unlawful killings. Between January and June, the Legal and Human Rights Center (LHRC) reported nine alleged cases of extrajudicial killings. In August police investigating a group
of suspected bandits in Pwani region engaged in a firefight that left all 13 suspects dead or wounded, including one suspect in police custody acting as an informant. Several suspects died of their wounds when police attempted to transport them for treatment to a distant hospital in Dar es Salaam. No police were injured in the encounter.

The nongovernmental organization (NGO) Mining Watch Canada reported continuing violence at the North Mara gold mine owned by African Barrick Gold, where there were past reports of mine security personnel and police using lethal force.

b. Disappearance

There were no confirmed reports of disappearances by or on behalf of government authorities. In April musician and rapper Ibrahim Mussa was abducted with three other individuals by unidentified persons at Tongwe Records Music Studio in Dar es Salaam and held for several days. Mussa claimed that he was interrogated and tortured while held captive. Some media and civil society observers claimed that the individuals were targeted for producing music critical of the current government. There were no arrests made or any follow-up from the police.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices; however, the law does not reflect this constitutional restriction nor define torture. There were reports police officers, prison guards, and soldiers abused, threatened, and otherwise mistreated civilians, suspected criminals, and prisoners. Accountability for those who committed such abuses was limited. These abuses most commonly involved beatings. In October following the unexplained death of a police officer in Dar es Salaam, police beat and harassed persons in the neighborhood and destroyed property and businesses over a span of three days. Two police officers were subsequently arrested for involvement in the abuses.

The law allows caning. Local government officials and courts occasionally used caning as a punishment for both juvenile and adult offenders. Caning and other corporal punishment were also used routinely in schools.

Authorities in Zanzibar subjected persons accused of homosexual activity to compulsory anal examinations. In October police in Dar es Salaam requested a
court order to perform compulsory anal examinations on a group of 12 persons accused of promoting homosexuality, but were denied on procedural grounds.

**Prison and Detention Center Conditions**

Prison conditions remained harsh and life threatening. Inadequate food, overcrowding, poor sanitation, and insufficient medical care were pervasive. In 2016 the government completed a new prisoner’s dormitory at a prison in Geita region and began construction of another in Lindi region. Five other prison dormitories were renovated. The 2017-18 budget included a 5-percent increase in funding for prisons, but overall funding remained far below the level required to provide adequate care for prisoners. There were no private detention facilities.

Physical Conditions: As of 2015 the prisons, whose total designed capacity was for 29,552 inmates, held 31,382, 6 percent above designed capacity. Pretrial detainees and convicted prisoners were held together. Authorities sometimes imprisoned irregular migrants before releasing them to the Office of the UN High Commissioner for Refugees (UNHCR) if there was a pending asylum claim. Other irregular migrants were occasionally arrested if they bypassed refugee transit sites and attempted to work in border towns without permission.

Authorities held minors together with adults in several prisons due to lack of detention facilities. In 2013 the independent government department, the Commission for Human Rights and Good Governance (CHRAGG), visited selected prisons and detention facilities and found 452 minors detained in the adult prisons visited. Among these, 101 were convicts and 351 were pretrial detainees. In several adult prisons, minors were placed in a separate cell but mixed with adults during the day and while being transported to court. In other prisons children and adults mixed at all times.

Information on the prevalence of deaths in prisons, whether deliberate or unintended, was not available.

Physical abuse of prisoners was common. Witnesses noted prisoners were routinely beaten.

Prison staff reported food and water shortages, a lack of electricity, inadequate lighting, and insufficient medical supplies. Prisons were unheated, but prisoners in cold regions of the country reportedly received blankets and sweaters. Sanitation was insufficient.
Medical care was inadequate. The most common health complaints by prisoners concerned malaria, tuberculosis, HIV/AIDS, and diseases related to poor sanitation. Prison dispensaries offered only limited treatment, and friends and family members of prisoners generally had to provide medications or the funds to purchase them. Limited transportation also affected the ability of prison staff to take prisoners to health centers and hospitals.

**Administration:** Judges and magistrates conducted regular visits to inspect prisons and hear concerns from convicts and detainees. In addition, relatives of inmates made complaints to the CHRAGG, which investigated reports of abuse, but the results of those investigations were not public.

On the mainland prisoners could submit complaints to judicial authorities. The CHRAGG also served as the official ombudsman. The union Ministry of Home Affairs’ Public Complaints Department and a prison services public relations unit responded to public complaints and inquiries sent to them directly or through the media about prison conditions.

Prisoners and detainees usually had reasonable access to visitors and could worship freely, with some exceptions. Seventh-day Adventists reported they had to work on Saturday. The mainland authorities often moved prisoners to different prisons without notifying their families.

**Independent Monitoring:** The law prohibits members of the press from visiting prisons. Generally, access to prisoners was difficult for outside organizations, and the process for obtaining access was cumbersome. In September the LHRC conducted a prison visit in Dar es Salaam. It reported that the main issues it found were overcrowding and a high demand for legal representation.

**d. Arbitrary Arrest or Detention**

The constitution prohibits arbitrary arrest and detention, although regional and district commissioners have discretionary authority to order someone detained for up to 48 hours without charge. This authority was used frequently to detain opposition members or persons expressing criticism of the government. The law allows persons arrested or detained, regardless of whether on criminal or other grounds, the right to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been
unlawfully detained. The law requires that a civil case must be brought in order to make such a challenge. In practice this was rarely done.

Role of the Police and Security Apparatus

Under the union’s Ministry of Home Affairs, the Tanzanian Police Force (TPF) has primary responsibility for maintaining law and order in the country. The Field Force Unit, a special division of the TPF, has primary responsibility for controlling unlawful demonstrations and riots. During the year there were reports of use of excessive force, police corruption, and impunity. Mainland police sometimes acted as prosecutors in lower courts. Although the TPF has stated this practice was being phased out, the Ministry of Justice reported police continued to act as prosecutors in all districts except for Monduli and regional headquarters. Police reported to civilian authorities (regional commissioners, district commissioners, and police leadership) appointed by the president. The ruling party, therefore, maintained de facto control of police forces, which contributed to police abuses, particularly in opposition party strongholds.

Sungusungu, or citizens’ patrols, and traditional neighborhood anticrime groups existed throughout the mainland. The law grants them the power to make arrests. In general these groups provided neighborhood security at night. Sungusungu members are not permitted to carry firearms or machetes but may carry sticks or clubs. They coordinated with municipal governing authorities as well as police but operated independently from police. They formed or disbanded based on the perceived local need. In areas surrounding refugee camps, sungusungu members have authority to arrest refugees found outside the camps without permission. Within the camp, groups composed of refugees provided security, supplementing the police.

The Ministry of Defense is responsible for external security; it also has some limited domestic security responsibilities. The National Service is a branch of military service similar to a national guard; its service is primarily domestic.

Police and other security forces acted with impunity in many cases. While legal mechanisms exist for investigation and prosecution of security forces, authorities did not always use them. In July 2016 a police officer was convicted of manslaughter and sentenced to 15 years in prison for the killing of a journalist when police broke up a political rally in Iringa region. The journalist had confronted police to protest the assault and arrest of another journalist. Police continued to hold educational seminars for officers to combat corruption and
sometimes took disciplinary action against officers implicated in wrongdoing. Between July 2016 and June 2017, 16 police officers were dismissed for unethical behavior, including corruption. In addition, 16 officers were required to explain their actions, 10 were criminally charged, and four were demoted.

The mainland community policing initiative to improve community relations with police and enhance police effectiveness continued. Community police received standardized training, and police conducted awareness campaigns for citizens on how to assist community-policing units. Between January and August in Zanzibar, the government conducted two community policing training sessions, focusing on providing local leaders with capacities to identify criminals, terrorists, and thieves. Officials noted increases in assistance provided to police in areas where the program had been implemented, leading to arrests and improved law enforcement.

A group of security units, referred to collectively as the “Zanzibar Special Forces,” was deployed at the district level for activities that would fall under police jurisdiction on the mainland. These forces report to the government of Zanzibar and are not affiliated with the TPF or the Tanzanian People’s Defense Forces. Recruitment, training, and actual command and control of the “special units” were opaque, although all units officially report to a top ruling party minister in Zanzibar. These units, including the fire brigade and prison guards, were often activated during political activities, such as voter registration or voting.

**Arrest Procedures and Treatment of Detainees**

On the mainland the law requires that an arrest for most crimes other than crimes committed in the presence of an officer be made with an arrest warrant based on sufficient evidence, although authorities did not always comply with the law. Police often detained persons without judicial authorization. The law also requires that a person arrested for a crime, other than a national security detainee, be charged before a magistrate within 24 hours of arrest, excluding weekends and holidays, but police failed to comply consistently with this requirement. Authorities usually informed detainees of the charges against them promptly, but there were several instances when this did not happen. There were reports of police using a rolling process of releasing and immediately rearresting individuals so that they would remain in custody while police completed their investigation and developed the required information for the accused to be charged. There were also reports of police detaining individuals without charge for short periods on the orders of local authorities.
The law does not allow bail for suspects in cases involving charges of murder, treason, terrorism, drugs, armed robbery, human trafficking, or other offenses where the accused might pose a public safety risk. In some cases courts imposed strict conditions on freedom of movement and association when they granted bail. In the primary and district courts, persons sometimes bribed officials to grant bail. The law gives accused persons the right to contact a lawyer or talk with family members, but police often failed to inform detainees of this right. Indigent defendants and suspects charged with murder or treason could apply to the registrar of the court to request legal representation. Prompt access to counsel was often limited by the lack of lawyers in rural areas, lack of communication systems and infrastructure, and accused persons’ ignorance of their rights. The government often did not provide consular notification when foreign nationals were arrested.

**Arbitrary Arrest:** By law the president may order the arrest and indefinite detention without bail of any person considered dangerous to the public order or national security. The government must release such detainees within 15 days or inform them of the reason for their continued detention. The law also allows a detainee to challenge the grounds for detention at 90-day intervals. The mainland government has additional broad detention powers under the law, allowing regional and district commissioners to arrest and detain for 48 hours anyone who “disturb[s] public tranquility.” In May, Kalist Lazaro, the mayor of Arusha, was arrested and taken to the central police station for questioning on the orders of the regional commissioner. He was accused of participating in an unlawful gathering when he and a group of seven journalists and religious leaders visited Lucky Vincent School to express condolences for the 32 children who were killed in a bus accident.

**Pretrial Detention:** According to the Ministry of Home Affairs, approximately 50 percent of the prison population consisted of pretrial detainees in 2015 (the latest available data). Detainees charged with crimes generally waited three to four years for trial due to a lack of judges to hear cases, an inadequate judicial budget, and the lengthy time required to complete police investigations.

**e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, but many components of the judiciary remained underfunded, corrupt, inefficient (especially in the lower courts), and subject to executive influence. Judges and senior court officers are all political appointees of the president. The need to travel long distances to courts imposes logistical and financial constraints that limit access to justice for persons
in rural areas. There were fewer than two judges per million persons. Court clerks reportedly continued to take bribes to open cases or hide or misdirect the files of those accused of crimes. Magistrates of lower courts occasionally accepted bribes to determine the outcome of cases.

**Trial Procedures**

The law provides for the right to a fair public trial, but a weak judiciary often failed to protect this right.

The law provides for the presumption of innocence. In most cases authorities informed detainees in detail of the charges against them once they had been brought to the police station. Charges were generally presented in Kiswahili or English with needed interpretation provided when possible. With some exceptions, criminal trials were open to the public and the press. Defendants have the right to be present at their trial. Courts that hold closed proceedings (for example, in drug trafficking cases and sexual offenses involving juveniles) generally are required to provide reasons for closing the proceedings. In cases involving terrorism, the law provides that everyone, except the interested parties, may be excluded from court proceedings and witnesses may be heard under special arrangements for their protection.

The law requires legal aid in serious criminal cases, although in practice only those accused of murder and treason were provided with free representation. Most other defendants could not afford legal representation and represented themselves in court. Defendants in criminal matters are entitled to legal representation of their choice. In practice legal representation was unavailable to defendants without the means to pay. NGOs represented some indigent defendants in large cities, such as Dar es Salaam and Arusha. In Zanzibar there were no public defenders. The law prohibits lawyers from appearing or defending clients in primary-level courts whose presiding officers are not degree-holding magistrates. Human rights groups criticized reported cases where lawyers attempting to represent clients in sensitive cases were themselves threatened with arrest.

Authorities did not always allow detainees sufficient time to prepare their defense, and access to adequate facilities was limited. Defendants have the right to free interpretation as necessary from the moment charged through all appeals. Defendants or their lawyers have the right to confront prosecution witnesses, and the right to present evidence and witnesses on the defendant’s behalf. Defendants were not compelled to testify or confess guilt.
All defendants charged with civil or criminal matters, except parties appearing before Zanzibari qadi courts (traditional Muslim courts that settle issues of divorce and inheritance), could appeal decisions to the respective mainland and Zanzibari high courts. All defendants can appeal decisions to the union Court of Appeal.

Judicial experts criticized the practice of police acting as prosecutors because of the risk police might manipulate evidence in criminal cases. The mainland Ministry of Constitutional Affairs and Justice continued hiring and training state prosecutors to handle the entire mainland caseload, although staffing shortages continued.

Political Prisoners and Detainees

Several opposition politicians and individuals critical of the government were arrested or detained during the year. Such individuals were usually charged with sedition, incitement, or unlawful assembly. For example, Tundu Lissu, a member of parliament (MP), the opposition chief whip, and the president of the Tanganyika Law Society, was arrested at least six times during the year, and variously charged with incitement, insulting the president, and violating the terms of his bail. In each incident he was released on bail.

Civil Judicial Procedures and Remedies

Persons may bring civil lawsuits seeking damages for or the cessation of human rights violations and can appeal those rulings to the Court of Appeal on the mainland and other regional courts. Civil judicial procedures, however, were often slow, inefficient, and corrupt. Individuals and organizations with observer status had the right to bring complaints to the African Court on Human and Peoples’ Rights.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The law generally prohibits such actions without a search warrant, but the government did not consistently respect these prohibitions. While only courts may issue search warrants, the law also authorizes searches of persons and premises without a warrant if necessary to prevent the loss or destruction of evidence or if circumstances are serious and urgent. The law relating to terrorism permits police officers at or above the rank of assistant superintendent or in charge of a police
station to conduct searches without a warrant in certain urgent cases, but there were no reports this occurred.

It was widely believed government agents monitored the telephones and correspondence of some citizens and foreign residents. The nature and extent of this practice were unknown.

Authorities in Dar es Salaam demolished numerous homes built within reserved areas alongside rivers, roadways, and railways. Many demolitions along the Morogoro road occurred without prior notice; authorities stated they were enforcing a court order issued in 2005. Some residents had subsequently received title deeds for their property and others had court injunctions, or had cases in court challenging the demolitions when they occurred.

In August, Tanzania National Park authorities destroyed 24 houses belonging to a Maasai community in Liliondo district, although the status of the community had not been legally clarified.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides for freedom of speech but does not explicitly provide for freedom of the press.

Freedom of Expression: Individuals could criticize the government both publicly and privately, but some persons expressed concern about doing so in public. In March police threatened former minister of information, culture, art, and sport Nape Nnauye with a firearm as he attempted to begin a press conference, forcing him to leave the venue (he was later able to address the press informally at a different location). Authorities used the Cybercrime Act to bring criminal charges against individuals who criticized the government in a variety of electronic media. In 2016 Isaac Abakuki was convicted of insulting the president on his Facebook page and sentenced to a fine of seven million Tanzanian Shillings (TZS) ($3,109) or three years in prison.

Press and Media Freedom: In 2016 the government revised the laws governing the media with the Media Services Act, and in February the government issued the Media Services Regulations implementing the act. The independent media on the mainland were active and generally expressed a wide variety of views, although
media outlets often practiced self-censorship to avoid conflict with the government. The union Ministry of Information, Culture, Arts, and Sports reported there were 148 radio stations, 32 television stations, nine cable television providers, and six yearly, 230 monthly, 160 weekly, and 37 daily newspapers. In Zanzibar the government controlled the only local daily newspaper (mainland newspapers were available), one of 12 television stations, and three of the 25 radio stations.

Two mainland newspapers (Daily News and Habari Leo) were owned by the government, one (Uhuru) by the ruling Party of the Revolution (CCM), and another (Daima) by the chair of the Party of Democracy and Development (Chadema) opposition party. The remaining newspapers were independent, although close associates of political party members owned some of them. In July the government introduced new regulations implementing the 2016 Media Services Act that revised the requirements for registering print media. All print media were required to reregister under the new regulations by October 15. The new rules include a requirement that print media outlets provide curriculum vitae and technical certificates for all editors and journalists employed by the outlet. Newspaper registration was at the discretion of the registrar of newspapers at the information ministry on both the mainland and Zanzibar. Acquiring a broadcasting license from the Tanzania Communication Regulatory Authority (TCRA) took an estimated six months to one year, and the TCRA restricted the area of broadcast coverage. The TCRA imposes mandatory registration and annual fees for commercial and community radio stations. The fee structure disproportionately disadvantages the existence and creation of small community radio stations.

The Zanzibari government-owned daily newspaper had an estimated circulation of 25,000. There was one privately owned weekly newspaper with a much smaller circulation. The government of Zanzibar controlled content on the radio and television stations it owned. There were government restrictions on broadcasting in tribal languages; broadcasts in Kiswahili or English were officially preferred. The seven private radio stations on Zanzibar operated independently, often reading the content of national dailies, including articles critical of the Zanzibari government.

On the mainland the government generally did not restrict the publication of books. The publication of books on Zanzibar was uncommon.

Violence and Harassment: On September 7, opposition MP and president of the Tanganyika Law Society Tundu Lissu, a prominent critic of the government, was
shot multiple times by unknown gunmen but survived what appeared to be an assassination attempt.

Law enforcement authorities and crowds attacked, harassed, and intimidated journalists during the year. In March the regional commissioner for Dar es Salaam entered the offices of Clouds TV with an armed police escort to insist the station broadcast a program he had provided.

**Censorship or Content Restrictions:** The law authorizes police to raid and seize materials from newspaper offices without a warrant and authorizes the minister of information to “prohibit or otherwise sanction the publication of any content that jeopardizes national security or public safety.”

A permit was required for reporting on police or prison activities, both on the mainland and in Zanzibar, and journalists needed special permission to cover meetings of the Tanzanian National Assembly or attend meetings in the Zanzibar House of Representatives. Anyone publishing information accusing a Zanzibari representative of involvement in illegal activities was liable to a fine of not less than 250,000 TZS ($115), three years’ imprisonment, or both. Nothing in the law specifies whether this penalty stands if the allegation is proven true. The government may fine and suspend newspapers without warning.

There were examples of the government repressing information, extending to online newspapers and journals. For example, in January the president warned that newspapers deemed to incite dissent would be closed. On June 15, the Kiswahili weekly newspaper *Mawio* was banned for two years by the minister of information, culture, arts, and sports using his discretionary power under the 2016 Media Services Act. The reason given for the ban was for defying a presidential order not to publish information relating to alleged involvement of past presidents with a controversy over mining concessions. As of November, three other newspapers had been issued bans of varying duration. The LHRC reported journalists from both private and public media were concerned about censorship of stories by editors fearful of criticizing government leaders or policies. The LHRC reported the government uses the Media Services Act to control content in both print and broadcast media.

**Libel/Slander Laws:** The law provides for arrest, prosecution, and punishment for the use of seditious, abusive, or derogatory language to describe the country’s leadership. The Media Services Act of 2016 makes defamation a criminal act. Defamation is defined as any matter likely to injure the reputation of any person by
exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

**Internet Freedom**

While the government did not restrict access to the internet, it monitored websites and internet traffic that criticized the government. According to the TCRA’s April-June report, 19.9 million persons (40 percent of the population) used the internet in 2016. According to the International Telecommunication Union, 10 percent of the population used the internet that year.

The Cybercrimes Act of 2015 criminalizes the publication of false information, defined as “information, data or facts presented in a picture, texts, symbol, or any other form in a computer system where such information, data, or fact is false, deceptive, misleading, or inaccurate.” Individuals who made critical comments about the government on electronic media were charged under the act, even when remarks reflected opinions or were factually true.

On February 21, four university students in Dar es Salaam were charged with defamation for distributing images of President Magufuli wearing a headscarf.

On August 24, a court began hearing a case against the founders of Jamii Forums, a popular online forum for political discussions. The charges involve obstructing justice by failing to reveal the identities of users who post details of suspected corrupt officials. Two other cases against the defendants on other charges are still pending.

**Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

**b. Freedoms of Peaceful Assembly and Association**

**Freedom of Peaceful Assembly**

The constitution provides for freedom of assembly, but the government did not always respect this right.

The government requires organizers of rallies to obtain police permission. Police may deny permission on public safety or security grounds or if the permit seeker
belongs to an unregistered organization or political party. The government and police continued to limit the issuance of permits for public demonstrations and assemblies to political parties, NGOs, and religious organizations. The only political meetings allowed are by MPs in their constituencies; outside participants, including party leaders, are not permitted to participate. Restrictions are also applied to nonpolitical gatherings deemed critical of the government. On June 3, police barred the Tanzania Student Networking Program and the Tanzania Human Rights Defenders Coalition (THRDC) and members of the public from a venue that they had booked and paid for to launch a book titled *The Voice of Human Rights Defenders in Universities*. THRDC National Coordinator Onesmo Olengurumwa was arrested and charged with criminal trespass.

**Freedom of Association**

The constitution provides for freedom of association, and the government generally respected this right. Thousands of NGOs and societies operated in the country. Political parties were required to register and meet membership and other requirements. Freedom of association for workers was limited (see section 7.a.).

The registration process for associations outside Zanzibar was slow, particularly for religious and lesbian, gay, bisexual, transgender, and intersex organizations. The law makes a distinction between NGOs and societies and applies different registration procedures to the two. It defines a society as any club, company, partnership, or association of 10 or more persons, regardless of its purpose, and notes specific categories of organizations not considered societies, such as political parties. The law defines NGOs to include organizations whose purpose is to promote economic, environmental, social, or cultural development; protect the environment; or lobby or advocate on issues of public interest. Societies and organizations may not operate until authorities approve their applications. In August the government began a verification exercise that required all NGOs to re-register. Registration of new NGOs was suspended until December 1.

Religious organizations are registered as societies and wait the longest--an average of four years--for registration. From July 2016 to March, the Registrar of Societies received 296 registration applications from NGOs. The registrar registered 162 societies and rejected 10 applications; 124 applications remained unprocessed. The government rarely registered societies within the legally required 14-day period. The Ministry of Health, Community Development, Gender, Elderly, and Children registered other NGOs.
NGOs in Zanzibar apply for registration with the Zanzibar Business and Property Registration Agency. While registration generally took several weeks, some NGOs waited months if the registrar determined additional research was needed.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. In late 2015 the government banned official international travel by civil servants without authorization from State House.

Abuse of Migrants, Refugees, and Stateless Persons: Refugees apprehended more than 2.5 miles outside their camps without permits are subject by law to sentences ranging from a fine up to a three-year prison sentence. UNHCR reported that when police apprehended refugees outside the camp without permits, they were normally held in the prison nearest to where they were arrested. Usually these people were prosecuted and sentenced in local courts. Some were only given warnings and advised to return to the camp. UNHCR advocated for the return of refugees to the camp, but the response was dependent on the officer handling the case.

Sexual and gender-based violence of refugees continued. UNHCR worked with local authorities and residents in the three refugee camps to strengthen coordination and address violence, including sexual violence, against vulnerable persons. UNHCR reported the most frequent gender-based violence crimes were rape and physical assault, followed by psychological and emotional abuse. The public prosecutor investigated, prosecuted, and punished perpetrators of abuses in the camp, although international NGOs provided assistance to the legal team when requested by a survivor. Local authorities and the public prosecutor handled most cases of refugee victims of crime and abuse outside the camp. Residents of the refugee camps suffered delays and limited access to courts, common problems also faced by citizens.
The government generally cooperated with UNHCR and other humanitarian organizations in providing protection and assistance to refugees and asylum seekers.

**Protection of Refugees**

**Access to Asylum:** The law provides for the granting of asylum or refugee status, and the government has an established system for providing protection to refugees. The National Eligibility Committee is mandated to meet regularly and make determinations on asylum applications, but as of September had not met during the year.

In January the government ceased granting prima facie refugee status for asylum seekers from Burundi. All new arrivals were required to undergo individual refugee status determination (RSD). An ad hoc committee was constituted and the first phase of RSD reviews began in June. As of September 5, 1,342 cases had been reviewed with a high rejection rate. More than 33,000 additional asylum seekers had claims pending review. There were also reports of asylum seekers being prevented from entering Burundi by immigration officials.

The international NGO Asylum Access reported many persons with refugee claims were living in Dar es Salaam. The government often treated these individuals as undocumented immigrants, deporting or imprisoning them if they faced criminal charges. Arrest was often the only situation in which urban asylum seekers were exposed to the government. Observers believed many urban asylum seekers, if given the opportunity, would be able to demonstrate a need for international protection that would qualify them for refugee status. Since urban asylum seekers were not formally registered with UNHCR and the government, however, they had very little access to health care and education, and employment opportunities were limited to the informal sector. There was no policy or infrastructure to serve this group.

UNHCR processed irregular migrants arrested by authorities when the persons in custody were asylum seekers or were in the process of accessing the asylum process at the time they were apprehended.

During the year the government and the International Organization for Migration (IOM) continued to support training for law enforcement officers on the use of biometric registration equipment intended to provide irregular migrants a basis for either regularizing their status or voluntary return to their places of origin. An
additional 280 persons were registered in Kigoma and Tanga regions during the reporting period. IOM supplied 122 biometric registration equipment sets to immigration and prison authorities across the country.

Safe Country of Origin/Transit: No policy for blanket or presumptive denials of asylum exists for applicants arriving from “safe country of origin” or through a “safe country of transit.” All asylum applications are evaluated individually. The law provides that, unless the transit country is experiencing a serious breach of peace, an asylum claim can be refused upon failure to show reasonable cause as to why asylum was not claimed in the transit country prior to entry into the country.

Freedom of Movement: Encampment policy does not allow refugees to travel more than 2.5 miles outside the boundaries of official refugee camps without permission of the Ministry of Home Affairs. The ministry generally granted permission for purposes such as medical referrals and court appearances.

Employment: The government generally did not permit refugees to pursue employment and restricted refugees’ attempts to farm land within the camps.

Durable Solutions: In 2014 the Ministry of Home Affairs granted citizenship to 1,514 members of the Wazigua ethnic group (formerly known as Somali Bantu) and 162,156 Burundian refugees. In June the government began verification of the roughly 60,000 remaining members of the 1972 Burundi population (many children born in Tanzania) not yet naturalized as captured by this process.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to participate in public elections, but it allows parliament to restrict this right if a citizen is a citizen of another state, mentally infirm, convicted of certain criminal offenses, or omits or fails to prove or produce evidence as to age, citizenship, or registration as a voter. Citizens exercised that ability for the union presidential elections. The chairperson of the Zanzibar Electoral Commission (ZEC) announced he had nullified the 2015 Zanzibar elections; new elections in March 2016 were neither inclusive nor representative.

Elections and Political Participation

Recent Elections: In 2015 the country held its fifth multiparty general election in which voters elected a new president and legislative representatives. The union
elections were judged largely free and fair. The CCM, however, benefited from vastly superior financial and institutional resources. There were also reports that the use of public resources in support of CCM increased, as well as many reports of regional and district commissioners campaigning for the ruling party.

In the presidential election, John Magufuli, the CCM candidate, was elected with 58 percent of the vote to replace Jakaya Kikwete, who was not eligible to run for a third term. Four opposition parties combined in the Coalition for the People’s Constitution to support a single candidate, who ran under the Chadema banner, as the law does not recognize coalitions. In parliamentary elections the CCM retained its majority in parliament with nearly 73 percent of the seats.

Separate elections are held for the union and for Zanzibar, ordinarily on the same day, in which citizens of the two parts of the union elect local officials, members of the national parliament, and a union (national) president. Additionally, Zanzibar separately elects a president of Zanzibar and members of the Zanzibar House of Representatives. The voting in Zanzibar in 2015 was judged largely free and fair. Following the vote, however, when tabulation of the results was more than half completed, the chairperson of the ZEC announced he had nullified the Zanzibar elections, although according to the constitution and law, the commission does not have the authority to do so. This decision precipitated a political crisis in the semiautonomous archipelago, with the opposition candidate declaring he had won. New elections in March 2016 were neither inclusive nor representative. They were boycotted by the opposition, which claimed they would not be fair. Following the new elections, the ZEC announced President Ali Mohammed Shein had won with 91 percent of the vote, with the ruling CCM party sweeping nearly all seats in the Zanzibar House of Representatives. Official voter turnout was announced at 68 percent, although numerous sources estimated actual turnout at closer to 25 percent.

In 2015 officials conducted national registration of voters using a Biometric Voter Registration system that collected a photograph and two thumbprints. Registration concluded with 22,751,292 eligible voters registered on the mainland and 503,193 registered in Zanzibar.

Political Parties and Political Participation: The constitution requires that persons running for office must represent a registered political party. The law prohibits unregistered parties. There were 19 political parties with full registration and one with provisional registration. Three parties were deregistered following the 2015 elections for failure to meet requirements.
The registrar of political parties has sole authority to approve registration of any political party and is responsible for enforcing regulations on registered parties. Parties granted provisional registration may hold public meetings and recruit members. To secure full registration, parties must submit lists of at least 200 members in 10 of the country’s 31 regions, including two of the five regions of Zanzibar.

The law requires political parties to support the union between Tanganyika (mainland Tanzania) and Zanzibar; parties based on ethnic, regional, or religious affiliation are prohibited.

MPs were sanctioned for expressing criticism of the government, including for speech on the floor of parliament. In July opposition MP Halima Mdee was arrested for remarks deemed insulting to the president. Mdee had denounced the president for his directive that pregnant girls not be allowed to continue their schooling as contrary to the constitution. In 2016 the president stated political activity should be confined only to parliamentary business and interaction between MPs and their constituents until the next election cycle in 2020. During the year authorities refused permission for political rallies and arrested persons participating in internal meetings. On June 22, the deputy mayor of Arusha and two other councilors, members of opposition party CHADEMA, were arrested and charged with unlawful assembly for holding an internal meeting with constituents. They were released on bail the following day. On July 7, 51 CHADEMA members and supporters were arrested for holding a public meeting in Geita region and charged with unlawful assembly. After their arrest, the group was transferred to a prison 84 miles away in Kagera region for detention, which caused logistical difficulties bringing them to court for bail hearings. Most were released on bail in four groups between August 14 and 24. As of September 14, one person remained in custody.

The election law provides for a “gratuity” payment of TZS 235 million to TZS 280 million ($108,000 to $129,000) to MPs completing a five-year term. Incumbents can use these funds in re-election campaigns. Several NGOs and opposition parties criticized this provision for impeding aspiring opposition parliamentary candidates from mounting effective challenges.

The mainland government allowed political opponents unrestricted access to public media, but the ruling party had far more funding to purchase broadcast time.
Participation of Women and Minorities: No laws limit participation of women and/or members of minorities in the political process, and they did participate. Some observers believed cultural constraints limited women’s participation in politics. In the 2015 election, voters elected a woman as vice president for the first time. Women won election to 9.5 percent of constituent seats in parliament and few seats in the Zanzibar House of Representatives. There were special women’s seats in both parliament and the Zanzibar House of Representatives that brought total representation to 30 percent.

Section 4. Corruption and Lack of Transparency in Government
While the law provides criminal penalties for corruption by officials, the government did not implement the law effectively, and officials often engaged in corrupt practices with impunity. Corruption was generally perceived to have declined significantly, although it continues to be a major problem at all levels nationwide. After taking office, President Magufuli took several high-profile steps to signal a commitment to fighting corruption. These included surprise inspections of ministries, hospitals, and the port of Dar es Salaam, often followed by the immediate dismissal of officials. The 2016-17 fiscal year budget, however, included a substantial cut to the funding for the Office of the Controller and Auditor General, one of the country’s two main anticorruption bodies.

Corruption: Corruption was generally perceived to have declined, although it continued to be a major problem nationwide at all levels. According to the Prevention and Combating of Corruption Bureau (PCCB), most corruption investigations concerned government involvement in mining, land matters, energy, and investments. From July 2016 through June, the PCCB reported it had opened 1,150 new investigations, completed 1,082 investigations, and forwarded 657 case files to the director of public prosecutions for action. There were 454 new cases filed and 495 cases underway in court. The PCCB concluded 409 cases, with 168 convictions and 241 acquittals. According to Afrobarometer findings for 2016-17, 72 percent of respondents said the level of corruption has decreased, and 71 percent believe that the government is fighting corruption. Perceptions of corruption in key public institutions declined across the board, led by a decline of 23 percentage points (37 percent in 2014 to 14 percent in 2017) for the Tanzania Revenue Authority. Respondents said the most corrupt entities were the police, judges and magistrates, and the Tanzania Revenue Authority. NGOs continued to report allegations of corruption involving the Tanzania Revenue Authority, local government officials, police, licensing authorities, hospital workers, and the media.
Corruption featured in newspaper articles, civil complaints, and reports of police corruption from the PCCB and from the Ministry of Home Affairs.

The PCCB’s mandate excludes Zanzibar. In Zanzibar the Anti-Corruption and Economic Crimes Authority received 53 complaints. It investigated 50 cases; one case was closed, seven cases were passed to the director of public prosecutions, and two cases were brought to court between January and September.

Financial Disclosure: Government ministers and MPs, as well as certain other public servants, are required to disclose their assets upon assuming office, annually at year’s end, and upon leaving office. The Ethics Secretariat distributes forms each October for collection in December. Although penalties exist for noncompliance, there was no enforcement mechanism and limited means to determine the accuracy of such disclosures. Information on compliance was considered sensitive and only available on request to the commissioner of the secretariat. Secretariat officials previously stated the individuals who failed to meet the deadline were asked to show cause for the delay. Any declaration forms submitted or filed after the deadline must explain the failure to observe the law. Asset disclosures are not public.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views. Some human rights NGOs complained of a negative government reaction when they challenged government practice or policy. In June the minister of home affairs threatened to deregister NGOs that advocated for the right of girls to return to school after giving birth.

Government Human Rights Bodies: The union parliamentary Committee for Constitutional, Legal, and Public Administration is responsible for reporting and making recommendations regarding human rights. The new committee formed since the 2015 elections retained a majority of members from the ruling CCM party.

The CHRAGG operated on both the mainland and Zanzibar; funding levels limited its effectiveness. After experiencing a large cut in 2016-17, the CHRAGG budget was increased by approximately 42 percent for 2017-18. The commission has no
legal authority to prosecute cases but can make recommendations to other offices concerning remedies or call media attention to human rights abuses and violations and other public complaints. It also has authority to issue interim orders preventing actions in order to preserve the status quo pending an investigation. From January through October, the commission received 216 complaints within its jurisdiction. Of these, 78 involved violations of human rights, and 216 involved contravention of principles of administrative justice. A total of 509 complaints were resolved, including 363 received in prior years. A total of 2,238 complaints remained under investigation. The CHRAGG also issued statements and conducted public awareness campaigns during the period on several issues, including the need for regional and district commissioners to follow proper procedures when exercising their powers of arrest, the need for railway and road authorities to follow laws and regulations when evicting citizens from their residences, and calling on security organs to investigate allegations of disappearances or abductions, including of journalists, political leaders, and artists.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law provides for life imprisonment for persons convicted of rape, including spousal rape during periods of legal separation. The law stipulates a woman wishing to report a rape must do so at a police station where she must receive a release form before seeking medical help. This process contributed to medical complications, incomplete forensic evidence, and failure to report rapes. Victims often feared that cases reported to police would be made public.

The law prohibits assault but does not specifically prohibit domestic violence. Domestic violence against women remained widespread, and police rarely investigated such cases.

The LHRC stated there were 7,474 reported cases of gender-based violence in the first half of 2016, and 2,059 cases of rape in the first quarter of 2017 (the latest figures available). See Appendix C for data on the incidence of domestic violence.

 Authorities rarely prosecuted persons who abused women. Persons close to the victims, such as relatives and friends, were most likely to be the perpetrators. Many who appeared in court were set free because of corruption in the judicial system, lack of evidence, poor investigations, and poor evidence preservation.
There were some government efforts to combat violence against women. Police maintained 417 gender and children desks in regions throughout the country to support victims and address relevant crimes. In Zanzibar, at One Stop Centers in both Unguja and Pemba, victims could receive health services, counseling, legal assistance, and a referral to police.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C from being performed on girls under the age 18, but it does not provide for protection to women ages 18 or older. For information on the incidence of FGM/C, see Appendix C.

Prosecutions were rare. Many police officers and communities were unaware of the law, victims were often reluctant to testify, and some witnesses feared reprisals from FGM/C supporters. Some villagers reportedly bribed local leaders not to enforce the law in order to carry out FGM/C on their daughters.

Sexual Harassment: The law prohibits sexual harassment of women in the workplace. There were reports women were asked for sexual favors in return for promotions. According to the Women’s Legal Aid Center, police rarely investigated reported cases. Those cases that were investigated, were often dropped before they got to court--in some instances by the plaintiffs due to societal pressure and in others by prosecutors due to lack of evidence.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: The law provides the same legal status and rights for women and men; the law, however, also recognizes customary practices that often favor men. In particular, women faced discriminatory treatment in the areas of marriage, divorce, inheritance, and nationality.

Overt discrimination in areas such as education, credit, business ownership, and housing was uncommon. Nevertheless, women, especially in rural areas, faced significant disadvantages due to cultural, historical, and educational factors.

Children
Birth Registration: Citizenship is derived by birth within the country if at least one parent is a citizen, or if abroad, also if at least one parent is a citizen. Registration within three months of birth is free; parents who wait until later must pay a fee. Public services were not withheld from unregistered children. For additional information, see Appendix C.

Education: Tuition-free primary education is compulsory and universal on both the mainland and Zanzibar until age 15. Secondary school is tuition-free, but not compulsory.

Girls represented approximately half of all children enrolled in primary school but were absent more often than boys due to household duties. At the secondary level, child marriage and pregnancy often caused girls to be expelled or otherwise prevented girls from finishing school.

The Center for Reproductive Rights reported in 2013 that more than 55,000 girls over the previous decade had been expelled from school for being pregnant. Regional authorities reported that it was common practice for school administrators to subject girls to hands-on external abdominal examinations for pregnancy. Under the Education and Training Policy launched by the government in 2015, pregnant girls may be reinstated in schools. In June President Magufuli declared that girls would not be allowed to return to school after giving birth. Human rights NGOs criticized the policy as contrary to the country’s constitution and laws.

Child Abuse: Violence against and abuse of children were major problems. Corporal punishment was employed in schools and the law allows head teachers to cane students. The National Violence against Children Survey, conducted in 2009 (the most recent data available), found that almost 75 percent of children experienced physical violence prior to age 18. According to the Ministry of Health, Community Development, Gender, Elderly, and Children, between July 2016 and June, 37,888 cases were reported through the program’s hotline.

Early and Forced Marriage: The law sets the legal age for marriage at age 18 for boys but does not set an age for girls. In 2016 the government amended the Law of the Child to make it illegal to marry a primary or secondary school student. To circumvent these laws, individuals reportedly bribed police or paid a bride price to the family of the girl to avoid prosecution. According to Human Rights Watch (HRW), girls as young as seven were married. Zanzibar has its own law on
Marriage, but it does not specifically address early marriage. For additional information, see Appendix C.

Sexual Exploitation of Children: The law criminalizes child prostitution and child pornography. Those convicted of facilitating child prostitution or child pornography are subject to a fine ranging from TZS one million ($460) to TZS 500 million ($230,000), a prison term of one to 20 years, or both. There were no prosecutions based on this law during the year.

The law provides that sexual intercourse with a child under 18 is rape unless within a legal marriage. The law was not always enforced.

Infanticide or Infanticide of Children with Disabilities: Infanticide continued, especially among poor rural mothers who believed themselves unable to afford to raise a child. Nationwide statistics were not available.

Displaced Children: According to the Ministry of Health, Community Development, Gender, Elderly, and Children, large numbers of children were living and working on the street, especially in cities and near the borders. According to the National Action Plan to End Violence Against Women and Children in Tanzania 2017/18-2021/22, an estimated 36,000 children were living and working on the streets. These children had limited access to health and education services, because they lacked a fixed address or money to purchase medicines, school uniforms, and books. They were also vulnerable to sexual abuse.


Anti-Semitism

The Jewish population is very small, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.
Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities, but the government did not effectively enforce these provisions.

Few public buildings were accessible to persons with disabilities. New public buildings, however, were built in compliance with the law. The law provides for access to information and communication, but not all persons with disabilities had such access.

There were six members of the union parliament with disabilities. Persons with disabilities held three appointed seats in the Zanzibar House of Representatives.

Limits to the political participation of persons with disabilities included inaccessible polling stations, lack of accessible information, limited inclusion in political parties, the failure of the National Electoral Commission to implement directives concerning disability, and stigma toward persons with disabilities.

According to the 2008 Tanzanian Disability Survey, an estimated 53 percent of children with disabilities attended school. There were no significant reported patterns of abuse in educational or mental health facilities.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

Consensual same-sex sexual conduct is illegal in the country. The law on both the mainland and Zanzibar punishes “gross indecency” by up to five years in prison or a fine. The law punishes any person convicted of having “carnal knowledge of another against the order of nature or permits a man to have carnal knowledge of him against the order of nature” with a prison sentence of 30 years to life on the mainland and imprisonment up to 14 years in Zanzibar. In Zanzibar the law also provides for imprisonment up to five years or a fine for “acts of lesbianism.” The burden of proof in such cases is significant, and according to a 2013 HRW report, arrests of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons rarely led to prosecutions. They usually were a pretext for police to collect bribes or coerce sex from vulnerable individuals. Nonetheless, the CHRAGG’s prison visits in 2014 revealed that “unnatural offenses” were among the most common reasons for pretrial detention of minors. In the past courts charged individuals suspected of same-sex sexual conduct with loitering or prostitution. The law does not prohibit
discrimination based on sexual orientation and gender identity. Police often harassed persons believed to be LGBTI based on their dress or manners. In March police in Dar es Salaam arrested a 19-year-old man suspected of being gay based upon a video he had posted on Instagram. The man was interrogated about his sexual history and taken to a government hospital where he was forcibly subjected to an anal exam seeking proof of homosexual conduct.

During the year government officials publicly stated opposition to improved safeguards for the rights of LGBTI persons, which it characterized as contrary to the law of the land and the cultural norms of society. Senior government officials made several anti-LGBTI statements. In March the deputy minister of health, community development, gender, seniors, and children tweeted “The war against promotion and normalization of homosexuality in Tanzania is real.” LGBTI persons were often afraid to report violence and other crimes, including those committed by state agents, due to fear of arrest. LGBTI persons faced societal discrimination that restricted their access to health care, including access to information about HIV, housing, and employment. There were no known government efforts to combat such discrimination.

HIV and AIDS Social Stigma

The 2013 People Living with HIV Stigma Index Report indicated persons with HIV/AIDS experienced significant levels of stigma countrywide (39.4 percent), with stigma particularly high in Dar es Salaam (49.7 percent). The most common forms of stigma and discrimination experienced were gossip, verbal insults, and exclusion from social, family, and religious activities. More than one in five persons with HIV/AIDS experienced a forced change of residence or inability to rent accommodations. In Dar es Salaam, nearly one in three of these persons experienced the loss of a job or other source of income.

The law prohibits discrimination against any person “known or perceived” to be HIV positive and establishes medical standards for confidentiality to protect persons with HIV/AIDS. HRW reported in 2013 that HIV-positive persons, particularly in three key populations (sex workers, drug users, and LGBTI persons) experienced discrimination by law enforcement officials and in accessing health services. Police abuses of these persons included arbitrary arrest, extortion, and refusal to accept complaints from victims of crime. In the health sector, key populations experienced denial of services, verbal harassment and abuse, and violations of confidentiality. In 2016 the government announced a ban on the distribution of lubricants and threatened to deregister and ban NGOs serving the
LGBTI community, including those providing health services to counter HIV/AIDS, for “promoting homosexuality.” In response to government threats, several NGOs suspended services to the LGBTI community. In April community-based services for key populations were reinstated following the release of revised guidelines.

Gender Desks at police stations throughout the country were established to help address mistrust between members of key populations and police. The Tanzania AIDS Commission in 2013 established a Key Populations Task Force to enable members of marginalized communities to have a say in government policies affecting them.

Other Societal Violence or Discrimination

Despite efforts by the government and NGOs to reduce mob violence through educational outreach and community policing, mob violence spiked early in the year, reversing several years of decline. According to the LHRC, there were 479 cases of mob violence from January to June, a 255-percent increase over the same period in 2016. In April, for example, a person suspected of being an armed robber was killed by a mob in Dar es Salaam.

Witchcraft-related killings continued to be a problem, but the LHRC reported a 62-percent decline in such killings from the same period in 2016 (from 303 to 115).

Attacks on persons with albinism declined, and from January through June there were no reported cases of persons with albinism being killed or attacked. There was one reported incident in Tabora of an attempted abduction of two children with albinism. According to the UN Human Rights Council, however, persons with albinism remained at risk of violence. Some ritual practitioners, particularly in the Lake Zone region, sought albino body parts in the belief they could be used to create power and wealth. Schools used as temporary shelters in some cases evolved into long-term accommodation, with many students with albinism afraid to return to their homes. In 2015 the government outlawed witchdoctors in an attempt to curtail killings of persons with albinism.

Farmers and pastoralists sometimes argued over traditional animal grazing areas, and violence continued to break out during some disputes.

Section 7. Worker Rights
TANZANIA

a. Freedom of Association and the Right to Collective Bargaining

The mainland and Zanzibari governments have separate labor laws. Workers on the mainland, except for workers in the categories of “national service” and prison guards, have the right to form and join independent trade unions, bargain collectively, and conduct legal strikes. The law prohibits antiunion discrimination. The government nevertheless restricted these rights. Reinstatement of workers fired for trade union activity is not mandatory.

Trade unions in the private sector must consist of more than 20 members and register with the government, while public-sector unions need 30 members. Five organizations are required to form a federation. Trade union affiliation with nonunion organizations can be annulled if it was obtained without government approval, or if the union is considered an organization whose remit is broader than just employer-worker relations. A trade union or employers association must file for registration with the Registrar of Trade Unions in the Ministry of Labor within six months of establishment. The law, however, does not provide for specific time limits within which the government must register an organization, and the registrar has the power to refuse registration on arbitrary or ambiguous grounds. The government prescribes the terms of office of trade union leaders. Failure to comply with government requirements is subject to fines and/or imprisonment.

The law requires unions to submit financial records and a membership list to the registrar annually and to obtain government approval for association with international trade unions. The registrar can apply to the Labor Court to deregister or suspend unions if there is overlap within an enterprise or if it is determined the union violated the law or endangered public security.

Collective bargaining agreements must be registered with the Labor Commission. Public service employees, except for limited exceptions, such as workers involved in “national service” and prison guards, may also engage in collective bargaining.

Employers have the right to initiate a lockout provided they comply with certain legal requirements and procedures. For a strike to be declared legal, the law requires three separate notifications of intent, a waiting period of at least 92 days, and a union vote in the presence of a Ministry of Labor official that garners approval by at least 75 percent of the members voting. All parties to a dispute may be bound by an agreement to arbitrate, and neither party may then engage in a strike or a lockout until that process has been completed. Disputes regarding
adjustments to or the terms of signed contracts must be addressed through arbitration and are not subject to strikes.

The law restricts the right to strike when a strike would endanger the life and health of the population. Picketing in support of a strike or in opposition to a lawful lockout is prohibited. Workers in certain “essential” sectors (water and sanitation, electricity, health services and associated laboratory services, firefighting, air traffic control, civil aviation, telecommunications, and any transport services required for the provision of these services) may not strike without a pre-existing agreement to maintain “minimum services.” Workers in other sectors may also be subject to this limitation as determined by the Essential Services Committee, a tripartite committee composed of employers, workers, and government representatives with the authority periodically to deem which services are essential.

An employer may not legally terminate an employee for participating in a lawful strike or terminate an employee who accedes to the demands of an employer during a lockout.

Penalties for violations include fines up to five million TZS ($2,300), imprisonment up to one year, or both, but these penalties were not sufficient to deter violations. Disputes on the grounds of antiunion discrimination must be referred to the Commission for Mediation and Arbitration, a governmental department affiliated with the Ministry of Labor.

In Zanzibar the law requires any union with 50 or more members to be registered and sets literacy standards for trade union officers. The law provides the registrar considerable powers to restrict registration by setting forth criteria for determining whether an organization’s constitution contains suitable provisions to protect its members’ interests. The law applies to both public- and private-sector workers and bans Zanzibari workers from joining labor unions on the mainland. The law prohibits a union’s use of its funds, directly or indirectly, to pay any fines or penalties incurred by trade union officials in the discharge of their official duties. In Zanzibar both government and private sector workers have the right to strike as long as they follow procedures outlined in the labor law. For example, workers in essential sectors may not strike; others must give mediation authorities at least 30 days to resolve the issue in dispute and provide a 14-day advance notice of any proposed strike action.
The law provides for collective bargaining in the private sector. Public-sector employees also have the right to bargain collectively through the Trade Union of Government and Health Employees. Zanzibar’s Dispute Handling Unit addresses labor disputes. In Zanzibar judges and all judicial officers, members of special departments, and employees of the House of Representatives are excluded from labor law protection.

In Zanzibar the courts are the only venue in which labor disputes can be heard.

On both the mainland and in Zanzibar, private-sector employers adopted antiunion policies or tactics, although the law discourages discriminatory activities by an employer against union members. On the mainland the Trade Union Congress of Tanzania (TUCTA) reported a history of international mining interests engaging in antiunion activities such as bribing officials from the Ministry of Labor Inspectorate to ignore worker complaints or to write favorable reports on working conditions. TUCTA officials stated employers threatened or terminated workers to prevent organizers from achieving the 50-percent threshold to guarantee access to collective bargaining.

b. Prohibition of Forced or Compulsory Labor

The law prohibits most forms of forced or compulsory labor. The law allows prisoners to work without pay on construction and agriculture projects within prisons. The law deems such work acceptable as long as a public authority ensures the work is not for the benefit of any private party. The law also allows work carried out as part of compulsory national service in certain limited circumstances. The constitution provides that no work shall be considered forced labor if such work forms part of compulsory national service in accordance with the law, or “the national endeavor at the mobilization of human resources for the enhancement of society and the national economy and to ensure development and national productivity.”

The law establishes criminal penalties for employers using forced labor. Offenders may be fined up to TZS five million ($2,300), sentenced to one year in prison, or both. Neither the government nor the International Labor Organization (ILO) had statistics on government enforcement.

The ILO reported unspecified instances of forced labor, including those involving children from the southern highlands forced into domestic service or labor on
farms, in mines, and in the informal business sector. Forced child labor occurred (see section 7.c.).

Prisoners provided labor on projects outside of the prison, such as road repair and government construction projects.

Also see the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the exploitation of children in the workplace. By law the minimum age for contractual employment is 14 on the mainland; in Zanzibar the minimum age is 15. Children over age 14 but under 18 may be employed to do only light work unlikely to harm their health, development, or attendance at school. Children under age 18 may not crew a ship or be employed in a mine, factory, or any other worksite where working conditions could be hazardous. The law specifically limits working hours for children. Fines ranging from TZS 100,000 to TZS 500 million ($45 to $230,000) and imprisonment ranging from three months to 20 years, or both, may be imposed for violations of the law.

The government did not effectively enforce the law. The lack of enforcement left children vulnerable to exploitation and with few protections. According to the Ministry of Health, Community Development, Gender, Elderly, and Children, approximately 29 percent of all children were engaged in child labor. Child labor was prevalent in agriculture, mining, industry, fishing, and domestic work. The ILO previously worked with the government to train labor inspectors on the problem of child labor, but during the year no reported child labor cases were brought to court. Officials reported that their authority was limited to the formal economy and most child labor takes place in the family and informal economy.

Government measures to ameliorate child labor included verifying that children of school age attended school, imposing penalties on parents who did not enroll their children in school, and pressing employers in the formal sector not to employ children below the age of 18. Ministry of Labor officials reported, however, enforcement of child labor laws was difficult because many children worked in private homes or rural areas. A combination of factors, including distance from urban-based labor inspectors and a lack of understanding by children on how to report the conditions of their employment and when to do so, complicated inspections. Officials reported the problem of child labor was particularly acute.
among orphans. In cooperation with the government, Plan International operated programs in the mining sector to combat child labor.

Children worked as domestic workers, street vendors, and shopkeepers as well as in small-scale agriculture, family-based businesses, fishing, construction, and artisanal mining of gold and tanzanite. According to HRW, children as young as eight worked in mining. In Zanzibar children worked primarily in transportation, fishing, clove picking, domestic labor, small businesses, and gravel making.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The law prohibits workplace discrimination, directly or indirectly, against an employee based on color, nationality, tribe, or place of origin, race, national extraction, social origin, political opinion or religion, sex, gender, pregnancy, marital status or family responsibility, disability, HIV/AIDS, age, or station in life. The law does not specifically prohibit discrimination based on sexual orientation and/or gender identity, language, citizenship, or other communicable disease status. The law distinguishes between discrimination and an employer hiring or promoting based on affirmative action measures consistent with the promotion of equality, or hiring based on an inherent requirement of the job. The government in general did not effectively enforce the law.

Women have the same status as men under labor law on the mainland. According to TUCTA, gender-based discrimination in terms of wages, promotions, and legal protections in employment continued to occur in the private sector. It was difficult to prove and often went unpunished. While employers in the formal sector were more attentive to laws against discrimination, problems were particularly acute in the informal sector, in which women were disproportionately employed. Women often were employed for low pay and in hazardous jobs, and they reported high levels of bullying, threats, and sexual harassment. A 2015 study by the Legal and Human Rights Center found that women faced particular discrimination in the mining, steel, and transport industries.

Discrimination against migrant workers also occurred. They often faced difficulties in seeking documented employment outside of the informal sector. The Non-Citizens Employment Regulation Act of 2015 gives the labor commissioner authority to deny work permits if a Tanzanian worker with the same skills is
available. During the year, foreign professionals, including senior management of international corporations, frequently faced difficulties obtaining or renewing work permits. Because refugees lived in camps and could not travel freely (see section 2.d.), few worked in the formal sector.

e. Acceptable Conditions of Work

The government established minimum wage standards in 2015 for employees in both the public and private sectors on the mainland, and it divided those standards into nine employment sectors. The lowest minimum wage was TZS 40,000 ($18) per month for the lowest-paid category of domestic workers residing in the household of the employer, who were not addressed in previous legislation. The highest was TZS 400,000 ($180) per month for workers in the telecommunications and multinational mining, energy, and financial sectors. The law allowed employers to apply to the Ministry of Labor for an exemption from paying the minimum wage. These monthly wages were above the basic-needs poverty line of TZS 36,482 ($16) per month per person and the food poverty line of TZS 26,085 ($12) per month, which had not changed since being established by the 2011/12 Household Budget Survey. The labor laws cover all workers, including foreign and migrant workers. In April the minimum wage on Zanzibar was increased to TZS 300,000 ($65) per month.

The labor standards laws derive from the international convention on labor standards. The convention does not fix specific penalties for violations. According to the law, the ordinary workweek is 45 hours, with a maximum of nine hours per day or six days per week. Any work in excess of these limits should be compensated with overtime pay at one and a half times the employee’s regular wage. Under most circumstances, it is illegal to schedule pregnant or breast-feeding women for work between 10 p.m. and 6 a.m., although employers frequently ignored this restriction.

The law states employees with 12 months of employment are entitled to 28 days of paid annual leave, and it requires employee compensation for national holidays. The law prohibits excessive or compulsory overtime, and it restricts required overtime to 50 hours in a four-week period or in accordance with previously negotiated work contracts. The law requires equal pay for equal work.

Several laws regulate occupational safety and health (OSH) standards in the workplace. According to TUCTA, OSH standards are appropriate for the main industries and enforcement of these standards had been improving, but challenges
remained in the private sector. In March the National Audit Office released a follow-up report on a 2013 performance audit on the management of occupational health and safety in the country. The report found that of 27 audit recommendations, 20 had been fully implemented, six had been partially implemented, and only one had not been implemented. OSH standards, however, were not effectively enforced in the informal economy. The Occupational Safety and Health Authority had offices in 25 of the 31 regions and a total of 201 staff members. In Zanzibar the government employed five labor inspectors for the islands and conducted 120 inspections between January and June. The inspection system’s effectiveness was limited due to lack of resources and the small number of labor officers available to conduct inspections. By law workers can remove themselves from situations that endanger health or safety without jeopardy to their employment, but authorities did not effectively enforce this protection.

Workers may sue an employer if their working conditions do not comply with the Ministry of Labor’s health and environmental standards. Disputes were generally resolved through the Commission for Mediation and Arbitration. There were no exceptions for foreign or migrant workers.

Many workers did not have employment contracts and lacked legal protections. The LHRC reported that approximately 38 percent of workers did not have contracts, and of those who did, an estimated 38 percent only had oral contracts. The LHRC also reported that employees who signed written contracts were often not provided copies of the contract, contracts held by employees differed from those maintained by employers, many contracts did not include job descriptions, and companies frequently used short-term contracts of six months or less. In August over 290 employees of Geo Engineering of China boycotted the company after management gave them contracts written only in Chinese or other languages instead of English, in violation of the Labor Relations Act.

Labor standards were not effectively enforced, particularly in the informal sector. According to the 2014 Integrated Labor Force Survey (the latest available), of an active labor force of 22 million, 66 percent worked in the informal sector (including agriculture). Enforcement of the law concerning the minimum wage and working hours was not reported to be widely problematic.

In dangerous industries such as construction, employees often worked without protective equipment such as helmets, gloves, or harnesses. According to a 2008 Accident Notification Survey (latest available), the sectors with the highest rates of fatal accidents were construction and building (0.024 percent), transport (0.021
percent), and mining and quarrying (0.021 percent). Domestic workers were reportedly frequent victims of abuse.
Tab 4
AFRICAN COMMISSION ON HUMAN & PEOPLES' RIGHTS

HIV, THE LAW AND HUMAN RIGHTS IN THE AFRICAN HUMAN RIGHTS SYSTEM: KEY CHALLENGES AND OPPORTUNITIES FOR RIGHTS-BASED RESPONSES

Report on the Study of the African Commission on Human and Peoples’ Rights
HIV, THE LAW AND HUMAN RIGHTS IN THE AFRICAN HUMAN RIGHTS SYSTEM: KEY CHALLENGES AND OPPORTUNITIES FOR RIGHTS-BASED RESPONSES
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ABBREVIATIONS

ACERWC
African Committee of Experts on the Rights and Welfare of the Child

African Charter
African Charter on Human and Peoples’ Rights

African Children’s Charter
African Charter on the Rights and Welfare of the Child

African Commission
African Commission on Human and Peoples’ Rights

African Court
African Court on Human and Peoples’ Rights

CEDAW Committee
Committee on the Elimination of Discrimination against Women

Committee on ESCR
The Committee on Economic, Social and Cultural Rights

CRC
Convention on the Rights of the Child

Doha Declaration
Doha Declaration on the TRIPS Agreement and Public Health

EAC
East African Community

FGM
female genital mutilation

GALZ
Gays and Lesbians of Zimbabwe

HIV Committee
Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV

ICASA
International Conference on AIDS and STIs in Africa

ICCPR
International Covenant on Civil and Political Rights

ICESCR
International Covenant on Economic, Social and Cultural Rights

IP
intellectual property

LEGABIBO
The Lesbians, Gays and Bisexuals of Botswana

LGBTI
lesbian, gay, bisexual, transgender and intersex people

NSPs
national strategic plans on HIV

OAU
Organisation of African Unity

OHCHR
Office of the United Nations High Commissioner for Human Rights
PITC  
provider-initiated testing and counselling

PMTCT  
prevention of mother-to-child transmission

SADC  
Southern African Development Community

STI  
sexually transmitted infection

TAC  
Treatment Action Campaign

TB  
tuberculosis

TRIPS Agreement  
Agreement on Trade-Related Aspects of Intellectual Property Rights

UN  
United Nations

UNAIDS  
Joint United Nations Programme on HIV/AIDS

UNGASS  
United Nations General Assembly Special Session

UNICEF  
United Nations Children’s Fund

WHO  
World Health Organization

WTO  
World Trade Organization

ZARAN  
Zambian AIDS Law Research and Advocacy Network
DEFINITION OF KEY CONCEPTS AND TERMS RELATING TO HIV

Acquired Immunodeficiency Syndrome (AIDS)
AIDS is a term that applies to the most advanced stages of HIV infection. It is defined by the occurrence of one or more of the HIV-related opportunistic infections or cancers.

AIDSinfo
AIDSinfo is a data visualization and dissemination tool intended to facilitate the use of AIDS-related data, both within individual countries and globally. AIDSinfo is populated with multi-sectoral HIV data from a range of sources, including Measure DHS, UNAIDS, UNICEF and WHO.

Antiretroviral Medicines/Antiretrovirals (ARVs)/Antiretroviral Therapy (ART)/HIV Treatment
Antiretroviral therapy is highly active in suppressing viral replication, reducing the amount of the virus in the blood to undetectable levels and slowing the progress of HIV disease. The usual antiretroviral therapy regimen combines three or more different medicines, such as two nucleoside reverse transcriptase inhibitors (NRTI) and a protease inhibitor, two nucleoside analogue reverse transcriptase inhibitors and a non-nucleoside reverse transcriptase inhibitor (NNRTI), or other combinations. More recently, entry inhibitors and integrase inhibitors have joined the range of treatment options. Suboptimal regimens are monotherapy and dual therapy.

Bisexuality
A bisexual person is defined as a person who is attracted to and/or has sex with both men and women, and who identifies with this as a cultural identity.

Epidemic
An epidemic refers to a disease condition affecting (or tending to affect) a disproportionately large number of individuals within a population, community or region at the same time. An epidemic may be restricted to one locale (an outbreak), or it may be more general (an epidemic) or global (a pandemic). Common diseases that occur at a constant but relatively high rate in the population are said to be endemic.

Gay
The term “gay” can refer to same-sex sexual attraction, same-sex sexual behaviour and same-sex cultural identity.

Gender Identity
Gender identity reflects a deeply felt and experienced sense of one’s own gender. A person’s gender identity typically corresponds with the sex assigned to them at birth.

Harm Reduction
The term “harm reduction” refers to a comprehensive package of policies, programmes and approaches that seeks to reduce the harmful health, social and economic consequences associated with the use of psychoactive substances. The elements in the package are the following: needle–syringe programmes; opioid substitution therapy; HIV testing and counselling; HIV care and antiretroviral therapy for people who inject drugs; prevention of sexual transmission; outreach (which includes information, education and communication for people who inject drugs and their sexual partners); viral hepatitis diagnosis, treatment and vaccination (where applicable); and tuberculosis prevention, diagnosis and treatment.

Human Immunodeficiency Virus (HIV)
HIV infects cells of the immune system, destroying or impairing their function. Infection with the virus results in progressive deterioration of the immune system, leading to “immune deficiency.”

Homophobia and Transphobia
Homophobia is an irrational fear, hatred or aversion towards lesbian, gay or bisexual people. Transphobia denotes an irrational fear, hatred or aversion towards transgender people.

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Intersex
An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male, female, both or neither. Intersex status is not about sexual orientation or gender identity; intersex people experience the same range of sexual orientations and gender identities as non-intersex people. Intersex people suffer specific human rights violations based on their sexual characteristics.

Key populations
Gay men and other men who have sex with men, sex workers and their clients, transgender people, people who inject drugs, and prisoners and other incarcerated people are considered the main key population groups. These populations often suffer from punitive laws or stigmatizing policies, and they are among those most likely to be exposed to HIV. Their engagement is critical to a successful HIV response everywhere—they are key to the epidemic and key to the response.

Lesbian
A lesbian is a woman attracted to other women. She may or may not be having sex with women, and a woman having sex with women may or may not be a lesbian. The term “women who have sex with women” should be used unless individuals or groups self-identify as lesbians.

LGBT
LGBT stands for the terms “lesbian, gay, bisexual and transgender.” While these terms have increasing global resonance, other terms may be used to describe people who are attracted to persons of the same sex and those who have non-binary gender identities. Some examples include hijra, meit, lala, skesana, motsoaile, mithli, kuchu, kawein, travesty, muxé, fa’afafine, fakaleiti, hamjensgara and Two-Spirit. In a human rights context, lesbian, gay, bisexual and transgender people face both common and distinct challenges.

Men who have sex with men
Men who have sex with men are males who have sex with males, regardless of whether or not they also have sex with women or have a personal or social gay or bisexual identity. This concept is useful because it also includes men who self-identify as heterosexual but who have sex with other men.

Mother-to-child transmission (MTCT)
MTCT is the abbreviation for mother-to-child transmission. PMTCT, the abbreviation for prevention of mother-to-child transmission, refers to a four-prong strategy for stopping new HIV infections among children and keeping their mothers alive and families healthy. The four prongs are: helping reproductive-age women avoid HIV (Prong 1); reducing unmet need for family planning (Prong 2); providing antiretroviral medicine prophylaxis to prevent HIV transmission during pregnancy, labour and delivery, and breastfeeding (Prong 3); and providing care, treatment and support for mothers and their families (Prong 4).

Multidrug-resistant tuberculosis (MDR-TB)
MDR-TB is a specific form of drug-resistant tuberculosis, caused by a bacillus that is resistant to at least isoniazid and rifampicin, the two drugs that form the backbone of standard anti-tuberculosis treatment.

Opioid substitution treatment or therapy (OST)
Opioid substitution therapy is the recommended form of drug dependence treatment for people who are dependent on opioids. It has proved effective in the treatment of opioid dependence, in the prevention of HIV transmission and in the improvement of adherence to antiretroviral therapy. The most common drugs used in opioid substitution therapy are methadone and buprenorphine.

Opportunistic infection
Opportunistic infections are infections caused by various organisms, many of which usually do not cause disease in persons with healthy immune systems. Persons living with advanced HIV infection may have opportunistic infections of the lungs, brain, eyes and other organs. In many countries, tuberculosis is the leading HIV-related opportunistic infection.

Post-exposure prophylaxis (PEP)
Post-exposure prophylaxis refers to antiretroviral medicines that are taken after exposure (or possible exposure) to HIV. The exposure may be occupational (e.g. a needlestick injury) or non-occupational (e.g. condomless sex with a seropositive partner).
Pre-exposure prophylaxis (PrEP)

Pre-exposure prophylaxis (PrEP) refers to antiretroviral medicines prescribed before exposure (or possible exposure) to HIV. Several studies have demonstrated that a daily oral dose of appropriate antiretroviral medicines is effective in both men and women for reducing the risk of acquiring HIV infection through sexual or injection transmission.

Prevalence

Usually given as a percentage, HIV prevalence quantifies the proportion of individuals in a population who are living with HIV at a specific point in time. HIV prevalence also can refer to the number of people living with HIV. UNAIDS normally reports HIV prevalence among people aged 15–49 years.

Sex worker

Sex workers include female, male and transgender adults (18 years of age and above) who receive money or goods in exchange for sexual services, either regularly or occasionally. It is important to note that sex work is consensual sex between adults, which takes many forms and varies between and within countries and communities. Sex work may vary in the degree to which it is more or less formal or organised. Since sex work is defined as the consensual sale of sex between adults, children (people under 18 years) cannot be involved in sex work. Instead, children involved in sex work are considered to be victims of sexual exploitation.

Sexual orientation

Sexual orientation refers to a person’s physical, romantic and/or emotional attraction to other people. Everyone has a sexual orientation, which is integral to a person’s identity.

Stigma

Stigma is derived from a Greek word meaning a mark or stain, and it refers to beliefs and/or attitudes. Stigma can be described as a dynamic process of devaluation that significantly discredits an individual in the eyes of others, such as when certain attributes are seized upon within particular cultures or settings and defined as discreditable or unworthy.

Transgender

Transgender (sometimes shortened to “trans”) is an umbrella term used to describe a wide range of identities—including transsexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender, and others whose appearance and characteristics do not correspond with the sex they were assigned at birth or are considered to be gender atypical.
ACKNOWLEDGEMENTS

The development of this report was made possible by the engagement and technical and financial contributions of key partners of the African Commission on Human and Peoples’ Rights (African Commission) and the Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV (HIV Committee): the Joint United Nations Programme on HIV/AIDS (UNAIDS), African Men for Sexual Health and Rights (AMSHeR) and the AIDS and Rights Alliance for Southern Africa (ARASA).

We also acknowledge the support of the Southern African Litigation Centre (SALC) and the Eastern and Southern African Regional Think Tank on HIV, Health and Social Justice.

Expert members of the HIV Committee played key roles in coordinating the development and writing of this report with the support of consultants. The UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health provided written comments to an earlier draft of the study. Inputs were also received from the United Nations Development Programme (UNDP).

The development of the report benefitted from the involvement and input of civil society organisations, particularly people living with, affected by and at risk of HIV from all regions of the continent. Their testimonies, experiences and perspectives were a reminder of the urgent need to advance rights-based responses to HIV in Africa. Finally, dialogues with HIV programme implementers, representatives of national AIDS bodies, medical experts, members of parliament and members of the judiciary brought deep insight and expertise that informed this report.

The engagement of these representatives of all branches of governments from several African States is acknowledged. The African Commission is grateful to all these individuals and institutions for their diverse contributions, which made this report possible.
The history and current reality of the HIV epidemic globally and in Africa illustrate the importance of the law and human rights in the context of global health. A critical lesson from the past 35 years of the HIV response is that the protection of human rights—including for those most vulnerable to HIV, such as women and girls, young people, prisoners, sex workers, transgender persons, gay men, men who have sex with men, and people who inject drugs—is essential for an effective response to HIV. A thriving civil society that is empowered to demand, support and monitor progress on HIV policies and programmes is a pre-condition to advances against the epidemic.

Rights-based approaches and community involvement have enabled great progress against the epidemic in the continent. Antiretroviral therapy, which was once declared impractical in Africa, was available to 13.8 million people on the continent in 2016. Significant reductions in deaths from AIDS-related illness were recorded in many countries in the region between 2005 and 2016. In certain countries, the coverage of services to prevent mother-to-child transmission of HIV is above 95%.

Despite these achievements, stigma, discrimination, gender inequality, violence and other human rights violations continue to make people vulnerable to the epidemic and hinder access to HIV services. AIDS activists and civil society organisations that were critical to successes to date are increasingly confronted by laws, policies and practices that create barriers to their registration, operations, activities and funding. These challenges occur at a time when African countries have committed to the bold visions of the Sustainable Development Goals, Agenda 2063, and of ending the AIDS epidemic as a public health threat by 2030. There is no better entity to address the legal, human rights and social justice challenges raised by the HIV epidemic than the African Commission on Human and Peoples’ Rights, which has a broad mandate for the promotion and protection of human rights in Africa.

The present study is a significant contribution to efforts to advance rights-based responses to HIV in Africa and globally. UNAIDS is privileged to have contributed to this report, and we look forward to working with the African Commission, States, civil society and other partners to promote this study and support the implementation of its recommendations, which constitute a milestone in our efforts to end the AIDS epidemic as a public health threat by 2030 and to leave no one behind.
Despite progress made through the mobilization of civil society organizations and the international community, the HIV epidemic on the continent is still a matter of concern. In many regions in Africa, people living with HIV—particularly those at risk—continue to face numerous obstacles in terms of testing and access to prevention, treatment, care and other HIV-related services. Such obstacles include economic barriers, prejudice and stereotypes, gender inequalities, harmful socio-cultural practices and the persistence of stigma and discrimination in health facilities. The existence of punitive laws and restrictive policies and practices—along with the lack of a conducive legal environment for the effective protection of the rights of people living with HIV and those at risk in most African States—are some of the current challenges impeding the HIV response in the continent and affecting our efforts to reach the 90–90–90 targets.

In light of these considerations—and in recognition of the importance of ensuring a human rights perspective to the fight against the epidemic and to the management of its repercussions—the African Commission on Human and Peoples’ Rights (the African Commission) deemed it necessary to undertake a study on HIV, the law and human rights.

By Resolution ACHPR/Res.290 (EXT.0S/XVI) 14—adopted at its 16th Extraordinary Session, held from 20 to 29 July 2014 in Kigali, Rwanda—the African Commission assigned the task of conducting this study to its Committee on the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV. The report, entitled HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses to HIV, was adopted by the African Commission at its 61st Ordinary Session, held from 1 to 15 November 2017 in Banjul, The Gambia.

On my behalf and on behalf of the African Commission, I would like to take this opportunity to thank all those who contributed to the realization of this study. We would especially like to extend our gratitude to the various partners who spared no effort in providing technical support to the Committee, particularly the Joint United Nations Programme on HIV/AIDS (UNAIDS), African Men for Sexual Health and Rights (AMSHeR), the AIDS and Rights Alliance for Southern Africa (ARASA) and the Southern Africa Litigation Centre (SALC).

This study, conducted in collaboration with State and non-State actors, presents the current situation of the HIV epidemic in Africa. It describes international, regional and national HIV-related norms and standards, as well as their interpretation and application by UN bodies, regional African mechanisms and national courts of law and other institutions. It contains a detailed analysis of key challenges and human rights violations affecting the HIV response in the continent. It also highlights best practices and other promising practices at the regional or national level in order to raise the awareness of States and other stakeholders on the need to integrate the human rights dimension as a key component in efforts to combat HIV. The study puts forward recommendations to the different stakeholders, including States Parties, for the effective protection of the rights of people living with HIV and those at risk. Attached to the report is a series of questions that could be used by States in the preparation of their periodic reports under Article 62 of the African Human Rights Convention.
Charter on Human and Peoples’ Rights to provide details on legislative and other measures they have adopted in combating HIV.

In this regard, the African Commission calls on all stakeholders—particularly States Parties—to take ownership of the conclusions of this study and to implement the recommendations therein to ensure that the human rights dimension is better integrated into their national policies, programmes, plans and strategies for an effective response to the epidemic. It further encourages national human rights institutions, civil society organizations and other development partners to disseminate and popularise the results of the study, thereby increasing awareness among States Parties of the correlation between HIV and human rights for the effective promotion and protection of the rights of people living with HIV and those at risk.

Ending the AIDS epidemic as a public health threat is, now more than ever, our collective responsibility. Everyone should, in his or her own sphere of action and influence, fully and consciously play a role in promoting the effective implementation of the recommendations provided in this report to guarantee the promotion and protection of the rights of people living with HIV, those at risk and vulnerable to HIV.

HONOURABLE COMMISSIONER
SOYATA MAÏGA

Chairperson of the African Commission on Human and Peoples’ Rights
Chairperson of the Committee on the Protection of the Rights of People Living With HIV and Those at Risk, Vulnerable to and Affected by HIV
EXECUTIVE SUMMARY

1. For more than three decades, the world has been battling the HIV pandemic, which is estimated to have claimed about 35 million lives globally. Africa is the region of the world most affected by the epidemic, with the great majority of deaths from AIDS-related illness and new HIV infections. Although important progress has been made in the response to HIV in the region—including a decline in new HIV infections and a significant increase in access to antiretroviral therapy—the epidemic remains a leading cause of death in sub-Saharan Africa. Moreover, serious social, legal and policy challenges continue to impact the epidemic in a negative way. These challenges include stigma, discrimination, gender inequality and other negative norms and practices that affect people vulnerable to HIV and hinder their access to HIV services.

2. Across the continent, women, young people, sex workers, prisoners, people who inject drugs and gay men and other men who have sex with men are among the populations most affected by the epidemic. Factors and conditions that make people vulnerable to the epidemic often are linked to human rights violations and disabling legal and social environments. Laws, policies and practices have a direct impact on the effectiveness of country responses to the epidemic and the ability of affected individuals and communities to access HIV prevention, treatment and care services.

3. This report by the African Commission on Human and Peoples’ Rights (African Commission) provides the first comprehensive analysis of the legal and human rights issues pertinent to HIV ever conducted by an organ of the African Union. This study was mandated by ACHPR/Res.290 (EXT. OS/XVI) 2014 (Resolution 290) on the Need to Conduct a Study on HIV, the Law and Human Rights, adopted by the African Commission in July 2014 in Kigali, Rwanda. It is intended to outline progress and challenges related to human rights in the response to HIV, and to share good practices and generate renewed action by States, civil society and other stakeholders to advance human rights as central to efforts to address HIV.

4. The report presents the current state of the HIV epidemic in Africa through a human rights and gender lens by showing the populations and locations most affected by HIV and those underserved by the response to the epidemic. It also describes the global, regional and national norms and standards relating to HIV and health, as well as their interpretation and application by African regional mechanisms, United Nations (UN) bodies and national courts and institutions. It further provides a detailed analysis of the key human rights challenges affecting the response to HIV on the continent, including the following:
  › discrimination;
  › inequality;
  › coercive HIV testing;
  › barriers to treatment access;
  › violations of the human rights of women and girls;
  › failure to uphold the human rights of children; and
  › the criminalisation of people living with HIV and members of key populations (namely sex workers, transgender persons, gay men and other men who have sex with men, people who use drugs and prisoners).

5. This report not only outlines challenges and human rights violations; it also highlights good and promising practices at the regional or national levels that address these challenges. The report ends with conclusions and recommendations for advancing human rights and the response to HIV in Africa that are aimed at various stakeholders,
including States, the African Commission, other African human rights bodies, national human rights institutions, civil society and donors. Below are the key findings from this study and the recommendations for strengthening human rights in the context of HIV in Africa.

**KEY FINDINGS**

*Global and regional human rights frameworks contain solid foundations for the protection of human rights in relation to HIV*

6. Most African States are Parties to numerous international and regional human rights treaties that guarantee critical protections in the context of HIV. At the global level, these include the following:

- the International Covenant on Economic, Social and Cultural Rights;
- the International Covenant on Civil and Political Rights;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination against Women;
- the Convention on the Rights of the Child;
- the Convention on the Rights of Persons with Disabilities; and
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7. At the regional African level, key provisions in the African Charter on Human and Peoples’ Rights (African Charter), the African Charter on the Rights and Welfare of the Child (African Children’s Charter), and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) also are relevant to HIV. The Maputo Protocol includes explicit provisions addressing HIV under Article 14 on health and reproductive rights. People living with, vulnerable to or affected by HIV are entitled to all the human rights guaranteed in these global and regional treaties, which include (among others):

- the right to non-discrimination, equal protection and equality before the law;
- the right to life;
- the right to the highest attainable standard of physical and mental health;
- the right to liberty and security of person;
- the right to dignity and integrity of the person;
- the right to freedom of movement;
- the right to seek and enjoy asylum;
- the right to privacy;
- the right to freedom of opinion and expression;
- the right to freely receive and impart information;
- the right to freedom of association;
- the right to work;
- the right to marry and to found a family;
- the right to equal access to education;
- the right to an adequate standard of living;
- the right to food;
- the right to adequate housing;
- the right to social security, assistance and welfare;
- the right to share in scientific advancement and its benefits;
- the right to participate in public and cultural life; and
- the right to be free from torture and cruel, inhuman or degrading treatment or punishment.

8. These protections have been elaborated upon and applied to HIV through global and regional commitments, guidelines and resolutions adopted by bodies such as the UN General Assembly, the African Union, the African Commission, the Intergovernmental Authority on Development (IGAD), the East African Community (EAC) and the Southern African Development Community (SADC). At the global level, the development of the International Guidelines on HIV/AIDS and Human Rights in 1996 and the adoption of several UN General Assembly political declarations on HIV and AIDS were important milestones in the recognition of HIV-related human rights. In Africa, the 2010 adoption of Resolution 163 on the Establishment of a Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV, which established the HIV Committee, was a critical breakthrough that localised HIV-related human rights within the work of the African Commission.
Commission. At the global and regional levels, human rights protections also have been applied and interpreted through decisions on cases and through general comments on HIV-related issues. For example, at the global level, UN human rights bodies have addressed cases relating to HIV-related discrimination. In Africa, the African Commission's General Comments No. 1 on Article 14(1)(d) and (e) of the Maputo Protocol and No. 2 on Article 14(1) (a), (b), (c) and (f) and Article 14(2)(a) and (c) of the Maputo Protocol, directly relate to the protection of the rights of women in relation to HIV.

**Good practices on the protection of HIV-related human rights across the continent must be expanded**

9. In spite of the many human rights challenges and concerns facing the HIV response in Africa, critical progress and good practices have been documented across the continent. These include advances in the areas of legislation and policy at the national and regional levels, progressive rulings by courts and the implementation of rights-based HIV programmes in several countries. These good practices are critical for guiding countries in the region on the best approaches to responding to the epidemic.

**Legal and policy advances at the national, sub-regional and regional levels**

10. A significant number of African countries have taken legislative and policy steps to combat HIV-related discrimination. Some 35 African States have adopted laws to protect people living with HIV from discrimination, many of which are HIV-specific. In spite of their shortcomings, these laws prohibit discrimination in areas such as employment, housing, education and health care. In Kenya, the HIV and AIDS Prevention and Control Act, 2006, established an HIV and AIDS Tribunal to specifically address HIV-related discrimination cases (among others). The Tribunal is composed of legal experts, medical practitioners and people living with HIV. Since its inception,
the Tribunal has addressed several hundred cases relating to workplace issues—including mandatory HIV testing and discrimination on the basis of an individual’s HIV status—as well as discrimination and abuse in health-care settings and denial of service based on HIV status.

Legislation to advance access to medicines

As part of efforts to increase access to medicines, a number of countries in Africa— including Mozambique, Rwanda, Zambia and Zimbabwe— have all used their laws to issue compulsory licenses for medicines. In 2008, Rwanda became the first country in the world to implement the World Trade Organization (WTO) Decision of the General Council of 30 August 2003, which permits someone other than the patent holder to manufacture a lower-cost version of a medicine for export to developing countries that do not themselves have the capacity to manufacture such products. The 2003 Decision requires that the developing country announce its intention to use this mechanism, and that it should further specify the expected quantity of drugs to be supplied and issue a compulsory license for them. In spite of these restrictions and challenges, the successful shipment of 7 million doses of generic antiretroviral medication from Canada to Rwanda demonstrates the possibility of implementing the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) flexibility, provided that governments (both developed and developing) and international organisations (such as the WTO) effectively support such implementation.

Creating enabling legal and policy environments for the HIV response

Several countries have adopted protective laws and policies to advance the response to HIV. In Mauritius, for example, the HIV and AIDS Act No. 31 (2006) provides access to a range of HIV prevention services for people who use drugs; this includes the provision of clean needles without penalty, even though drug use is criminalised in the country. In Lesotho, the Children’s Protection and Welfare Act, 2011, provides in Section 240(2) that a child of 12 years and over may consent independently to medical treatment if they are of “sufficient maturity and have the mental capacity to understand the benefits, risks, social and other implications of the treatment or operation.” Similarly, Article 12 of Senegal’s Loi n° 2010-03 du 9 avril 2010 relative au VIH/SIDA provides that a minor over the age of 15 years may independently consent to HIV testing.

At the sub-regional level, the Model Law on HIV in Southern Africa, adopted by the SADC Parliamentary Forum in 2008, provides rights-based and evidence-informed recommendations for legislating around HIV. Although it is a non-binding document, the Model Law has been used as a yardstick and advocacy tool for assessing and challenging national HIV laws. The East African Community HIV Prevention and Management Act, 2012, provides for binding provisions that create an enabling and protective legal framework for EAC countries.

At the regional level, the African Commission adopted in 2012 General Comment No. 1 on Article 14(1)(d) and (e) of the Maputo Protocol, and in 2014 General Comment No. 2 on Article 14(1)(a), (b), (c) and (f) and Article 14(2)(a) and (c) of the Maputo Protocol. Together these two General Comments elaborate on the protection of the human rights of women in the context of HIV in Africa. The African Commission also adopted ACHPR/Res.275 (LV) 14 (Resolution 275), which calls on States to end discrimination and other human rights violations based on sexual orientation and gender identity. Further, ACHPR/Res.376 (LX) 17 (Resolution 376), adopted by the African Commission in May 2017, expresses concerns about restrictions to civil society space and threats to human rights defenders working on the “right to health, the fight against HIV/AIDS, reproductive health, sexual orientation and gender” (among other issues). It calls on States to adopt specific legislative measures to recognise the status of human rights defenders and protect their rights. Finally, Resolution 260 on Involuntary Sterilisation and the Protection of Human Rights in Access to HIV Services (Resolution 260),
adopted by the African Commission in 2013, calls on all countries to take measures to end and remedy involuntary and coerced sterilisation of women living with HIV.

**Advancing HIV-related rights through the courts**

15. Throughout the continent, courts have enabled critical advances in the protection of human rights in the context of HIV. Key judicial breakthroughs include the following.

**Challenging discrimination based on HIV-related status**

16. In Hoffmann v. South African Airways, the South African Constitutional Court held that the dismissal of an employee on grounds of HIV status violates the right to dignity and constitutes unfair discrimination.

**Ending mandatory testing for sex workers**

17. In S v. Mwanza Police, Mwanza District Hospital, Ministries of Justice, Internal Affairs, Health, Attorney-General and Ex parte: HB, JM (o.b.o 9 others), the High Court of Malawi held that mandatory HIV testing violated a woman’s constitutional rights to privacy, equality, dignity and freedom from cruel, inhuman and degrading treatment.

**Ending overly broad HIV criminalisation**

18. In Kenya, the High Court in Aids Law Project v. Attorney General and Others found that Section 24 of the HIV and AIDS Prevention and Control Act, 2006, which criminalised HIV non-disclosure and exposure, was vague and overbroad and thus violated the rights guaranteed under the Constitution, including the right to privacy.

**Ending forced sterilisation of women living with HIV**

19. The Supreme Court of Namibia found in Namibia v. LM and Others that the sterilisation without informed consent of three women living with HIV was a violation of their rights to physical integrity and to found a family—rights guaranteed to them under the Constitution. The court, however, dismissed their claim of discrimination on the basis of HIV status.

**Programmes to advance human rights in the HIV response**

20. Throughout the continent, countries have set up programmes to advance human rights and address barriers to HIV services, including for key populations. In Côte d’Ivoire, for instance, the Clinique Confiance, established in 1992, provides HIV and sexually transmitted infection (STI) prevention and treatment services for female and male sex workers. The tailored services for sex workers provided by Clinique Confiance has increased uptake of HIV and STI prevention and treatment services among sex workers in the areas covered. In Uganda, legal support services for sex workers—including a hotline, legal services, documentation of violations and training on rights for sex workers—are helping to reduce violations against that key population.

21. At the regional level, SADC’s HIV Cross-Border Initiative co-ordinates HIV prevention, treatment, care and support services for long-distance truck drivers, sex workers and border communities along major transport corridors in southern Africa. It includes a commitment to advocate for the review of laws and regulatory frameworks that criminalise sex work and the development of policy frameworks to increase access to services.

22. Many of the advances in the HIV response in Africa have been made possible thanks to global solidarity and funding from bilateral and multilateral sources. As per the latest data available in 2017, 33 of the 89 low-income and middle-income countries globally had 75% or more of their HIV in-country expenditures provided by external sources. Despite this, overall external funding for the HIV response in low-income and middle-income countries is decreasing. While there are sub-regions in Africa where international financing is stable or continues to grow—such as East and South Africa—national financial commitments and actual in-country expenditures remain insufficient to fill the gap, particularly in West, central and North Africa. The flattening or actual decrease in international funding for the HIV response—and the lack of an increase in domestic expenditures in many countries—poses a serious threat to the fight against the epidemic, especially for sustaining and expanding the protection of HIV-related human rights.
The engagement of the African regional human rights system remains limited in efforts to advance HIV-related human rights

In spite of recent progress, the role of the regional African human rights system in the response to HIV remains limited. The study has identified several challenges that must be addressed in order to ensure that regional mechanisms can fully contribute to efforts to advance human rights in relation to HIV. These challenges include the following:

**Limited focus on HIV from most African human rights mechanisms**

Besides the African Commission and its HIV Committee, other regional human rights bodies have thus far played little to no role in addressing the human rights issues raised by the most serious health epidemic on the continent. Bodies such as the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) could do more to address pertinent HIV-related human rights issues affecting children. A number of special mechanisms of the African Commission (e.g. special rapporteurs and working groups) could further articulate the HIV-related issues that are pertinent to their mandate. These include the following:

- the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa;
- the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
- the Special Rapporteur on Rights of Women;
- the Special Rapporteur on Freedom of Expression and Access to Information;
- the Committee for the Prevention of Torture in Africa;
- the Working Group on Economic, Social and Cultural Rights; and
- the Working Group on Rights of Older Persons and People with Disabilities.

**Limited accountability for, and enforcement of, regional commitments relating to HIV**

There have been a plethora of resolutions, commitments and similar documents on HIV adopted at the regional and sub-regional levels. However, most of them have been symbolic and have lacked concrete measures for ensuring their effective monitoring and implementation. As a result, human rights protections provided in these documents have not had much impact for the protection of people living, affected by or vulnerable to HIV.

**Limited awareness and visibility of regional human rights mechanisms on HIV-related issues**

Affected individuals and civil society organisations are generally unaware of the existence of regional human rights mechanisms. Publicly available information on regional mechanisms and how best to approach them is not easily accessible. Civil society organisations and people affected by HIV across the continent are generally unaware of the mandate of regional human rights mechanisms, the process for making a communication or otherwise interacting with the mechanisms, and how to contact them. Recent efforts by the HIV Committee to interact with government institutions and civil society through country visits and during regional and global HIV conferences are welcome, but they need to be expanded.

**Inaccessibility of mechanisms**

Regional mechanisms are inaccessible to civil society organisations and people affected by HIV. To meaningfully participate in the African Commission’s public sessions, civil society organisations must have observer status. Only a handful of organisations working on HIV currently enjoy this status, and travel to the public sessions of the African Commission is costly. Similarly, the African Court on Human and People’s Rights (the African Court) does not permit individuals to approach the Court unless the State related to the individual complaint has signed a declaration pursuant to Article 34(6) of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights that allows individuals and NGOs to bring matters directly to the Court. To date, only eight African Union Member States have signed this declaration, meaning that people affected by HIV and civil society organisations have limited access to the African Court. Thus, it is unsurprising that the Court has yet to issue any decisions specifically relating to HIV.
Resource constraints

Regional human rights mechanisms—including the African Commission and, particularly, its HIV Committee—are hampered in their work by resource constraints. This limits their ability to conduct the promotional activities, missions and fact-finding visits expressed by their mandate.

HIV-related human rights violations represent a serious concern in Africa

Across the continent, countries have introduced laws and taken other measures in response to HIV. In spite of these measures, HIV-related human rights violations continue to occur. These human rights violations impede programmes to address HIV by stifling health-seeking behaviours and limiting the abilities of stakeholders and service providers to act against the epidemic. Examples of human rights violations in the context of HIV include the following.

Inequality and discrimination against people living with HIV

People living with HIV in Africa continue to experience high levels of discrimination and stigma because of their HIV status. Stigma and discrimination hinder efforts to end the HIV epidemic because they discourage people living with HIV from disclosing their status to family members and sexual partners. They also undermine the ability and willingness of people living with HIV to access and adhere to treatment.

Stigma and discrimination have a profound effect on the ability of people living with HIV to enjoy their rights to work, health care, privacy, dignity and freedom of movement. Forms of discrimination and stigmatisation are similar across the continent and include marginalisation from families and communities, verbal harassment, physical assault, workplace discrimination, and coercive sexual and reproductive health-care services.

In many countries where anti-discrimination laws exist to protect people living with HIV, their implementation and enforcement is often lacking. Key decision-makers—including legal professionals, health-care workers and employers—do not always understand HIV or its relationship to the law, and they are therefore not able to uphold human rights. Similarly, people living with HIV are not always aware of their rights or they lack access to legal services, and these challenges—together with stigma and discrimination—combine to pose significant barriers to accessing legal services.

Compulsory and other forms of coercive HIV testing

Mandatory and coerced testing and breaches of confidentiality have been reported across the continent. Countries such as Egypt and Mauritius still impose HIV testing for immigration purposes, and mandatory pre-marital HIV testing has been reported in several countries, including Burundi, Democratic Republic of the Congo, Ghana, Kenya, Nigeria, Tanzania and Uganda. Where same-sex sexual conduct is criminalised, cases of involuntary testing of men accused of engaging in consensual same-sex sexual acts have been documented. In efforts to expand access to HIV testing, countries have introduced testing modalities such as provider-initiated testing and counselling (PITC), community and home testing, routine testing, couples testing and mobile testing. While critical to expanding access to HIV testing, some of these approaches can have serious human rights implications, particularly in terms of confidentiality and informed consent. HIV testing also poses gender-related issues because women, particularly pregnant women, are disproportionately subjected to HIV testing without clear measures to ensure their safety and protection from abuse.

Challenges to access to treatment, including restrictive intellectual property regimes

In spite of recent increases in access to antiretroviral therapy, a significant number of people living with HIV in Africa still lack access to life-saving medication. Article 16 of the African Charter places an obligation on Member States to "take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick." This includes non-discriminatory access to affordable life-saving treatments, such as antiretroviral medicines. The
protection of intellectual property (IP) rights—and the failure to reform or effectively use flexibilities within the IP regime—undermines access to affordable medicines in Africa: one in two people living with HIV are still not accessing antiretroviral therapy. In eastern and southern Africa, 67% [54–76%] of women and 51% [41–58%] of men were accessing antiretroviral therapy in 2016. In western and central Africa, 44% [32–56%] of women living with HIV and 25% [17–32%] of men living with HIV were accessing antiretroviral therapy in 2016.¹

Countries face many barriers when trying to provide citizens with affordable drugs. The TRIPS Agreement limits the ability of countries to access affordable medicines: the flexibilities existing under TRIPS have proven too complex and restrictive for the great majority of African countries. In recent years, anti-counterfeiting laws have been shown to represent a threat to the ability of countries to manufacture or import generic medicines.

Overly broad criminalisation of HIV non-disclosure, exposure or transmission

More than 25 countries in Africa have adopted laws that explicitly allow for the criminalisation of HIV non-disclosure, exposure or transmission. This is problematic, because overly broad criminalisation of HIV non-disclosure, exposure or transmission raises both public health and human rights concerns. Rather than achieving justice or preventing HIV transmission, laws or prosecutions for HIV non-disclosure, exposure or transmission perpetuate stigma and discrimination against people living with HIV. They create barriers to accessing prevention, treatment and care services, and they expose already marginalised groups (such as sex workers and people who inject drugs) to further discrimination and persecution. These laws and prosecutions often relate to acts that represent no risk of HIV transmission, and they involve disproportionately high penalties. Furthermore, laws allowing for HIV criminalisation can be vague and ambiguous, and they pose a serious risk of unfair application and the miscarriage of justice.

Restrictions to civil society space in the context of HIV

A vibrant, well-funded, resourced and engaged civil society and community movement is critical to the response to the HIV epidemic. Civil society plays an important role in delivering testing and treatment services, educating communities on HIV and prevention, building the capacities and resilience of key populations, and advocating for law reform and increased government services.

Despite their importance, non-governmental organisations working on HIV or with key populations appear to be experiencing increased challenges, as governments restrict the activities of organisations seen to be supporting or promoting illegal or so-called immoral activities. Several organisations working on HIV have reported challenges while registering, operating or attempting to access funding. These challenges mainly target groups that conduct advocacy and human rights work on HIV and those that work with key populations, and they have been shown to impact the ability of these organisations to contribute fully to the HIV response. In particular, they limit the ability of organisations to raise funds or apply for grants, advocate for a stronger legal environment for the HIV response, and provide critical HIV-related services. Such restrictions also drive marginalised populations underground, inhibiting their ability to access testing and treatment and increasing their vulnerability to violence, abuse and HIV infection.

Conflict as a challenge for the HIV response

Armed conflict and post-conflict periods raise challenges for HIV prevention and treatment. During armed conflict, HIV prevention and treatment services tend to be significantly reduced because of the instability created by war. Armed conflicts also can increase the need for HIV prevention and treatment services, and they can increase the risk of sexual violence and abuse.

People displaced by conflict have reduced access to prevention and treatment services. Knowing where to access such services and having a regular supply
of antiretroviral medicines can be difficult in such circumstances. This can result in people living with HIV developing resistance to HIV medicines. Due to their socio-economic vulnerability and other factors, refugees and migrants also experience increased risks of acquiring HIV.

Challenges faced by women and girls

Women are significantly more vulnerable to HIV than men in Africa, where women and girls accounted for 59% of people living with HIV in 2016. In sub-Saharan Africa, HIV prevalence among young women and girls is more than double what it is among young men and boys. Laws, policies and practices that perpetuate gender inequality, harmful gender norms and gender-based violence undermine the health of women and girls by keeping them in poverty and limiting their autonomy and decision-making power, including limiting their ability to access health-care services. In some settings, women who are subjected to intimate partner violence are on average 1.5 times more likely to acquire HIV.

Women living with HIV experience discrimination and coercive practices in relation to their sexual and reproductive health rights. Discriminatory treatment by health-service providers can deprive women living with HIV of their right to a family, breach their right to privacy, deny them potentially life-saving treatments or procedures and, in some cases, amount to torture. These practices include being advised not to have children, being forced to use contraception in order to obtain antiretroviral therapy and being coerced into terminating a pregnancy.

Harmful cultural practices—such as wife inheritance, child marriage and female genital mutilation (FGM)—also could increase vulnerability to HIV among women and girls. Child marriage and FGM are still legal in a number of countries, and even where they are illegal, many women report being unable or unwilling to oppose them for religious or cultural reasons, or because they feel forced to abide by them out of fear of recrimination. A number of countries have...
begun to outlaw both child marriage and FGM, but exceptions and loopholes continue to exist in relation to marriage. Changing laws also does not necessarily result in changes to customary and religious practices, particularly where custom and tradition tend to prevail over the law.

Challenges faced by children

44. Children and adolescents face various human rights challenges in the context of HIV. These include barriers to their ability to protect themselves from HIV transmission or to access the necessary treatment, care and support when they have acquired HIV or been affected by it. Child marriage and laws and policies that place restrictions on access to sexual and reproductive health services increase young people’s vulnerability to HIV and limit their access to health and HIV services.

45. Children living with HIV often experience stigma, discrimination and violations of their rights, including discrimination within their communities and in their access to health-care services. Reports indicate that children are sometimes subjected to HIV testing without their voluntary and informed consent, or to having their rights to confidentiality breached by health professionals. Access to independent HIV testing, treatment and care for adolescents and young people is limited by laws and policy, including age of consent requirements that limit their access to services. For many children, access to HIV treatment and care is limited by social, medical, systemic and economic barriers, including the failure to implement appropriate systems and strategies for early diagnosis and treatment for children. Furthermore, lack of birth registration for children, particularly orphans and other vulnerable children, contributes to hindering their access to health and social services.

Challenges faced by persons with disabilities

46. Persons with disabilities are often marginalised and stigmatised in society. They experience high rates of violence, sexual abuse and poverty, and they face limited access to health-care services. These factors contribute to making them more vulnerable to HIV and to hindering their ability to access services when living with HIV. The limited research undertaken on HIV and disability in Africa suggests that persons with disabilities have a similar, if not higher, risk of acquiring HIV than the general population.

47. People living with HIV who have a disability face significant barriers to accessing health-care services. This includes negative attitudes among health-care providers towards persons with disabilities, particularly in relation to sexual and reproductive health care. There also is limited access to services for persons with disabilities, including actual services and educational materials and information. Services designed to meet their specific needs are also very limited.

Challenges faced by indigenous persons

48. The prevalence of HIV and specific risk factors among indigenous populations in Africa is significantly underexplored and the data are limited. Indigenous populations in Africa experience human rights violations that likely increase their vulnerability to HIV infection, including political and economic marginalisation, de facto discrimination of non-agricultural groups, loss of land and community, lack of access to health-care services (often due to geographic isolation) and poverty.

Challenges faced by migrants, refugees and displaced persons

49. Social, economic and political factors in both the country of origin and destination countries influence migrants’ and refugees’ risk of HIV infection. HIV prevalence can be higher among migrants, refugees and displaced persons, especially for those originating from regions and settings with high HIV prevalence in the general population. These populations may acquire HIV in their country or region of destination or while in transit and often face a specific vulnerability to HIV related to their status as migrants, refugees and displaced persons. Stigma, discrimination, violence, denial of health services and other human rights violations contribute to making these populations particularly vulnerable to HIV and limiting their access to HIV and other health services.
Challenges faced by key populations in need of specific protection and access to HIV and health services

Key populations—who are already marginalised through other forms of stigma, inequality and discrimination—are disproportionately affected by HIV. Evidence from UNAIDS and the World Health Organization (WHO) shows that key populations in the context of HIV include gay men and other men who have sex with men, sex workers, transgender people, people who inject drugs and prisoners. These populations face human rights violations as well as legal and social barriers that make them vulnerable to HIV and limit their access to health and HIV services.

Gay men and other men who have sex with men

In 2016, the highest global median HIV prevalence rates among gay men and other men who have sex with men were reported in western and central Africa (17%) and eastern and southern Africa (14%). Punitive legal environments—combined with stigma, discrimination and high levels of violence—place gay men and other men who have sex with men at high risk of HIV infection because they are driven underground due to fear of prosecution or other negative consequences. As a result, they do not receive appropriate health education and service provision, and they are reluctant to seek health-care services, testing and treatment. In recent years, a number of countries have introduced new laws that target these populations, in some cases extending criminalisation to individuals and organisations perceived to support same-sex sexual relationships. This is believed to have led to increased harassment and prosecution on the basis of sexual orientation and gender identity, and it has resulted in increased difficulties for health workers who are trying to reach this population. In most countries, national funding and spending to address the health and HIV needs of this population remain limited.

Transgender persons

Transgender persons are marginalised, abused and often rejected by their families and society. They experience discrimination, gender-based violence and abuse, and marginalisation and social exclusion, and in the face of such treatment, they are less likely to seek out health care and testing. They also are vulnerable to HIV through sexual assault, and in many contexts, they are pushed into high-risk practices such as sex work. As a result, transgender people are one of the most vulnerable groups in relation to HIV, being 49 times more likely to be living with HIV than adults in the general population. Overall, there is limited information on the impact of HIV on transgender women and men in Africa; for the most part, they are an “invisible” population in responses to the HIV epidemic.

Sex workers

Globally, female sex workers are 10 times more likely to acquire HIV than adult women in the general population. In sub-Saharan Africa, HIV prevalence among female sex workers is roughly 26%. Sex workers in Africa face exceptionally high levels of stigma, discrimination, violence, extortion, sexual abuse and rape from clients, intimate partners and law enforcement officials; this, in turn, places them at increased risk of HIV.

People who use drugs

HIV prevalence among people who use drugs in Africa is approximately 5% (based on nine countries reporting). While the number of people who use drugs in Africa is relatively small in comparison to other regions, this number is growing along with the HIV infection rate. Criminalisation of drug use, fear of arrest and harassment, the imprisonment of people who use drugs and widespread societal stigma all contribute to discourage access to health-care services among people who use drugs and to create legal barriers to the provision of needle-syringe programmes.

These laws and practices have prevented most
countries in Africa from establishing effective HIV prevention, treatment, care and support services for people who inject drugs (including harm reduction services, such as needle–syringe programmes and opioid substitution therapy).

Prisoners

56. Prison populations are estimated to be between two to 10 times more likely to contract HIV and tuberculosis (TB) than the general population. In 2016, the estimated median HIV prevalence among prison populations in East and southern Africa was 20%.

57. A number of factors contribute to the high risk of HIV exposure in prisons. Poor conditions—including severe overcrowding, minimum ventilation, inadequate sanitation, poor nutrition and high levels of sexual violence—play a part in high vulnerability to HIV and TB. Such conditions violate the rights of prisoners to dignity, health and to be free from cruel, inhumane and degrading treatment or punishment.

58. Prisons also are sites of unsafe practices that place prisoners at high risk of HIV, including unprotected sex, rape, drug use, multi-person use of injecting equipment and unsterile tattooing. Criminalisation of same-sex sexual relations and drug use continue to be used to prevent many countries from providing needed HIV services and commodities in prisons, including condoms, lubricants, clean needles and opioid substitution therapy.

RECOMMENDATIONS

59. To States

› Take immediate steps to review and amend laws, policies and practices to ensure that they are in line with human rights norms and principles, and that they support effective HIV responses. In particular, steps should be taken to remove laws and other measures that allow for discrimination against and criminalisation of people living with HIV and members of key populations (including sex workers, people who inject drugs, gay men and other men who have sex with men, and transgender persons).

› Adopt effective measures to prevent and redress human rights violations in the context of HIV, and refrain from discrimination, criminalization or other human rights violations against people living with HIV, key populations and other vulnerable groups.

› Remove legal, policy, social and other barriers that limit the rights of women and girls to access HIV prevention, treatment, care and support services or those that make them more vulnerable to HIV.

› Remove legal, policy, social and other barriers that limit access to HIV prevention, treatment, care and support services among children and young people or those that make them more vulnerable to HIV.

› Remove punitive and restrictive laws, policies and practices that infringe upon the rights to freedom of association and assembly of organisations and human rights defenders working on health and HIV. Also remove the punitive and restrictive laws, policies and practices that stigmatise and discriminate against particular categories of human rights defenders on the basis of sex, health status, sexual orientation, gender identity and expression, or other status.

› Maintain and expand dialogue and consultation with civil society organisations working on HIV and human rights, including those working with or for key populations.

› Ensure that national mechanisms responsible for the response to HIV (including national AIDS commissions) apply rights-based responses and guarantee the meaningful participation of people living with HIV and key populations in the HIV response, as provided in the good practices identified in this report.

› Take the necessary measures to increase their financial allocation to the health sector in general—and for HIV services in particular—as agreed in the Abuja Declaration on HIV/
AIDS, Tuberculosis and Other Related Infectious Diseases (Abuja Declaration).

- Take the necessary measures to establish and expand programmes to reduce stigma and discrimination and to expand access to justice in the context of HIV and health. These measures should include the following:
  - Programmes to reduce stigma and discrimination. These can include community interaction and focus group discussions involving people living with HIV and members of populations vulnerable to HIV infection, as well as the use of media, peer mobilization and support developed for and by people living with HIV to promote health, well-being and human rights.
  - Programmes to ensure access to HIV-related legal services.
  - Programmes on monitoring and reforming laws, regulations and policies relating to HIV.
  - Legal literacy (“know your rights”) programmes.
  - Sensitization of law-makers and law enforcement agents.
  - Training for health-care providers on human rights and medical ethics related to HIV.
  - Programmes to reduce discrimination against women in the context of HIV.

60. To the African Union and other regional and sub-regional bodies

- Increase political and technical engagement in efforts to address the HIV epidemic in Africa, including the legal and policy challenges raised by HIV.

- Encourage States to take appropriate measures to address laws, policies and practices that violate human rights and act as barriers to effective responses to HIV.

- Ensure appropriate attention to HIV and human rights issues and challenges in the implementation of key regional and sub-regional priorities, agendas and frameworks, including Agenda 2063 of the African Union.

61. To the African Commission

- Create opportunities for dialogue between States, civil society and other key stakeholders on the challenges, good practices and progress related to the protection of human rights in the context of HIV.

- Continue to provide space for all civil society organisations (including those representing key populations) to engage States and other stakeholders in the response to HIV at the regional and sub-regional levels, and to ensure their effective participation in regional policy development and decision-making processes.

- Encourage and support full collaboration between States and national, regional and international human rights mechanisms, and support the independence of these mechanisms.

- Continue to raise awareness on the importance of promoting and protecting human rights in the context of HIV, including by publishing an annual update developed by the HIV Committee that examines the key human rights progress and challenges facing the HIV response in Africa.

- Fully utilise the protective and promotional mandates to monitor State compliance with all relevant human rights norms and standards relevant to HIV, including through country visits, fact-finding missions, urgent appeals and the work of subsidiary mechanisms.

- Systematically monitor and denounce human rights violations that are committed in the context of HIV, including by publishing an annual update developed by the HIV Committee that examines the key human rights progress and challenges facing the HIV response in Africa.

- Fully utilise the protective and promotional mandates to monitor State compliance with all relevant human rights norms and standards relevant to HIV, including through country visits, fact-finding missions, urgent appeals and other means. In particular,
  - call on Members States to address the questions provided in the Annex of this study when preparing their state reports under Article 62 reports; and
  - ensure that the African Commission and its subsidiary mechanisms use the questions provided in the Annex of this study in their
country visits, consideration of state reports and fact-finding missions.

- Encourage Member States to conduct law and policy review and reform, and to adopt, implement and enforce rights-based laws, policies and plans in the context of HIV and AIDS, drawing on international and regional guidance on HIV law and human rights.

- Monitor and ensure the effective dissemination and implementation of HIV-related key resolutions, general comments and guidelines of the African Commission.

- Develop guidelines and recommendations for Member States on particular legal and policy issues affecting the rights of people living with HIV and key populations. Among other issues, these guidelines should address criminal law and its impact on the HIV response.

- Ensure that the HIV Committee has the necessary technical, human and financial resources to fully discharge its mandate as provided in Resolution 163 of the African Commission.

- Ensure the effective dissemination and promotion of the present study and its recommendations, including through seminars, promotional visits and other appropriate means.

- Continue and reinforce collaboration and dialogue with civil society, governments and relevant regional and global institutions working on HIV in order to discuss challenges, good practices, progress and effective accountability to advance human rights-based responses to HIV, including through the work of the HIV Committee.

- Consider the extension of the mandate of the HIV Committee in the medium- to long-term to cover other critical health issues that are affecting the continent.

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**62. To the ACERWC**

- Require specific information on children and HIV from Member States in the States Parties Reporting Guidelines.

- Actively ensure the promotion and protection of the rights of the child in the context of HIV through its mandate, including country visits, reports and resolutions on the rights of the child.

- Develop a general comment focused on the rights of the child in the context of HIV and the obligation of States to respect, protect and fulfil these rights. This should address access to HIV prevention, testing, treatment and care services for children, including access to sexual and reproductive health services.

- Encourage Member States to ensure that domestic legal frameworks protect the rights of children living with HIV and those vulnerable to HIV infection.

- Urge Member States to conduct the necessary law and policy review and reform, and to adopt, implement and enforce rights-based laws, policies and plans in the context of HIV and in accordance with the African Children’s Charter.

- Increase awareness of ACERWC’s mandate among civil society and other organisations working on the rights of the child in the context of health and HIV.

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**63. To national human rights institutions, gender commissions and similar bodies**

- Effectively use their promotion and/or protection mandates to hold States accountable for advancing human rights in the context of the HIV response.

- Establish focal points on HIV and health within the institution or commission, and ensure they
are adequately resourced and actively engage all human rights issues affecting people living with HIV and members of key populations.

› Work closely with and regularly engage national authorities and programmes (such as HIV and TB programmes) working on HIV, TB and other health issues, as well as civil society organisations (including those representing key populations) that are working on these issues.

64. To civil society organisations

› Continue to engage national, regional and UN human rights mechanisms to prevent and respond to human rights violations in the context of HIV. In particular, prioritise engagement with the African Commission, its HIV Committee and other regional bodies on HIV and human rights.

› Establish and reinforce regional partnerships and approaches to advance collaboration and intersectional approaches with the African Commission and African Union that build alliances with diverse civil society organisations working on areas such as women and young people, and with human rights defenders working on issues such as health, HIV, sexual orientation, gender identity and expression, civic space, and sexual and reproductive health and rights.

› Develop innovative approaches to engage the general public, all branches of government and other opinion leaders (including the media) on the critical human rights issues relating to the HIV epidemic.

65. To the media

› Maintain and strengthen dialogue with people living with HIV and members of key populations. Support their efforts to advance human rights, the rule of law, social change and development in the context of the HIV response.

› Refrain from inciting hatred against people living with HIV and members of key populations, and promote responsible reporting that advances rights-based and evidence-informed responses to HIV.

66. To religious and traditional leaders

› Maintain and strengthen dialogue with people living with HIV and members of key populations. Support their efforts to advance human rights, the rule of law, social change and development in the context of the HIV response.

› Refrain from inciting hatred against people living with HIV and members of key populations.

› Encourage an inclusive, protective and humane attitude towards people living with HIV and vulnerable and key populations.
General Background

1. For more than three decades, the world has been battling the HIV pandemic, which is estimated to have claimed a total of 35 million lives globally, primarily in Africa. In 2016, there were an estimated 25.7 million [23.0–28.8 million] people living with HIV in Africa, representing nearly 70% of the global total of 36.7 million people living with HIV [30.8–42.9 million]. In 2016 alone, there were an estimated 1.2 million [990,000–1.4 million] new HIV infections and 730,000 [590,000–890,000] deaths due to AIDS-related illness in Africa.  

2. Although important progress has been made in the response to HIV in the region—including a decline in new HIV infections and a significant increase in access to antiretroviral therapy—16—the epidemic remains the leading cause of death in sub-Saharan Africa.  Moreover, serious social, legal and policy issues—such as stigma, discrimination, gender inequality and other negative norms and practices that affect people vulnerable to HIV and hinder access to HIV services—remain largely unchallenged.  

3. Very early in the HIV epidemic, it was recognised that the protection of human rights was essential to ensuring that those living with and affected by the epidemic would come forward to access HIV-related prevention, treatment and care services. It was also recognised that the protection, promotion and fulfilment of human rights for all was instrumental to addressing the factors that make specific populations—such as women, children, young people, sex workers, people who use drugs, prisoners, and gay men and other men who have sex with men—vulnerable to the epidemic. Contrary to restrictive measures generally used in the context of public health, the 41st World Health Assembly adopted Resolution WHA 41.24 in 1988, which called on States to protect people living with HIV against discrimination and other coercive measures.  

4. At the global level, human rights norms enshrined in the Universal Declaration on Human Rights and a number of human rights treaties have been interpreted to apply to HIV.  In particular, the norms in these treaties relating to non-discrimination, liberty, security, equality, health, education and free and fair trials have been explicitly interpreted to apply to HIV through general comments, concluding observations and findings in communications.  

5. In Africa, the great majority of legal and human rights developments relating to HIV have occurred at the national level.  

First, human rights norms have been invoked at the national level to ensure that people living with HIV are protected against discrimination, violence and coercion, including in accessing HIV services. This has taken the form of advocacy campaigns and court cases in response to discrimination in areas such as employment, housing and inheritance.  

Second, human rights norms have been used to claim HIV-related health services and entitlements, including access to evidence-informed HIV-related prevention and treatment services. This was illustrated by the Treatment Action Campaign’s (TAC’s) successful litigation against the South African Government to secure access to antiretroviral 

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16 - UNAIDS 2017 estimates.  
17 - UNAIDS 2017 estimates.  
20 - Examples of treaties include the following: the International Covenant on Civil and Political Rights (ICCPR), Art. 2, the International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 2; the Convention on the Rights of the Child (CRC), Art. 2(1); and subsequent human rights treaties, such as the Convention on the Rights of Persons with Disabilities.  
23 - Minister of Health and Others v. Treatment Action Campaign and Others (No. 2) (CCITB/02) [2002], ZACC 15.
therapy for the prevention of mother-to-child transmission (PMTCT).\(^{23}\)

Third, human rights norms and approaches have been used to demand specific actions to address factors such as vulnerability to HIV and barriers to HIV service access, including for specific groups (such as those identified as key populations). For example, in Odafe and Others v. Attorney-General and Others, the High Court of Nigeria relied on the African Charter in finding that the denial of access to HIV treatment for prisoners violated their rights to life and dignity.\(^{24}\)

6. At the regional level, the African Commission’s first pronouncement on HIV was in 2001 with the adoption of Resolution ACHPR/Res.53 (XXIX) 01 on the HIV/AIDS Pandemic—Threat Against Human Rights and Humanity (Resolution 53). In this resolution, the African Commission “declare[d] that the HIV/AIDS pandemic is a human rights issue which is a threat against humanity,”\(^{25}\) It subsequently called on African governments and State Parties to the Charter to allocate national resources that reflect a determination to fight the spread of HIV, ensure human rights protection against discrimination for those living with HIV, provide support to families for the care of those dying from AIDS-related illness, devise educational public health-care programmes, and carry out public awareness, especially in view of free and voluntary HIV testing and appropriate medical interventions.\(^{26}\)

7. Further to this resolution, the African Commission adopted Resolution ACHPR/Res.141 (XLIV) 08 on Access to Health and Needed Medicines in Africa (Resolution 141) and Resolution 260.\(^{27}\) Through the work and reports of some of its subsidiary mechanisms—such as the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa (Special Rapporteur on Prisons), the Special Rapporteur on the Rights of Women in Africa and the Working Group on Economic, Social and Cultural Rights—the African Commission has further addressed HIV-related issues.\(^{28}\)

8. However, the engagement of the African Commission has not been commensurate with the seriousness and diversity of human rights challenges faced in Africa due to the HIV epidemic. To provide a mechanism for intensifying its efforts to advance human rights in the response to HIV, the African Commission adopted Resolution 163 establishing the HIV Committee. The HIV Committee has been afforded a broad promotion and protection mandate that includes fact-finding missions on allegations of human rights violations, the publication of reports of key human rights issues relating to HIV and the production of recommendations to States to strengthen the respect, protection and fulfilment of the rights of people living with HIV and those at risk of (and affected by) the epidemic in Africa.

**PROCESS AND METHODOLOGY OF THIS STUDY**

9. At its 16th Extraordinary Session held in July 2014 in Kigali, Rwanda, the African Commission adopted Resolution 290 on the Need to Conduct a Study on HIV, the Law and Human Rights, which tasked the HIV Committee with conducting a study on “HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses to HIV. The resolution is based on the mandate of the HIV Committee to “recommend concrete and effective strategies to better protect the rights of people living with HIV and those at risk.”\(^{29}\)

Recognizing the various legal challenges involved in the HIV epidemic and the response in Africa, the resolution seeks to use the study to analyse “legislative/legal frameworks and human rights [with a focus] on best practices and opportunities for [strengthening] the promotion and protection of human rights” relating to HIV.\(^{30}\) In line with the mandate of the HIV Committee, the study is expected to cover all people living with HIV and those at risk, vulnerable to and affected by

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\(^{25}\) African Commission, Resolution 53 on the HIV/AIDS Pandemic.


\(^{28}\) African Commission, Resolution 290 on the Need to Conduct a Study on HIV, the Law and Human Rights, ACHPR/Res.290 (EXT/OV/XVI) (20–29 July 2014).

\(^{29}\) African Commission, Resolution 290 on the Need to Conduct a Study.
HIV, including “women, children, sex workers, migrants, men having sex with men, intravenous drugs users and prisoners.”

10. The development of the report was effectively initiated in 2015 with the development of the terms of reference. In light of this delay, the African Commission adopted ACHPR/Res.308 (EXT.OS/ XVIII) 2015 on The Extension of the Deadline for the Study on HIV, the Law and Human Rights (Resolution 308), which prolonged the period for undertaking the report by one year. The process for developing this report was remarkable for the extensive consultations that it involved and the diversity of stakeholders engaged.

11. The terms of reference of the study were discussed and amended during a joint meeting between the HIV Committee and UNAIDS’ Eastern and Southern Africa Regional Think Tank on HIV, Health and Social Justice (the Think Tank) from 31 August to 1 September 2015, in Abidjan, Côte d’Ivoire. A revised version of the terms of reference for the study was produced in October 2015. It served as a basis for a consultative session during the 18th International Conference on AIDS and STIs in Africa (ICASA), held in December 2015 in Harare, Zimbabwe. The consultative session was attended by members of the African Commission, expert members of the HIV Committee, representatives from national AIDS commissions, HIV programme implementers, civil society organisations, people living with HIV, human rights experts and representatives from key populations (including sex workers and men who have sex with men). Following the consultative session, a first draft of the report was developed and tabled for discussion and input from experts and stakeholders at a 23 July 2016 meeting during the 21st International AIDS Conference in Durban, South Africa. The meeting in Durban brought together HIV programme implementers, members of the judiciary, people living with HIV, women, young people, civil society organisations and the UN. It enabled a good representation of members of key populations to participate in...
the study review and deliberations, including sex workers, people who inject drugs, men who have sex with men and transgender persons.

12. Further to the face-to-face consultative meetings, the draft of the study was posted online for public submissions for a period of two weeks. Comments were received from individuals, civil society organisations and international institutions with expertise on human rights, health and HIV. Through these consultations, meetings and submissions, the HIV Committee was able to engage and elicit the views of over 200 organisations and individuals working on HIV in Africa and around the world.

13. This report is divided into six chapters and an annex:
   › It begins with this introduction as Chapter I.
   › Chapter II presents a synopsis of the HIV epidemic in Africa.
   › Chapter III provides an overview of global African regional human rights norms applicable to HIV.
   › Chapter IV examines the extent to which legal and institutional arrangements at the African regional and sub-regional levels address HIV-related human rights issues.
   › Chapter V focuses on the key human rights challenges impacting the HIV response in Africa. It also provides an overview of good practices on addressing these human rights challenges.
   › Chapter VI concludes the study with a summary of its key findings and recommendations.
   › The study is completed by an annex, which provides questions and elements to guide both State reporting under Article 62 of the African Charter and other interactions with States regarding HIV.
II. THE HIV EPIDEMIC IN AFRICA

1. More than 30 years into the AIDS epidemic, Africa remains the region of the world most affected by HIV. The HIV epidemic is also contributing to high TB incidence and deaths in Africa: TB is the leading cause of mortality among people living with HIV in the region. With 275 incident TB cases for every 100,000 people in 2015—almost double the global estimate—the African region has the most severe TB burden relative to population in the world. Half of the countries with the highest TB burden are in Africa, and nine countries—Angola, the Democratic Republic of the Congo, Ethiopia, Kenya, Mozambique, Nigeria, Somalia, South Africa and Zimbabwe—are among the 30 countries with the highest burden of multi-drug resistant TB. Countries in sub-Saharan Africa accounted for approximately 75% of all deaths from HIV-associated TB in 2015.

2. The impact of the HIV epidemic on families and communities is significant in the region. High HIV-related mortality among adults translates into a high number of children orphaned by the epidemic. In 2016, an estimated 13.7 million [11.4–16 million] children in sub-Saharan Africa—83% of the global total—had lost one or both parents to AIDS-related illness. The epidemic also has had important economic and social impacts. The cost of caring for household members with AIDS-related illness is high, and it is compounded by the overall reduced family income that results because of the inability to work due to illness. While recent progress in access to HIV treatment on the continent has helped alleviate the impacts of the epidemic, its social and economic consequences continue to be serious in communities where treatment coverage remains low.

DIVERSE BURDEN OF THE HIV EPIDEMIC

3. The AIDS epidemic in Africa is far from homogenous. Countries in eastern and southern Africa are generally more affected by HIV than those in West and central Africa, and countries in North Africa are among those with the lowest HIV prevalence (see Figure 1). All four countries in the world with HIV prevalence in the adult population above 15% (also referred to as “hyperendemic” countries) are in southern Africa. With the exception of Equatorial Guinea, all countries in West and central Africa have an HIV prevalence of less than 5% in the adult population aged 15–49 years (Figure 1).

4. Great differences in HIV prevalence and incidence also exist within countries. In Kenya, 63% of all new HIV infections in 2014 occurred in nine of the 47 counties (see Figure 2). Similar trends are reported across sub-Saharan Africa, with higher HIV prevalence and incidence being concentrated in specific parts of countries.

IMPORTANT BUT UNEQUAL PROGRESS

5. Significant progress against HIV has been made in recent years in sub-Saharan Africa. The number of people receiving antiretroviral therapy in the region increased from fewer than 10,000 in 2000 to 13.8 million in 2016. The expanded access to HIV treatment in the region is contributing to reduced deaths from AIDS-related illness in sub-Saharan Africa, which fell by 53% between 2005 and 2016. Countries that recorded the most significant reductions in deaths from AIDS-related illness include Rwanda (78%), Ethiopia (76%), Burkina Faso (72%), Tanzania (72%), Kenya (71%), Zimbabwe (70%), Botswana (70%), Eritrea (69%), Zambia (67%) and Malawi (67%).

6. Coverage of programmes for PMTCT has increased drastically, particularly in eastern and southern Africa, where 89% of pregnant women living with HIV were reported to receive effective antiretroviral medicines for PMTCT in 2016. Consequently, in...
FIGURE 1: ESTIMATED HIV PREVALENCE (PERSONS AGED 15–49 YEARS) IN AFRICAN COUNTRIES, 2016

- No data
- < 0.2%
- 0.2 – 0.6%
- 0.6 – 1.7%
- > 1.7%
FIGURE 2: ESTIMATED NEW HIV INFECTIONS IN KENYA, 2014, BY COUNTY
7. The keys to these advances have been the commitment of governments, the critical role played by civil society [including people living with HIV], the reduced cost of HIV treatment and international funding for the response to the epidemic. Total resources available for in-country HIV responses in low-income and middle-income countries increased by 91% from 2006 to 2016. While international resources increased 65% in the same period, the trend has slowed: from 2010 to 2014, the international resources increased by 11%, but from 2010 to 2016, it increased by only 2%. Resource availability varies by region. In eastern and southern Africa, for instance, the international resource availability increased by 93% from 2006 to 2016 while the domestic resources increased by 130% over the same period. In West and central Africa, international resources increased by 60% and domestic resources by 77% for the same period, while in North Africa, international resources increased by 29% and domestic resources increased by 49%.

8. Resource availability in eastern and southern Africa mimics the global figures, showing a 1% decrease from international sources from 2015 to 2016 and a 6% increase from domestic resources over the same period. This calls on governments in Africa to continue to step up their efforts to increase domestic funding to expand access to HIV prevention, treatment, care and support according to their financing capacity.

9. Advances in the response to HIV in Africa have been uneven, with significant differences between regions and countries in terms of access to antiretroviral therapy and reductions in new HIV infections. In general, countries in eastern and southern Africa are witnessing more robust progress in access to antiretroviral therapy than countries in West and central Africa. In 2016, for instance, just 36% [25–46%] of adults living with HIV in West and central Africa were on antiretroviral therapy, compared to 61% [49–69%] in eastern and southern Africa. Only 22% [13–29%] of children below the age of 15 years living with HIV in West and central Africa were on antiretroviral therapy in 2016 compared to 51% [37–65%] in eastern and southern Africa.

10. According to a recent report by Médecins Sans Frontières, the lower access to HIV treatment in West and central Africa is due to a number of factors. These include high stigma and discrimination, weak health systems, inadequate service delivery models, the limited role of civil society, low prioritisation of HIV, lack of political leadership and the delayed response to the needs of people living with HIV in the context of recurrent humanitarian crises in the region.

11. North Africa is the only region in Africa where deaths from AIDS-related illness and new HIV infections are increasing. Since 2010, new HIV infections among adults have increased by 76% in Egypt. Similarly, new HIV infections have increased in Tunisia over the same period. The limited access to antiretroviral therapy in the region translates to growing numbers of deaths from AIDS-related illness, with increases in Tunisia and Egypt between 2010 and 2015.

POPULATIONS LEFT BEHIND IN THE RESPONSE TO THE HIV EPIDEMIC

12. The impact of the HIV epidemic in Africa differs among populations. In sub-Saharan Africa, young women (aged 15–24 years) accounted for 28% of new HIV infections among adults, and women aged 15 years and older accounted for 56% of new HIV infections among adults. There were approximately 5,500 new HIV infections weekly among young women in the region in 2016, double the number among young men.

13. Adolescent girls and young women are less able to negotiate condom use, and they have limited access
to HIV testing, modern contraception and family planning. In Chad, Guinea, Mali, Mozambique and Niger, one in 10 girls has a child before the age of 15 years. Some 41% of girls in western and central Africa—and 34% of girls in eastern and southern Africa—are married as children. Child marriage has been associated with higher exposure to intimate partner violence and commercial sexual exploitation. Women who are exposed to intimate partner violence in some regions are 50% more likely to acquire HIV than those who are not exposed. Women and young girls living with HIV in sub-Saharan Africa also are at increased risk of other STIs, including the human papillomavirus (HPV), which causes diseases that range from benign lesions to invasive cancers. The prevalence rate of HPV among women living with HIV is as high as 80% in Zambia and 90–100% in Uganda.

Regardless of the nature and level of the HIV epidemic, data show that specific population groups in all sub-Saharan African countries—including prisoners, sex workers, gay men and other men who have sex with men, and people who inject drugs—are particularly impacted by the epidemic. Also referred to as “key populations,” these groups experience higher HIV prevalence and incidence and often have limited access to HIV prevention, treatment and care services. Even in high prevalence settings, HIV prevalence among members of key populations is often higher than it is among the remaining population. According to UNAIDS, all 12 countries where HIV prevalence among sex workers exceeds 20% are in sub-Saharan Africa.

HIV prevalence among men who have sex with men in western and central Africa is more than 14%, compared to less than 2% among the general population. HIV prevalence among men who have sex with men in North Africa is also high at 9% in Tunisia and 6% in Morocco. Even in eastern and southern Africa, the region with the highest HIV prevalence in Africa, men who have sex with men face a higher HIV burden: HIV prevalence among men who have sex with men is over 33% in Lesotho, 17% in Malawi and Mauritius, and 18% in Tanzania.

Throughout Africa, HIV prevalence is higher among prisoners and other incarcerated people than it is among the general adult population. In 2016, for instance, there was an estimated HIV prevalence of 35% among prisoners in Swaziland. Similarly, HIV prevalence among prisoners in 2016 was 20% in Malawi and 27% in Zambia. In 2012, 40% of prisoners who were living with HIV in Mauritania had a history of injecting drugs. In South Africa, HIV prevalence is 2.4 times higher among prisoners than it is among the general adult population.

Prisons often are overcrowded due to inappropriate, ineffective and excessive criminal laws. Overcrowding increases vulnerability to infections such as HIV, TB and hepatitis. Prisoners also are at risk of violence and denial or disruption of HIV prevention and treatment, including access to harm reduction services. Available data on HIV among people who inject drugs in sub-Saharan Africa also point to particularly high HIV prevalence among these populations.

High HIV prevalence among all these populations most affected by HIV in Africa cannot be justified only by biology or sexual practices. Gender inequalities—including gender-based violence—exacerbate the physiological vulnerability of women and girls to HIV, and they block their access to HIV services. Young people are denied the information and freedom to make free and informed decisions about their sexual health, with most lacking the knowledge required to protect themselves from HIV.

Similarly, stigma and discrimination, violence, negative gender and heteronormative constructs, and criminal laws that affect members of key populations (particularly sex workers, people who inject drugs and gay men and other men who have sex with men) have been shown to increase vulnerability to HIV and limit access to HIV services. For instance, harassment, violence (including by police) and the denial of prevention services (such as harm reduction programmes) contribute to a higher vulnerability to HIV.
FIGURE 3: HIV PREVALENCE IN ADULTS AND KEY POPULATIONS IN AFRICA, 2012

among people who inject drugs and their sexual partners.\textsuperscript{66} Similarly, men who have sex with men face serious barriers in accessing antiretroviral therapy and other health-care services due to discrimination in health-care settings, abuse, fear of arrest and other negative consequences that arise from the criminalisation of same-sex sexual relations.\textsuperscript{67} In Botswana, Malawi and Namibia, more than 80\% of men who have sex with men have not disclosed their same-sex sexual practices to a health practitioner.\textsuperscript{68} This situation has serious implications for providing information, protection and quality health-care services for this population because men who have sex with men have different HIV risks than heterosexual men, which suggests that the consistent association between discrimination events and STI variables is reflective of the role of stigma in the general sexual health of men who have sex with men. For instance, clinicians likely will not assess for anal HPV infection or certain other STIs in men unless they are aware that these men are at specific risk for these infections.\textsuperscript{69}

**CONCLUSION**

20. This chapter shows that in spite of important progress that has been made in the HIV response in Africa, there are still critical challenges to our ability to ensure that all regions and populations benefit from increased access to HIV treatment and reduced new HIV infections. Unequal progress within and between regions has led to a variety of HIV epidemics and their ensuing differentiated impacts on countries, locations and populations across Africa. Tailored responses are therefore needed to focus on the particular challenges facing specific populations and locations in the region.\textsuperscript{70} In particular, vulnerabilities and barriers—including in law, policy and practices—that are experienced by the populations most affected by the HIV epidemic in each national context must be identified and addressed. Effective measures are needed to respond to stigma and discrimination experienced by people living with, affected by and vulnerable to HIV.

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\textsuperscript{67} WHO, Consolidated Guidelines on HIV Prevention.


\textsuperscript{69} H. Fay et al., “Stigma, Health Care Access, and HIV Knowledge.”

\textsuperscript{70} UNAIDS, On the Fast-Track to End AIDS by 2030, 14.
III. GLOBAL AND AFRICAN REGIONAL HUMAN RIGHTS NORMS RELATING TO HIV

1. Global and regional human rights instruments contain key human rights principles essential to effective responses to HIV. Global human rights instruments include the following:
   › the Universal Declaration of Human Rights;
   › the International Covenant on Economic, Social and Cultural Rights;
   › the International Covenant on Civil and Political Rights;
   › the International Convention on the Elimination of All Forms of Racial Discrimination;
   › the Convention on the Elimination of All Forms of Discrimination Against Women;
   › the Convention on the Rights of the Child;
   › the Convention on the Rights of Persons with Disabilities; and
   › the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

At the regional level, a number of key provisions in the African Charter, the African Children’s Charter and the Maputo Protocol also are relevant to HIV. The Maputo Protocol includes explicit provisions addressing HIV under Article 14 on health and reproductive rights.
BOX: SELECTED AFRICAN REGIONAL AND SUB-REGIONAL INSTRUMENTS ON HIV

- Abuja Declaration on HIV/AIDS, Tuberculosis and Other Infectious Diseases (2001)
- Maputo Declaration on HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases (2003)
- Gaborone Declaration on a Roadmap towards Universal Access to Prevention, Treatment and Care (2005)
- Brazzaville Commitment on Scaling Up towards Universal Access to HIV and AIDS Prevention, Treatment, Care and Support in Africa by 2010 (2006)
- Abuja Call for Accelerated Action towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa (2006)
- Africa’s Common Position to the UN General Assembly Special Session on HIV/AIDS (2006)
- African Union Roadmap on Shared Responsibility and Global Solidarity (2012)
- East African Community HIV and AIDS Prevention and Management Act (2012)
- Dakar Declaration on Key Populations in the Response to HIV and AIDS in ECOWAS Member States (2015)
2. In addition to binding instruments, a number of resolutions and similar documents address human rights in the context of HIV. These include the 2011 Declaration of Commitments on HIV,\textsuperscript{13} the UN High-Level Meetings on HIV in 2006, 2011 and 2016,\textsuperscript{14} and the resolutions on HIV of the UN Commission on Human Rights (and later the UN Human Rights Council).\textsuperscript{15} Numerous global guidelines and directives also have been adopted on HIV and human rights. Chief among these are the International Guidelines on HIV/AIDS and Human Rights.\textsuperscript{16} These guidelines, published by UNAIDS and the Office of the High Commissioner on Human Rights (OHCHR), articulate human rights norms and principles that are applicable in the context of HIV, and that provide specific recommendations to countries for developing HIV-related laws, regulations, policies and programmes that comply with human rights.\textsuperscript{17}

In addition, the report of the Global Commission on HIV and the Law, which was convened by the United Nations Development Programme (UNDP) on behalf of the UNAIDS Joint Programme, articulates important human rights challenges that need to be addressed in the response to HIV.\textsuperscript{18}

3. At the regional level, several non-binding instruments on HIV have been adopted by the African Union, the African Commission, IGAD, the EAC and the SADC (see below).

4. The African Commission has recently adopted two general comments pertinent to HIV. The first, General Comments on Article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, was adopted in 2012. It highlights the measures that States should take to respect, protect, promote and fulfil women’s rights to sexual and reproductive health, and it addresses women’s rights in relation to HIV. The second, General Comment No. 2 on Article 14(1)(a), (b), (c) and (f) and Article 14(2) (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa was adopted in 2014, and it also specifically addresses the human rights of women living with HIV.\textsuperscript{19}

5. In general, human rights protections recognised under international and regional human rights norms are relevant to HIV, including the following:

- the right to non-discrimination, equal protection and equality before the law;
- the right to life;
- the right to the highest attainable standard of physical and mental health;
- the right to liberty and security of person;
- the right to dignity and integrity of the person;
- the right to freedom of movement;
- the right to seek and enjoy asylum;
- the right to privacy;
- the right to freedom of opinion and expression;
- the right to freely receive and impart information;
- the right to freedom of association;
- the right to work;
- the right to marry and to found a family;
- the right to equal access to education;
- the right to an adequate standard of living;
- the right to social security, assistance and welfare;
- the right to share in scientific advancement and its benefits;
- the right to participate in public and cultural life; and
- the right to be free from torture and cruel, inhuman or degrading treatment or punishment.

6. Under human rights law, States should refrain from violating these human rights.\textsuperscript{20} For instance, they should not adopt discriminatory measures against people living with HIV. Human rights norms also oblige States to take effective measures to prevent such abuses, including through legislative, policy and educational and informational means. In addition, States must ensure that accountability measures are in place to monitor and evaluate the effectiveness of preventative measures, and they must take steps to ensure the improvement of those measures. States also must ensure redress when violations occur.

7. The specific needs of persons living with HIV and other persons belonging to groups vulnerable
to HIV are better addressed by ensuring their meaningful participation in devising and implementing programs and services. This participatory process empowers individuals and civil society to assert their rights and report violations when they occur, and it enhances accountability for the implementation of laws and policies. International human rights bodies have increasingly addressed the rights of persons living with HIV and those most vulnerable to HIV, including in areas such as health care, employment, education and the context of freedom of expression.

8. In narrowly defined circumstances, States may impose restrictions on some rights that are provided under international and regional African human rights law; provided that these restrictions are necessary to achieve overriding goals, such as public health, the rights of others, morality, public order, the general welfare in a democratic society and national security. Public health, for instance, is often cited by States as a basis for restricting human rights in the context of HIV, but many such restrictions infringe on human rights. For example, the right to privacy is violated through mandatory testing and involuntary disclosure of people’s HIV status, and the right to liberty of the person is violated when HIV is used to justify deprivation of liberty or segregation.

9. Below is a description of several key human rights norms that are pertinent to HIV, including (where possible) the interpretation of these norms in HIV-related matters by global and regional African human rights mechanisms. This chapter draws on global human rights norms for two reasons. First, African States have committed to global human rights treaties by ratifying them. Second, in terms of Article 61 of the African Charter, the provisions of global treaties and their authoritative interpretation—including by human rights bodies—constitute applicable sources of law in the African regional human rights system.

THE RIGHT TO HEALTH

10. The right to health is widely recognised in international and regional human rights instruments. It is protected under the following Articles:
   - Article 12 of the International Covenant on Economic, Social and Cultural Rights;
   - Articles 11 and 12 of the Convention on the Elimination of All Forms of Discrimination Against Women;
   - Article 24 of the Convention on the Rights of the Child;
   - Article 25 of the Convention on the Rights of Persons with Disabilities;
   - Article 16 of the African Charter;
   - Article 14 of the Maputo Protocol; and
   - Article 14 of the African Children’s Charter.

UN human rights standards

11. The human right to health is recognised in several UN instruments. Article 25(1) of the Universal Declaration of Human Rights affirms that “everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.” Article 12(1) of the International Covenant on Economic, Social and Cultural Rights further recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The right to health is also recognised in Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, in Articles 11(1)(f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979, and in Article 24 of the Convention on the Rights of the Child of 1989 (among others).

12. The right to health is the short form for the right to the highest attainable standard of physical and mental health. This includes the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. UN human rights bodies have stressed that persons living with HIV and those vulnerable to HIV must be guaranteed the right to health. In
particular, the Committee on Economic, Social and Cultural Rights (Committee on ESCR) emphasises in General Comment No. 14 on the Right to the Highest Attainable Standard of Physical and Mental Health, and later in its General Comment 22 on the Right to Sexual and Reproductive Health, the linkages that exist between the right to health and other human rights:

The right to health is closely related to and dependent upon the realization of other human rights . . . including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.\(^{85}\)

13. Also in General Comment No. 14, the Committee on ESCR describes the essential elements of the right to health as involving the availability, accessibility, acceptability and quality of health facilities, goods and services.\(^{86}\) Applied to HIV, these elements relate to the following:

- **Availability:** States must ensure that there are an adequate number of trained medical and professional personnel, functioning health-care facilities, services, goods and programs to serve the population. This includes essential drugs, as defined by the WHO Model List of Essential Medicines, which includes antiretroviral therapy for the treatment of HIV.

- **Accessibility:** States must ensure that health facilities and services are accessible to all, especially the most marginalised. This includes people living with HIV. Facilities and services should be accessible both in law and in fact, without discrimination on any prohibited ground, including HIV status. There are various kinds of accessibility:
  
  - **Physical accessibility:** facilities and services must be within safe and reasonable geographical reach for all sections of the population, especially persons belonging to disadvantaged and marginalised groups. This includes adequate access to buildings for persons with disabilities.

- **Economic accessibility:** facilities and services must be affordable for all through either publicly or privately provided services. Payment assistance must be based on the principle of equity to ensure that impoverished families and individuals do not bear a disproportionate burden of health costs. This includes affordable antiretroviral therapy.

- **Information accessibility:** individuals and groups must be able to seek, receive and disseminate information and ideas concerning sexual and reproductive health issues generally, including information related to HIV and groups vulnerable to HIV, and for individuals to receive specific information on their health status. Information related to sexual and reproductive health—including information on HIV—must be accessible, evidence-based and not censored or withheld. Such information must be provided in a manner consistent with the needs of the individual and the community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation and gender identity.

- **Acceptability:** health facilities, services and goods must be culturally appropriate and consider the needs of minorities, indigenous populations, gender, sexual diversity and age groups. They also must be designed to respect medical ethics, such as confidentiality and informed consent, including in the context of HIV testing. However, this cannot be used to justify the refusal to provide tailored facilities, goods, information and services to specific groups.

- **Quality:** health facilities, goods and services must be of good quality, evidence-based, scientifically and medically appropriate and up to date. This requires trained and skilled health-
care personnel and scientifically approved and unexpired drugs and equipment. The failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as advances in the treatment of HIV and AIDS, jeopardises the quality of care.

14. General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Standard of Health, adopted by the Committee on the Rights of the Child, has applied these norms to the right to health of adolescents. The General Comment No. 15 also stresses that States should provide health services that are sensitive to the needs and human rights of all adolescents.

15. African human rights standards

In the African regional human rights system, Article 16 of the African Charter, Article 14 of the Maputo Protocol and Article 14 of the African Children’s Charter all discuss the right to health. The African Commission has had the opportunity to elaborate on the scope and content of these provisions—including in relation to health and HIV—through general comments, resolutions, concluding observations, and case law.

General comments

16. The first-ever general comment of the African Commission was adopted in 2012 in relation to Articles 14(1)(d) and (e) of the Maputo Protocol, which set forth the right of women to self-protection and to be protected from HIV infection, as well as their right to be informed of their HIV status and that of their partners, in accordance with international standards and practices. In it, the African Commission outlines the measures that African States must adopt to ensure that the realisation of Article 14(1)(d) and (e) of the Maputo Protocol includes the following:

> Information and education: States Parties should ensure that information and education, both in and out of schools, on sexual and reproductive rights (including HIV) is provided to women, particularly adolescents and young women. This requires States to ensure that content is evidence-informed, fact- and rights-based, non-judgmental and understandable in content and language. It also stipulates that content should “address taboos and misconceptions relating to sexual and reproductive health issues, deconstruct men and women’s roles in society and challenge traditions notions of masculinity and femininity which perpetuate stereotypes harmful to women’s health and well-being.”

> Access to sexual and reproductive health services: States Parties must guarantee available, accessible, affordable, comprehensive and quality HIV prevention and treatment procedures that are evidence-informed and women-centred—including female condoms, microbicides, PMTCT and post-exposure prophylaxis (PEP)—to all women independent of a discriminatory assessment of risk.

> Enabling legal and policy framework: States Parties are obligated to create environments that allow women to control their sexual and reproductive choices, thus strengthening their control over HIV prevention and protection. A framework to create such an environment must include (1) anti-discrimination legislation that ensures women’s access to health services, (2) public health legislation that ensures the provision of pre-and post-test counselling in all cases, and (3) strict rules of data protection and confidentiality.

> Accountability and redress: States Parties should ensure that laws and policies regarding women’s rights related to HIV are appropriately implemented and enforced.

17. The second general comment adopted by the African Commission (General Comment No. 2) deals with the remaining provisions of Article 14 of the Maputo Protocol. In it, the African Commission enjoins States to promote the right of women to health care, including sexual and reproductive health services. It particularly enjoins States to ensure integration of family planning services with HIV prevention services. The Commission further

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87. UN Committee on the Rights of the Child, General Comment No. 15 on the Right of the Child to the Highest Attainable Standard of Health (Art. 24), Chapter IV, Section E (2013).
88. African Commission, General Comment on Article 14(1)(d) and (e).
89. African Commission, General Comment on Article 14(1)(d) and (e), paras. 27-28.
90. African Commission, General Comment on Article 14(1)(d) and (e), paras. 30 and 40.
91. African Commission, General Comment on Article 14(1)(d) and (e), paras. 33 and 35.
92. African Commission, General Comment on Article 14(1)(d) and (e), para. 38.
93. African Commission, General Comment on Article 14(1)(d) and (e), paras. 39 and 44.
94. African Commission, General Comment on Article 14(1)(d) and (e), para. 34.
95. African Commission, General Comment No. 2.
96. African Commission, General Comment No. 2, para. 44.
97. African Commission, General Comment No. 2, para. 47.
urges States to take appropriate measures towards eliminating stigma and discrimination in relation to sexual and reproductive health. This broadly covers HIV-related stigma and discrimination, which often hinder women and girls from seeking information and services in health-care institutions. More importantly, the Commission encourages States to adopt legislative measures and administrative policies and procedures to ensure that “no woman is forced because of her HIV status, disability, ethnicity or any other situation, to use specific contraceptive methods or undergo sterilization or abortion.”

**Resolutions**

18. In Resolution 141, the African Commission stresses that “access to medicines forms an indispensable part of the right to the highest attainable standard of health.” This right to access medications was also elaborated upon in the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Principles and Guidelines), which directs State Parties to “adopt and implement policies that ensure that members of vulnerable and disadvantaged groups have access to medicines.”

19. In the Principles and Guidelines, the African Commission also sets a target of 15% of the annual budgets of State Parties to improve the health sector, mandating that “an appropriate and adequate portion of this amount must be put at the disposal of the national authorities responsible for the fight against malaria, HIV/AIDS, tuberculosis and other related diseases.” This 15% budgetary target was established in the Abuja Declaration. The African Commission has followed up on this budgetary requirement in several of their concluding observations. The Principles and Guidelines also define people living with or affected by HIV/AIDS as a vulnerable group.

20. In Resolution 260, the African Commission notes that forced sterilisation of HIV-positive women violates their rights to equality and non-discrimination, and that it also violates other fundamental rights guaranteed under the African Charter. It condemns all forms of stigma and discrimination in terms of access to, and provision of, health services in the context of HIV, and it emphasises that all forms of involuntary sterilisation violate women’s rights to health.

**Concluding observations**

21. In some of its concluding observations, the African Commission has drawn the attention of States to gaps in their efforts to address the HIV pandemic. In its response to the report of Gabon, for instance, the African Commission recommends that the Government strengthen ongoing HIV sensitisation programmes, with a particular focus on children and young people. In its concluding observations to the report on Cameroon, the African Commission urges the Government to engage with relevant stakeholders with a view to ensuring the adoption of laws and policies to protect the rights of people living with HIV.

22. In one of its concluding observations to the Government of Sudan, the African Commission notes that while it is commendable that the Government is making efforts to ensure access to medical services and social security for everyone, including vulnerable and marginalised groups, the report fails to provide detailed information on access to life-saving medication for people living with HIV in the country.

**Case law**

23. While the African Commission has not dealt directly with an HIV case, it has dealt with health-related issues in several communications.

24. In Purohit and Moore v. The Gambia, the African Commission held in relation to Article 16 of the African Charter that enjoyment of the human right to health as it is widely known is vital to all aspects of a person’s life and well-being, and is crucial to the realisation of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access
to goods and services to be guaranteed to all without discrimination of any kind.\textsuperscript{107}

Although not HIV-specific, this is nevertheless relevant to situations of HIV-related discrimination in health-care settings. Even more explicitly, in the Pretoria Declaration on Economic, Social and Cultural Rights in Africa, the African Commission states that “the right to health in Article 16 of the Charter entails among other things the following . . . education, prevention and treatment of HIV/AIDS . . . .”\textsuperscript{108}

25. The right to access medications is elaborated on in Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interafricaine des Droits de l’Homme, Les Témoins de Jehovah / DRC.\textsuperscript{109} The African Commission found that the Government of Zaire had violated Article 16 due to the lack of basic services, including a shortage of medication throughout the country.\textsuperscript{110}

26. The African Commission has also affirmed the link between the right to health and other rights guaranteed under the African Charter. For instance, in Social and Economic Rights Action Centre (SERAC) and Another v Nigeria, the African Commission held that “exploitation of oil in a part of Nigeria by oil companies with no regard to the health and environmental consequences for local communities” constituted a violation of various rights provisions of the African Charter, including the right to life.\textsuperscript{111} Not only do States have the obligation to ensure the health of an individual, but they also have the additional broad obligation of ensuring that communities overall are healthy. This broader interpretation of the right to health encompassing the right to life is significant in holding African governments accountable to ensure the provision of life-saving medications in the context of HIV.

**THE RIGHT TO BE FREE FROM DISCRIMINATION**

27. Non-discrimination is a bedrock human rights principle found in international and regional human rights treaties (including those covered in

\textsuperscript{107} - Communication 24/01, Punshl and Moore v The Gambia, Sixteenth Annual Activity Report, para 80.
\textsuperscript{110} - Communication 25/89-47/90-56/91-100/93, Committee for Human Rights, Union Interafricaine des Droits de l’Homme, Les Témoins de Jehovah/DRC, para 47.
\textsuperscript{111} - Communication 155/96, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria, para 2.
\textsuperscript{112} - UNAIDS, Reduction of HIV-Related Stigma and Discrimination (Geneva: UNAIDS, 2014). The People Living with HIV Stigma Index provides a tool that measures and detects changing trends in relation to stigma and discrimination experienced by people living with HIV. It aims to address stigma relating to HIV while also advocating on the key barriers and issues perpetuating stigma, which is a significant obstacle to
this document) and in national constitutions and other laws. The right to be free from discrimination must be protected regardless of resource and other constraints. This is critical to the realization of the right to health and other rights, including in the context of HIV. Under international and regional human rights law, not only must States refrain from discrimination on the basis of HIV or AIDS status, but they must also take effective measures to prevent this discrimination, including legislative, policy and educational measures to prohibit and counter stigma and discrimination related to HIV and AIDS. Addressing HIV-related stigma is important, as discrimination is often based on stigmatizing attitudes and prejudice about populations, behaviours, practices, sex, illness and death.\footnote{28.}

\textbf{UN human rights standards}

While no UN treaty explicitly lists HIV status as a protected class for the purpose of discrimination, the general provisions on non-discrimination found in UN treaties have consistently and explicitly stated that health status, including HIV status, is a prohibited ground of discrimination. For example, the Committee on ESCR’s General Comments Nos. 14, 20 and 22—on health, non-discrimination, and sexual and reproductive health, respectively—have noted over the past 15 years that discrimination is prohibited on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV and AIDS), sexual orientation and civil, political, social or other status.\footnote{29.} The Committee on the Rights of the Child, which monitors compliance with the Convention on the Rights of the Child, prohibits discrimination against children affected by HIV, including children who have been infected.\footnote{30.} The Committee on the Elimination of Discrimination against Women (CEDAW Committee) does the same with regards to women, calling on States to take measures to prohibit and prevent discrimination against women living with HIV.\footnote{31.} UN human rights bodies have recognised that discriminatory laws and practices can hamper the HIV response, such as when HIV status serves as the basis for differential treatment.\footnote{32.} They have urged States to prohibit discrimination based on seropositive status, and to take steps to ensure that people living with HIV have non-discriminatory access to reproductive health services. States also have an obligation to take effective measures to counter stigma and discrimination related to the HIV epidemic.

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29. States are obligated to ensure non-discrimination in access to health care and the underlying determinants of health. This is an immediate obligation for all States, regardless of resources, because “many measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information.” Under international law, States must prohibit discrimination in access to health care and the underlying determinants of health, as well as the means and entitlements to their procurement. The Committee on ESCR also emphasises the need for equality of access to health care and health-care services. The prohibition on discrimination applies to people living with HIV and to groups that are particularly vulnerable to HIV, including young people, sex workers, gay men and other men who have sex with men and people who inject drugs.

30. People living with HIV are entitled to equality and non-discrimination. The prohibition of discrimination is guaranteed under all main African human rights treaties. The African Commission has stated that Articles 2 and 3 of the African Charter, which relate to equality and non-discrimination, are considered fundamental and linked to the enjoyment of other rights. It notes that Article 2 lays down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises, while Article 3 is important because it guarantees fair and just treatment of individuals within a legal system of a given country. These provisions are non-derogable and therefore must be respected in all circumstances in order...
for anyone to enjoy all the other rights provided for under the African Charter.\textsuperscript{120}

The African Commission has explained the importance and breadth of Articles 2 and 3 on various occasions, and it has noted their application to a range of persons.

\textit{General comments}

\textbf{31.}\ The first General Comment of the African Commission recognises HIV status as a prohibited grounds of discrimination:

According to the African Commission there are multiple forms of discrimination based on various grounds such as: race, sex, sexuality, sexual orientation, age, pregnancy, marital status, HIV status, social and economic status, disability, harmful customary practices and/or religion.\textsuperscript{121}

\textbf{32.}\ The African Commission recognises that vulnerable and disadvantaged groups face significant impediments to their enjoyment of economic, social and cultural rights—including their right to health—and that these groups include persons living with HIV and other persons vulnerable to HIV, including women, children, detainees, and lesbian, gay, bisexual, transgendered persons. Like the UN System, the African System also recognises intersectional or multiple bases of discrimination and recommends that States take steps to combat such discrimination.\textsuperscript{122}

\textbf{33.}\ Most recently, the African Commission has issued a non-exhaustive list of grounds for discrimination in its General Comment No. 4 on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment. The list explicitly includes health status and other statuses of marginalised groups vulnerable to the HIV and AIDS, most notably because of sexual orientation and gender identity:

These include race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, disability (including psychosocial and intellectual disability), health status, economic or indigenous status, reason for which one is detained (including accusations of political offences or terrorist acts), asylum-seekers, refugees or others under international protection, or any other status or adverse distinction, and including those marginalised or made susceptible on bases such as those above.\textsuperscript{123}

\textbf{34.}\ General Comment 1 of the African Commission notes that the right to be informed of one’s health status is applicable to all women, including women living with HIV and those vulnerable to HIV (such as young and adolescent women, women who engage in sex work, women who use drugs, migrant women, indigenous women, detained women, and women with physical and mental disabilities).\textsuperscript{124}

The General Comment further recognises that an enabling legal and policy framework is intrinsically linked to women’s rights to equality, non-discrimination, and self-protection. States Parties have an obligation to create an enabling supportive, legal and social environment to allowing to control their sexual and reproductive choices and thus to strengthen control over HIV prevention and protection choices.\textsuperscript{125}

It also calls on State Parties to ensure that health workers are not allowed, on the basis of religion or conscience, to deny access to sexual and reproductive health services to women as highlighted in the document.\textsuperscript{126}

In particular, the first General Comment calls on State Parties to enact anti-discrimination legislation to address discrimination, stigma, prejudices and practices related to HIV and other STIs that perpetuate and heighten risk to HIV and related rights abuses among women. Where discriminatory laws and policies exist, States must take immediate action to remove the legal and policy barriers that hinder access to sexual and reproductive health services for women.\textsuperscript{127} For example, General Comment No. 2 notes that certain groups of women, such as women living

\textsuperscript{120} - Communication 241/01, Punshni and Moore v. The Gambia, para. 49.

\textsuperscript{121} - African Commission, General Comment No. 1, para. 4.

\textsuperscript{122} - African Commission, Principles and Guidelines.

\textsuperscript{123} - African Commission, General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, Art. 5, para. 20.

\textsuperscript{124} - African Commission, General Comment No. 1, para. 15.

\textsuperscript{125} - African Commission, General Comment No. 1, para. 33.

\textsuperscript{126} - African Commission, General Comment No. 1, para. 31.

\textsuperscript{127} - African Commission, General Comment No. 1, para. 35.

\textsuperscript{128} - African Commission, General Comment No. 1, para. 47.

\textsuperscript{129} - African Commission, General Comment No. 1, para. 44.

\textsuperscript{130} - Lee, “African Commission Condemns Coerced Sterilisation”.

with HIV, may be subjected to coercive practices (including forced sterilization or abortion) because of their status, and it further calls on States to ensure that necessary laws and policies are in place to ensure that no woman is forced into such a procedure.\textsuperscript{136} It also refers to State obligations to eliminate stereotypes that are harmful to women’s health, including conventional notions of masculinity and femininity and the role of women in society.\textsuperscript{137} 

\textit{Resolutions}

36. The African Commission has found practices or acts against persons living with HIV or those belonging to groups vulnerable to HIV to be discriminatory. In Resolution 260, the African Commission notes that forced sterilisation of HIV-positive women violates women’s rights to equality and non-discrimination, and that it violates other fundamental rights guaranteed under the African Charter.\textsuperscript{138} It condemns all forms of stigma and discrimination in terms of access to, and the provision of, health services in the context of HIV, and it emphasises that all forms of involuntary sterilisation violate a woman’s right to health. In relation to children, the African Commission issued Resolution ACHPR/Res.346 (LVIII) 2016 on the Right to Education in Africa (Resolution 346), which calls on States to “prohibit and prevent all forms of discrimination in education against children with HIV/AIDS based on their real or perceived status.”\textsuperscript{139} These resolutions tend to draw the attention of States to important human rights issues in the context of HIV that warrant an urgent response.

37. The African Commission has also addressed the connection between violence and discrimination in Resolution 275. This Resolution expresses the African Commission's concern at acts of violence, discrimination and other human rights violations against persons on the basis of their real or perceived sexual orientation or gender identity. The Resolution confirms that such acts violate several rights, including the right to be free from discrimination and the right to equal protection of the law. While Resolution 275 does not mention HIV explicitly, it is relevant to HIV rights under the African system because the lesbian, gay, bisexual, transsexual and intersex (LGBTI) population is particularly prone to discrimination in education and health care, both of which affect HIV outcomes.\textsuperscript{140}

38. In its Principles and Guidelines, the African Commission also recommends that States “review and reform public health legislation and criminal laws and correctional systems to ensure they adequately address the public health issues raised by epidemic, endemic, occupational and other diseases including in particular malaria and HIV/AIDS, and tuberculosis. . .”\textsuperscript{141} This includes the range of discriminatory criminal laws that directly and/or indirectly impact the HIV response.

\textit{Concluding observations}

39. The African Commission has also made recommendations through its State reporting processes on State obligations to ensure the protection of persons living with HIV and those vulnerable to HIV and, further, to guarantee non-discrimination. In its fifth periodic review of Uganda, the African Commission recommends under its “Non-discrimination and Equality” section that Uganda “strengthen its legal framework for the protection of people living with HIV to discourage HIV-related human rights violations.”\textsuperscript{142} It calls on Nigeria to repeal a law criminalising homosexuality, noting that it “has the potential to engender violence against persons on grounds of their actual or imputed sexual orientation, and also to drive this group of persons vulnerable to HIV/AIDS underground, thereby creating an environment which makes it impossible to effectively address the HIV pandemic in the State.”\textsuperscript{143} It also recommends that Botswana reform a law that requires minors to be accompanied by their parents when getting tested for HIV.\textsuperscript{144} With regard to one of its concluding observations on the report of Cameroon, the African Commission urges the Government to engage with relevant stakeholders with a view to ensuring the adoption of laws and policies that protect the rights of people living with HIV.\textsuperscript{145}

\begin{itemize}
  \item \textsuperscript{132} - African Commission, Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity (2014).
  \item \textsuperscript{133} - African Commission, Principles and Guidelines.
  \item \textsuperscript{137} - African Commission, Concluding Observations on the 3rd Periodic Report of the Republic of Cameroon, para. XIV.
\end{itemize}
Case law

40. In Legal Resources Foundation v. Zambia, the African Commission noted that the right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. The right to equality is important for a second reason. Equality or the lack of it affects the capacity of one to enjoy many other rights.138

41. In Good v. Republic of Botswana, the African Commission described the importance and breadth of the principle of non-discrimination, which it said “guarantees that those in the same circumstances are dealt with equally in law and in practice.”139 This was in keeping with its decision on Communication 245/02 Zimbabwe Human Rights NGO Forum v. Zimbabwe, in which the African Commission observed that principles of equality and non-discrimination apply to all persons:

Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights. . . . The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, age or sexual orientation.140

42. These interpretations are crucial in addressing the HIV-related stigma and discrimination that is pervasive in many African countries. In particular, they can serve as a bulwark of protection in the context of HIV for vulnerable and disadvantaged groups such as women, children, prisoners, persons with disabilities, and sexual and gender minorities.

THE RIGHTS TO LIBERTY AND PRIVACY

43. The rights to liberty and privacy include the protection of confidentiality, informed consent, autonomy and more. These rights are protected in regional and international human rights treaties, and they encompass decisional, physical and informational protections of privacy. In the context of health care, decisional privacy affirms the human right to make health care choices without the intervention of others, including family members or the State, and it supports autonomy. Physical privacy affirms the right of individuals to allow or deny providers the right to examine or treat them, ensuring that treatment requires informed consent. Informational privacy underpins the issues of confidentiality, which is the duty of health workers and others who handle private medical or health information about patients in a way that keeps it secret or private from others (except the patient). Protection of these rights is particularly important for patients seeking diagnosis and treatment of illnesses such as HIV because of associated sensitivities and stigma.

UN human rights standards

44. The right to privacy includes the right of individuals to make informed decisions about their bodies and to be free from coercion, discrimination and violence.141 Interference with the exercise of sexual and reproductive autonomy also may reflect multiple forms of discrimination, violate numerous human rights, constitute forms of violence and even rise to the level of inhuman and degrading treatment, as is the case in the context of the forced sterilization of HIV-positive women.

Confidentiality

45. In the context of health care (including HIV-related care), this right places an obligation on those who have access to personal information to ensure that such information is not shared with third parties, including the partners, family or friends of patients, without the full and informed consent of the patient.142

139 - Communication 33/05, Kenneth Good v. Republic of Botswana, Twenty-eighth Activity Report, para. 298.
142 - CEDAW, General Recommendation No. 15; Committee on ESC, General Comment No. 22; CEDAW, General Recommendation No. 24; and Committee on the Rights of the Child, General Comment No. 13 (2005) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health, Art. 24 (7 April 2003).
143 - For example, UNAIDS and the UNDP issued a more detailed policy brief in 2008 that specifically outlined a number of recommendations regarding the use of both HIV-specific criminal laws and general laws by States to punish HIV exposure, nondisclosure and transmission. These included calling on States to “repeal HIV-specific criminal laws, laws directly mandating disclosure of HIV status, and other laws which are counterproductive to HIV prevention, treatment, care and support efforts, or which violate the human rights of people living with HIV and other vulnerable groups,” and to apply general criminal law “only to the intentional transmission of HIV, and audit the application of general criminal law to ensure it is not used inappropriately in the context of HIV.” UNAIDS, Policy Brief: Criminalization of HIV Transmission (Geneva: UNAIDS, 2008).
Informed consent

Informed consent to medical procedures is derived from the rights to privacy, liberty, security, dignity, health and protection against cruel, inhuman and degrading treatment that are provided under global and regional human rights law. In the context of HIV, informed consent to HIV testing and treatment involves two complementary elements: 1) access to information and knowledge, and 2) full agreement. A person’s informed consent to a medical procedure (such as HIV testing) therefore requires that the person be provided with full information and knowledge, that they understand the information, and that they fully and freely agree to undergo the HIV test. In order to fulfil this principle, States have an obligation to provide individuals with access to information and services that enable them to exercise their autonomy. This includes providing counselling on the risks, benefits and alternatives to treatment that is understandable to the patient.

The UN Special Rapporteur on Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health stresses that informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being.

States have an obligation to take measures to ensure that third parties (including health-care providers) do not interfere with the right to autonomy. States should also abolish laws, policies and practices that interfere with an individual’s right to autonomous decision-making.

UN human rights bodies have recognised that some groups are particularly vulnerable to violations of the right to informed consent. This includes persons living with and vulnerable to HIV (such as children, women, persons with disabilities, sex workers, transgender people, prisoners and persons who use drugs). States have an obligation to take particular measures to protect these vulnerable groups against violations of informed consent.

The Committee on the Rights of the Child, for example, has recognised that adolescents face formidable barriers in exercising their autonomy in the context of health care, and that this has a significant impact on their health and human rights. The Committee has recommended that States review and consider allowing children to consent to certain medical treatments and interventions.
without the permission of a parent, caregiver or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.\textsuperscript{152}

\textbf{African human rights standards}

\textsuperscript{52.} The African human rights system has addressed issues concerning confidentiality and informed consent explicitly in the context of HIV in two general comments.

\textsuperscript{53.} According to the African Commission’s General Comment No. 2 on the Maputo Protocol, States have an obligation to take measures to prevent third parties from interfering with the enjoyment of women’s sexual and reproductive rights. Particular attention must be given to prevention, as regards the interference of third parties concerning the rights of vulnerable groups such as adolescent girls, women with disabilities, women living with HIV and women in situations of conflict. The obligation entails the formulation of standards and guidelines containing the precision that the consent and involvement of third parties, including but not limited to, parents, guardians, spouses and partners, is not required when adult women and adolescent girls want to access family planning/contraception and safe abortion services in cases provided for in the Protocol.\textsuperscript{153}

\textsuperscript{54.} The General Comment No. 1 states that the right to be informed on one’s health status must not only encompass knowing one’s HIV status, but that it should also include pre-test counselling (which enables women to make a decision based on informed consent before taking the test) and post-test counselling services (on preventative measures or available treatment, depending on the outcome of the HIV test).\textsuperscript{154} In relation to the disclosure of a person’s HIV status to partners, the General Comment clarifies that information on a partner’s health status must be obtained with informed consent in line with international standards, without coercion, and should be primarily aimed at preventing harm to one’s health. Caution should be exercised in relation to the conditions and environments under which the right to be informed on the health status of one’s partner may be exercised, in particular, where the revealing of a partner’s health status may result in negative consequences such as harassment, abandonment and violence.\textsuperscript{155}

It also notes that while disclosure should be encouraged, there should be no requirement to reveal one’s HIV status or other information related to one’s health status. In the context of HIV, health-care workers should be authorised, without being obliged to, decide, depending on the nature of the case and according to ethical considerations, whether to inform a patient’s sexual partners of his or her HIV-positive status.\textsuperscript{156}

The first General Comment also requires States to create an enabling legal and policy framework, including on counselling and confidentiality. States Parties have an obligation to create an enabling supportive, legal and social environment that allows women to control their sexual and reproductive choices and thus strengthen control over HIV prevention and protection choices. Such an environment includes public health legislation that ensures pre- and post-test counselling is provided in all cases.\textsuperscript{157} States Parties also are obligated to ensure that strict rules for data protection and confidentiality apply, and that data are protected from unauthorised collection, use or disclosure. This includes creating “safe and enabling conditions through legal, policy, regulatory and programmatic measures that create positive conditions for informed disclosure and lawful notification of one’s health status and the health status of one’s partner.”\textsuperscript{158} In addition, General Comment No. 1 notes that States Parties should provide training for health-care workers on non-discrimination, confidentiality and respect for dignity, autonomy and informed consent.

\textsuperscript{152 - UN Committee on the Rights of the Child, General Comment No. 15.}
\textsuperscript{153 - African Commission, General Comment No. 2, para. 42.}
\textsuperscript{154 - African Commission, General Comment No. 1, para. 14.}
\textsuperscript{155 - African Commission, General Comment No. 1, paras. 16 and 17.}
\textsuperscript{156 - African Commission, General Comment No. 1, para. 19.}
\textsuperscript{157 - African Commission, General Comment No. 1, para. 38.}
\textsuperscript{158 - African Commission, General Comment No. 1, para. 45.}
\textsuperscript{159 - African Commission, General Comment No. 1, para. 49.}
consent in the context of sexual and reproductive health services for women.\textsuperscript{159}

56. Both General Comments No. 1 and No. 2 recommend that HIV testing should not be used as a condition for access to other health services, including treatment, contraception, abortion, medical examination, pre- and post-natal services or any other reproductive health care. Furthermore, positive test results should not be a basis or pretext for the use of coercive practices or the withholding of services.\textsuperscript{160}

THE RIGHT TO LIFE

57. The right to life is guaranteed in virtually all major international and regional human rights instruments. Article 3 of the Universal Declaration of Human Rights guarantees the right to life for all persons. Similarly, Article 6 of the International Covenant on Civil and Political Rights provides that “every human being has the inherent right to life,” that the right must be protected by law and that no one shall be arbitrarily deprived of their life. The right to life is interconnected with other rights and is one of the most important human rights guaranteed to all individuals. It is argued that the right to life has almost attained the status of jus cogens under international law.\textsuperscript{161}

In the context of HIV, the right to life implies that people living with HIV must not be denied access to information and services that are crucial to their health and well-being. For instance, denial of access to life-saving medications such as antiretroviral drugs will amount to the violation of the right to life. Equally, States are expected to ensure that hospitals and clinics are well-stocked with essential medicines needed to treat opportunistic infections for people living with HIV. More importantly, health-care providers must refrain from mistreating people living with HIV or engaging in any act that is prejudicial to their life and well-being.
In its General Comment No. 6 on the Right to Life, the UN Human Rights Committee explains that the right to life should be broadly understood as intersecting with health issues such as maternal mortality and the treatment and prevention of diseases. The General Comment also mentions the need for States Parties to take all possible measures to eliminate epidemics. In the Human Rights Committee’s view, the right to life is not only the most fundamental of all human rights, but it is also non-derogable. In its concluding observations, the Human Rights Committee expresses concern about the availability of effective treatment for individuals at risk of or living with HIV and AIDS, and it urges States Parties to allow and facilitate access to adequate medical care, counselling and treatment (including antiretroviral therapy) as an obligation under the right to life.

The Committee on ESCR explains in its General Comments Nos. 14 and 22 that the violation of the right to health, including the right to sexual and reproductive health, is “indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the rights to life; liberty and security of person…”

The Committee identifies essential medication—including medicines and treatment for the prevention of STIs and HIV—as one of the minimum core contents of the right to health, and it indicates that States have an obligation to ensure their availability.

In its General Comment No. 35, the CEDAW Committee notes that the right of women to lead lives free from gender-based violence is indivisible from and interdependent with other human rights, including the right to life. It goes to indicate that health-care services should be responsive to trauma and include timely and comprehensive mental, sexual and reproductive health services, including PEP.

In its General Comment No. 3 on HIV/AIDS and the Rights of the Child, the Committee on the Rights of the Child observes that the HIV epidemic not only affects the health and well-being of children, but that it also has implications for other rights, including their rights to life, survival and development. The Committee explicitly notes that the State obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. In this regard, the female child is often subject to harmful traditional practices, such as early and/or forced marriage, which violate her rights and make her more vulnerable to HIV infection, including because such practices often interrupt access to education and information. Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills and to preventive measures.

All of the above standards impose positive obligations on States to avoid unnecessary loss of lives, including by taking adequate measures to ensure that appropriate health-care services (including access to antiretroviral drugs) are provided. They coincide with the decisions of international tribunals such as the European Commission on Human Rights. In Tavares v. France, for example, the Commission held that the right to life guaranteed under the European Convention on Human Rights extends beyond a State’s duty to abstain from intentional killing to also include taking necessary steps to protect the unintentional loss of life.

At the regional level, the right to life of all individuals is explicitly guaranteed under Article 4 of the African Charter, which provides that every human being shall be entitled to the respect for his
or her life and the integrity of his or her person. Article 5 of the African Children’s Charter also declares that “every child has an inherent right to life. This right shall be protected by law.” In language similar to that of the African Charter, Article 4 of the Maputo Protocol guarantees the right to life and security of all women. Given the high mortality rate associated with HIV in Africa, the right to life is one of the strongest rights to protect the right of persons living with, affected by or vulnerable to HIV in Africa.

General Comments

A number of the African Commission’s general comments address the right to life. For instance, the African Commission’s General Comment No. 3 is directly related to the right to life as provided under Article 4 of the Charter, Article 4 of the Maputo Protocol and Articles 5 and 30 of the African Children’s Charter, all of which enshrine the right to life. Similarly, its General Comment on Articles 14 (1) (d) and (e) of the Maputo Protocol includes a recognition of the intrinsic link with the right to life.

General Comment No. 3 illustrates the connection between the right to life and other human rights, including the right to health, and it notes that the right to life should be interpreted broadly. It requires States to engage in preventive steps to respond to infectious diseases and other emergencies, and it indicates that the State has a positive duty to protect individuals and groups from real and immediate risks to their lives caused by the actions or inactions of third parties.168

Finally, General Comment No. 3 makes explicit the connection between State obligations to protect the right to life and those to ensure access to antiretroviral medicines. It notes that when the State deprives an individual of liberty, its control of the situation yields a heightened level of responsibility to protect the rights of that individual. This includes a “positive obligation to protect all detained persons from violence or from emergencies that threaten their lives, as well as to provide the necessary conditions of a dignified life, including the provision of adequate health care (including maternal health care and the provision of antiretroviral drugs).”171

Resolutions

In Resolution 53 on the HIV/AIDS Pandemic, the African Commission notes the high mortality associated with HIV in the region and the fact that the epidemic has become a threat to humanity. While affirming that the HIV pandemic has become a human rights challenge, Resolution 53 calls on African governments to take decisive measures towards addressing it. In particular, it calls on States to ensure the protection of human rights of those infected and affected and to provide “support to families for the care of those dying of AIDS, devise public health-care programmes of education and carry out public awareness especially in view of free and voluntary HIV testing, as well as appropriate medical interventions.” 172

In Resolution 275, the African Commission notes the connection between violence, including sexual violence and violence based on sexual orientation and gender identity, and the right to life guaranteed in Article 4 of the Charter. In doing so, the African Commission calls on States to end such violence through laws prohibiting and punishing all forms of violence on the basis of imputed or real sexual orientation or gender identities, to pursue the proper investigation and prosecution of perpetrators, and to ensure judicial procedures that are responsive to the needs of victims.

The African Commission’s Principles and Guidelines raises concerns about the negative

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168 - African Commission, General Comment No. 3 on Article 4 of the African Charter on Human and Peoples’ Rights: The Right to Life, paras. 3 and 41.
169 - African Commission, General Comment No. 3 on Article 4, paras. 3 and 43.
170 - African Commission, General Comment No. 3 on Article 4, para. 3.
171 - African Commission, General Comment No. 3 on Article 4, para. 36.
172 - Adopted during the 29th Ordinary Session in Tripoli, the Great Socialist People’s Libyan Arab Jamahiriya, from 23rd April to 7th May 2001.
impact of HIV and AIDS on the right to health and on other rights, including the right to life. It calls on States to ensure the availability of drugs and technologies at affordable prices for the treatment, care and prevention of HIV. It also calls for reform of public health and criminal laws to address public health issues raised by HIV, and to ensure and respect the rights of individuals infected and affected by HIV.\textsuperscript{175}

Concluding observations

In a number of concluding observations to States, the African Commission has made the link between the right to health and the obligation to preserve the right to life. For instance, in its concluding observations to the report of Namibia, the Commission urges the Government to take concrete efforts with a view to reducing maternal and child mortality rates in the country.\textsuperscript{174} The Commission expresses a similar concern on the report of Ethiopia when it raises the high maternal mortality rate in the country.\textsuperscript{175} It also recommended that the Government of Ethiopia adopt appropriate measures to address this situation.

Case law

The African Commission affirmed the interrelated nature of all human rights in Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria, when it found that the Nigerian government was in violation of the rights to health, life, clean environment and other rights due to pollution caused by the activities of oil companies in Ogoniland.\textsuperscript{176} Also, in International Pen and others (on behalf of Ken Saro-Wiwa), the Commission reaffirmed the positive obligation imposed on States by the right to life under Article 4 of the African Charter:

The protection of the right to life in Article 4 also includes a duty for the State not to purposefully let a person die while in its custody. Here at least one of the victims’ lives was seriously endangered by the denial of medication during detention. Thus, there are multiple violations of Article 4.\textsuperscript{177}

\textbf{THE RIGHT TO BE FREE FROM TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT}

74. The right to be free from torture and cruel, inhuman or degrading treatment is protected in many international and regional human rights treaties. It is closely connected to the right to informed decision-making and bodily autonomy, not only in the context of forced HIV testing, but also in the provision of family planning services to HIV-positive women.\textsuperscript{179}

\textbf{UN human rights standards}

75. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . [including] for any reason based on discrimination of any kind.”\textsuperscript{177} Article 5 of the African Charter stipulates that every individual “shall have the right to the respect of the dignity inherent in a human being.” It also states that all forms of exploitation—particularly cruel, inhuman or degrading punishment and treatment—shall be prohibited.\textsuperscript{178}

76. Similar to the African Charter, Article 4 of the Maputo Protocol addresses the rights to life, integrity, liberty and security of every woman.\textsuperscript{181} Article 4 sets out that “every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.”\textsuperscript{182}

77. The Committee against Torture, which monitors State compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, notes the enhanced risk of torture and ill-treatment in the context of reproductive health care in its General Comment No. 2:

Gender is a key factor. Being female intersects with other identifying characteristics or status of the person, such as race, nationality . . .
immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, [and] medical treatment, particularly involving reproductive decisions . . . [emphasis added].113

78. The UN Special Rapporteur on Torture similarly states that “women seeking maternal health care face a high risk of ill-treatment, particularly before and after childbirth . . . Such mistreatment is often motivated by stereotypes regarding women’s childbearing roles and inflicts physical and psychological suffering that can amount to ill-treatment.”114

79. International and regional human rights bodies have repeatedly affirmed that sterilisation without informed consent violates the right to be free from torture and cruel, inhuman or degrading treatment. These bodies include the African Commission,115 the UN Committee against Torture,116 and the UN Human Rights Committee.117 For example, the UN Committee against Torture raised concern over the involuntary sterilisation of HIV-positive women in Kenya in its latest review of Kenya’s compliance with the Convention against Torture.118

African human rights standards

80. In its recent General Comment No. 4, the African Commission refers to acts of sexual and gender-based violence that may amount to torture and other ill-treatment, including acts perpetrated against people living with HIV that also fuel the HIV epidemic.119 The General Comment provides that acts of sexual and gender-based violence, or the failure by States to prevent and respond to such acts, may amount to torture and other ill-treatment in violation of Article 5 of the African Charter. This General Comment specifically refers to those acts of sexual and gender-based violence that amount to a form of torture and other ill-treatment in view of the specific, traumatic and gendered impact of sexual violence on victims, including the individual, the family and the collective.120

81. Such acts include physical and psychological acts committed against victims without their consent or under coercive circumstances, such as rape (including so-called corrective rape), domestic violence, verbal attacks and humiliation, forced marriage, isolation, dowry-related violence, trafficking for sexual exploitation, enforced prostitution, indecent assault, denial of reproductive rights (including forced or coerced pregnancy), abortion and sterilisation, forced nudity, mutilation of sexual organs, virginity tests, sexual slavery, sexual exploitation, sexual intimidation, abuse, assault or harassment, forced anal testing, or any form of sexual or gender-based violence of comparable gravity.121

FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

82. The rights to freedom of expression, association and assembly are closely linked rights protecting the ability of individuals and groups to organise, associate, and meet and express ideas around areas of interest and concern. These rights are protected under both international and regional treaties. Under international law, individuals and groups must be allowed to express views and opinions and disseminate information, even when such views are dissenting or held by a minority. They must be allowed to associate and assemble freely without interference or legal barriers, and they have the right to be protected from interference, intimidation or abuse by third parties when exercising such rights. These rights include the rights of marginalised groups to form civil society organisations, raise funds, provide services and participate in public and political discussions. They also include the rights of people living with HIV and others to assemble publicly for events and rallies, and for individuals (including adolescents) to receive and disseminate information relating to HIV or sexual and reproductive health.

UN human rights standards

83. Under international human rights law, everyone has the right to freedom of expression, association

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184 - HIV and others to assemble publicly for events and rallies, and for individuals (including adolescents) to receive and disseminate information relating to HIV or sexual and reproductive health.
187 - Committee Against Torture, Concluding Observations of the African Commission, General Comment No. 4, para. 57.
188 - African Commission, General Comment No. 4, para. 57.
189 - African Commission, General Comment No. 4, para. 58.
and assembly. No restrictions can be placed on these rights except as provided by law, and such restrictions may only be imposed in a democratic society where necessary for the protection of the rights and freedoms of others or the interests of national security, public order or public health and morals. Restrictions should not impinge upon the general democratic principles of pluralism, tolerance and broadmindedness. These rights are to be enjoyed and protected without discrimination, including on grounds of sexual orientation and gender identity.

**Freedom of expression and opinion**

84. Freedom of opinion and expression is central to a functioning, free and democratic society, and it is necessary for the promotion and protection of all other human rights. Individuals have the right to hold all forms of opinion, including political, scientific, historic, moral and religious opinions. Any harassment, arrest, detention, intimidation or stigmatization of people on the basis of their opinion is a breach of this right. The right to express oneself includes the right to receive and impart information and ideas of all kinds. Similarly, information about sexual health rights and HIV must be readily available to individuals, including adolescents. This availability is necessary for both prevention and treatment of the HIV epidemic.

85. State Parties have an obligation not only to refrain from preventing freedom of expression, but also to ensure that individuals are protected from attacks aimed at silencing people who are exercising free speech. This is particularly the case where the topics of conversation are considered controversial in a particular context, or where groups experience stigma or discrimination. Individuals, including key populations, judges and lawyers and other community representatives and human rights defenders who speak out on human rights issues—such as the rights of sexual orientation and gender identity, sex workers and drug use—should be able to operate without fear of reprisal, either from the State or private individuals.

86. Any limitations must be necessary, proportionate and for a legitimate purpose; they should also apply to all persons equally. This means that in the area of HIV, limitations may not target key populations or limit speech around sexual orientation, gender identity, sex workers or people living with HIV.

**Freedom of association**

87. In the context of HIV, freedom of association is necessary to ensure that civil society organisations that work on HIV or with key populations can form and operate effectively. Civil society organisations perform an important role in implementing and supporting activities such as assisting people with HIV, promoting legal reform, combating discrimination and stigma, and preventing HIV transmission. Any restrictions on the freedom to associate must be necessary, proportionate and for a legitimate reason. Organisations working in the area of HIV through service delivery, education, legal reform, advocacy—or those working with key populations—must be allowed to register, fundraise and operate freely without interference or fear. Restrictions on the ability to form an association can have a significant effect on civil society organizations and, by extension, the HIV epidemic.

88. While States may make regulations for the registration and operation of associations, under international law, such regulations must be for the benefit of those associations rather than acting as a barrier to their operation. Registration procedures must be short, accessible and have strict time limits regarding responses; any delays may amount to interference with the exercise of the right to association. As with individuals, associations should be able to express their views and advocate for changes to laws and the Constitution, even when such views represent the minority and may lead to tension. Unregistered associations also are protected by this right.
The freedom to associate means that such organisations must be able to work, to operate and to raise funds from domestic, foreign and international sources. Limitations on foreign funding have been held to violate the right to freedom of association. For organisations working on HIV—where a significant amount of funding is from foreign sources—this is critical. Laws that limit the amount of foreign funding can limit an association’s ability to operate, and they have led to the closure of many civil society organizations. Where countries require organisations to register, the process should be simple, accessible and voluntary, without fear of criminal sanctions.

The right to freedom of association applies to all persons without discrimination, including people who normally experience discrimination or stigma because of sexual orientation or gender identity. Due to the stigma and discrimination surrounding both people living with HIV and key populations, associations connected with either HIV or certain key populations can experience a backlash. The Special Rapporteur on Freedom of Assembly and Association has specifically mentioned the rights of LGBTI organisations to be registered.

Connected closely to association and speech, everyone has the right to assemble in public and participate in peaceful assemblies. As with freedom of association, any restrictions should be minimal and should facilitate the holding of peaceful assemblies. Persons assembling should not require permission or an application; at most, governments may require prior notification in order to facilitate the assembly and protect public safety. Failure to notify the government in advance should not incur criminal or even civil penalties, nor should it result in the shutdown of otherwise peaceful assemblies.

Organisations have a right to take part in the conduct of public affairs, including participating in the State’s decision-making processes by advocating for reform and commenting on government policies, actions and legislation. People living with HIV, key populations and those working with people living with HIV all have the right to assemble in order to demonstrate, protest or hold a rally, procession or public event. Holding or espousing minority beliefs or views critical of the government cannot be a reason for disallowing or disrupting an assembly. Such assemblies are important for raising awareness of HIV, advocating for the protection of rights or influencing public policy. States also must ensure that participants in assemblies are protected from assault, violence and other violations by provocateurs or counter-demonstrators. This is particularly important given the stigma and discrimination faced by people living with HIV, especially those from marginalised key populations.

**African human rights standards**

Articles 9, 10 and 11 of the African Charter provide for the rights to freedom of expression, association and assembly. Any limitations imposed on these rights must be for a legitimate purpose and grounded in the rights of others and in collective security, morality and common interest; they also must be necessary and proportionate. Both the African Commission and the African Court have upheld the rights of associations and individuals to speak out, associate and assemble, and they have condemned actions and restrictions that serve to violate these rights.

**Freedom of expression and information**

The African Commission recognises the freedom of expression and the right to information as cornerstones of democracy and as means of ensuring respect for all human rights and freedoms. The African Commission has specifically declared that freedom of expression imposes an obligation on the State to promote diverse views through pluralistic access to the media, including by vulnerable and marginalised groups, and the availability and promotion of a
range of information and ideas to the public. In an environment where individuals are targeted and stigmatised because of their sexual identity, gender orientation or HIV status, protection of the right to express oneself freely and speak about controversial or minority issues is key.

Both the African Court and African Commission have heard cases on freedom of expression. They have held that States have an obligation to refrain from detaining journalists who are critical of the government. They also have held that States have not only a positive obligation to protect individuals from attacks and reprisals by third parties when exercising freedom of expression, but that they are obligated to investigate any such reprisals or acts.

Freedom of association

The African Charter and the African Children’s Charter recognise the right of adults and children to associate freely. In 1992, the African Commission passed a resolution on the Right to Freedom of Association, stating that authorities should not override constitutional provisions or undermine fundamental rights. When regulating freedom of association, States should not limit the exercise of that freedom, and any regulation should be consistent with the African Charter. The Kigali Declaration of 2003 also specifically recognises the important role of civil society organisations. In addition, Africa has a Charter on Democracy, Elections and Governance (2007) that imposes obligations on States to create conducive conditions for civil society organisations to exist and operate within the law. Under the Charter, State Parties commit to “fostering popular participation and partnership with civil society organisations” and “promoting partnerships and dialogue between governments, civil society and the private sector.” Unfortunately, as of April 2017, only 10 States had signed and ratified the Charter, and none have done so since 2011.

The African Commission has upheld the rights of associations to operate without undue interference from the State. According to the Commission, there “must always be a general capacity for citizens to join, without State interference, in associations in order to attain various ends. . . . In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom.” States cannot interfere or act against members of an organization simply because they do not like the comments or views of the organization, or because the organisation is critical of the government. Membership of an association should not solely be considered as grounds for criminal charges.

Freedom of assembly

The African Charter and African Commission have likewise protected the right to freedom of assembly. Under African human rights mechanisms, States should not place unnecessary limitations or barriers on the right to assemble in public. Groups should not require authorisation to assemble peacefully, and notification procedures should be easy to use. Organisers should not be sanctioned because they failed to notify the authorities, nor should they be made liable for the unlawful conduct of others. There should be no blanket prohibitions on assembly, and any restrictions should be for a legitimate purpose with full reasons provided.

THE RIGHT TO FREEDOM OF MOVEMENT

The right to freedom of movement is protected by international and regional human rights law,
including the African Charter.\textsuperscript{229} This right to freedom of movement includes the right of persons living lawfully within a country to move freely within it and to choose their place of residence without coercion. It also includes the rights of nationals to exit and enter their country freely, including without any form of coercion or discrimination. Importantly, it also encompasses the right of non-nationals who are lawfully in the country to remain so unless expelled through legal processes that respect principles of access to justice.

101. According to human rights and public health standards, there is no rationale for restricting freedom of movement on the basis of HIV status. Restrictions based solely on real or perceived HIV status, including HIV screening of travellers, are discriminatory and not justifiable as a public health concern. Some States may prohibit people living with HIV from long-term residency due to concerns about health care and other financial costs, but highlighting HIV status to determine residency is discriminatory. Economic considerations also should not play a role in the consideration of entry applications. Humanitarian factors should be the primary consideration, including family reunification and the need for protection.\textsuperscript{230}

**THE RIGHT TO MARRY AND TO FOUND A FAMILY**

102. Numerous international and regional human rights treaties guarantee the right to marry and to found a family, as well as the protection of the family.\textsuperscript{231} The International Covenant on Civil and Political Rights states that “the right of men and women of marriageable age to marry and to found a family shall be recognized” and that “States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. . . . In the case of dissolution, provision shall be made for the necessary protection of any children.”\textsuperscript{232}

103. Various laws and/or practices in relation to people living with HIV infringe on this right. For example, mandatory premarital testing as a precondition for the issuance of marriage licenses affects this right. Forced abortion and sterilization of HIV-positive women infringes on the right to found a family (in addition to many other rights). Informed decision-making—including in decisions related to reproduction and family formation—is a central aspect of the right to liberty and security and the right to privacy. Measures to ensure the equal rights of women within the family, which are explicitly protected by the African Charter, also are relevant in the HIV context because they are necessary for women to negotiate safe sex or to have the choice to leave a relationship.\textsuperscript{233}

**THE RIGHT TO ENJOY THE BENEFITS OF SCIENTIFIC PROGRESS AND ITS APPLICATIONS**

104. The right to enjoy the benefits of scientific progress is found in the International Covenant on Economic, Social and Cultural Rights.\textsuperscript{234} The right to enjoy the benefits of scientific progress in relation to medicine and health is closely related to the right to health and the right to quality health-care treatment. In the context of HIV, this right and its applications are important because of advances regarding testing and treatment.

105. The Committee on ESCR General Comment No. 22 on the Right to Sexual and Reproductive Health notes the following:

Facilities, goods, information and services related to sexual and reproductive health must be of good quality, meaning that they are evidence-based and scientifically and medically appropriate and up-to-date. This requires trained and skilled healthcare personnel and scientifically approved and unexpired drugs and equipment. The failure or refusal to incorporate technological advancements and innovations in the provision of sexual and reproductive health services, such as medication for abortion, assisted reproductive technologies and


\textsuperscript{225} - Communications 48/90, 50/91, 52/91 and 89/93, Amnesty International and Others v. Sudan, Thirteenth Annual Activity Report, paras. 81-82.

\textsuperscript{226} - Communications 48/90, 50/91, 52/91 and 89/93, Amnesty International and Others v. Sudan, Thirteenth Annual Activity Report, paras. 81-82.

\textsuperscript{227} - Communications 54/91, 98/93, 164-166/97 and 210/98, Malawi African Association and Others v. Mauritania, paras. 106-7; and Communications 137/94, 139/94, 154/96 and 161/97, International Pen and Others v. Nigeria, paras. 105-06.

\textsuperscript{228} - Communications 48/90, 50/91, 52/91 and 89/93, Amnesty International and Others v. Sudan, paras. 81-82; and Malawi Law Society and Others v. President and Others, AHRLR 110 (MwHC 2002), para. 30.

\textsuperscript{229} - African Charter, Art. 12.


\textsuperscript{231} - This is the case for instance of Art. 18 of the African Charter.

\textsuperscript{232} - United Nations, ICESCR, Art. 23.

\textsuperscript{233} - African Charter, Art. 18.

\textsuperscript{234} - United Nations, ICESCR, Art. 18.
advancements in the treatment of HIV and AIDS, jeopardizes the quality of care.\footnote{235}

\presidentialnote106. As with other rights, the right to benefit from scientific progress and its applications cannot be applied in a discriminatory fashion. The denial of affordable antiretroviral therapy to the public at large and specific marginalised populations (such as prisoners) violates numerous rights.\footnote{236}

\section*{THE RIGHT TO FOOD}

\presidentialnote107. The right to food is recognised in Article 11 of the Universal Declaration of Human Rights. In its General Comment No. 14, the Committee on ESCR connected the right to health with adequate nutrition and food, identifying nutrition and food as core elements of the enjoyment of the right to health because access to adequate food and good nutrition is essential for healthy living. Furthermore, access to nutritious food is crucial in the context of HIV because malnutrition or hunger may worsen the health of people living with HIV.

\presidentialnote108. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises that every person has the right to an adequate standard of living for themselves or their families, including adequate food and the right to the continuous improvement of living conditions.\footnote{237} In addition, it recognises “the fundamental right of everyone to be free from hunger.”\footnote{238} It imposes obligations on States Parties to take necessary measures, including specific programmes, that are aimed at ensuring improved methods of production, conservation and distribution of food and those that ensure an equitable distribution of world food supplies in relation to need.\footnote{239}

\presidentialnote109. While the right to food is not explicitly recognised in the African Charter, the African Commission has noted that the right to food is “linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation.”\footnote{240} The African Commission has indicated that States Parties to the African

\footnotes\begin{enumerate}
\item \footnote{235}{CESCR, General Comment No. 22, para. 21.}
\item \footnote{236}{UNAIDS et al., International Guidelines, 10.}
\item \footnote{237}{CESCR, Art. 11 (1).}
\item \footnote{238}{CESCR, Art. 11 (2).}
\item \footnote{239}{CESCR, Art. 11 (2) (b).}
\item \footnote{240}{SERAC and Another v. Nigeria (2001) AHRLR 60 (ACHPR 2001), para. 65.}
\item \footnote{241}{SERAC and Another v. Nigeria (2001), para. 66.}
\item \footnote{242}{International Conference on Population and Development, para. 5.}
\item \footnote{243}{African Commission, Principles and Guidelines, para. 16.}
\item \footnote{244}{African Commission, Resolution 734 on the Right to Food and Food Insecurity in Africa, ACHPR/Res.734 (LX) 2017, adopted in May 2017 in Niamey, Niger.}
\item \footnote{245}{African Commission, Resolution 734 on the Right to Food and Food Insecurity in Africa.}
\end{enumerate}
Charter can be in violation of the right to food when the Charter is read with other pertinent international human rights instruments. The Commission’s Principles and Guidelines notably provide that African countries should “promote food security and good nutritional practices as part of the response to HIV/AIDS, tuberculosis and other infectious diseases.” The Principles and Guidelines thus enjoin African countries to ensure that health policies and programmes address “issues related to food and nutrition.”

During its 60th Ordinary Session, the African adopted Resolution 374 on the Right to Food and Food Security in Africa. This resolution recognises that the right to food is inherent in the Charter’s protection of the rights to health and life, and it draws on existing standards, noting with concern the threats that food insecurity pose to the enjoyment of the right to food of millions of people in the region. It therefore urges African governments to adopt legislative, administrative and other necessary measures with a view to addressing the challenge of food insecurity and hunger in the region.

**The Right to Housing**

The right to housing is often described as one of the most important human rights. Due to the inherently interrelated nature of human rights, a denial of the right to housing potentially also leads to a denial of an array of ancillary human rights, such as the right to water and sanitation, the right to food, the right to human dignity and equality, and even the right to work.

Article 25 of the Universal Declaration of Human Rights guarantees the right of everyone to an adequate standard of living, which includes, inter alia, a right to food, clothing, housing, medical care and necessary social services. A similar provision is found in Article 11 of the International Covenant on Economic, Social and Cultural Rights, which recognises “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and binds themselves to the continuous improvement of living conditions.” States are enjoined to take appropriate steps to ensure the realization of this right.

In General Comment No. 4 on the Right to Adequate Housing and No. 7 on forced evictions, the Committee on ESCR clarified the nature and scope of State obligations regarding the right to housing. It explains that States have the obligation to respect, protect, promote and fulfil the right to adequate housing. This includes progressively realising the right to adequate housing and refraining from acts of forced evictions unless alternative accommodation has been provided.

People living with HIV sometimes face discriminatory practices in relation to their right to housing. Reports show that people living with HIV have been denied access to housing or ejected from their accommodation based on HIV status. This further compounds human rights challenges encountered by persons living with, affected by or vulnerable to HIV.

The African Charter does not contain an explicit right on housing, but the Principles and Guidelines adopts the same standards as the International Covenant on Economic, Social and Cultural Rights in its explanation of the nature of obligations imposed by the right to adequate housing on States Parties to the African Charter. It is further provided that States must prioritise the right to housing of vulnerable and marginalised groups, including people living with or affected by HIV.

In some of its decisions, the African Commission has read into the African Charter an obligation on the part of the State to refrain from embarking on forced evictions or removal of groups of people from their community. In Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria, the African Commission noted that housing rights are protected under the African Charter through the combination of provisions protecting the right to property (Article 14), the right to enjoy the best attainable standard of

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248 - Universal Declaration of Human Rights, Art. 25 (1).

249 - ESCR, Article 11 (1).

250 - African Commission, Principles and Guidelines, paras. 77-79.

mental and physical health (Article 16) and the protection accorded to the family (Article 18).\textsuperscript{252}

CONCLUSION

116. The great majority of civil, political, economic, social and cultural rights provided under human rights law are relevant to the HIV epidemic. These rights have been interpreted at the global and regional levels to highlight critical principles to guide governments on their duties to respect, protect, promote and fulfil human rights in the context of HIV. This information is contained in various documents, including general comments, resolutions, case law and concluding observations on State reports. Together, these global and regional documents represent a corpus of norms for ensuring a rights-based and effective response to HIV in Africa.
IV. THE PRACTICE OF THE AFRICAN REGIONAL HUMAN RIGHTS SYSTEM ON HIV

1. This chapter provides an overview of the work and engagement of African regional human rights mechanisms on HIV-related issues. It describes and assesses the nature and scope of the work of the regional mechanisms, with a focus on the African Commission (established under the African Charter) and ACERWC (established under the African Children’s Charter).

THE AFRICAN COMMISSION AND THE HIV EPIDEMIC

2. Over the years, the African Commission has had the opportunity to address the HIV epidemic directly and indirectly through its promotion and protection mandate, and through the work of several of its subsidiary mechanisms. This has involved the adoption of resolutions on specific issues relating to HIV and the issuance of general comments clarifying certain provisions of the African Charter and the Maputo Protocol. In several of its communications, the African Commission has also dealt with issues pertinent to HIV, and some of the subsidiary mechanisms established by the African Commission—such as the Special Rapporteur on the Rights of Women in Africa and the Special Rapporteur on Prisons—have also addressed HIV. The most important subsidiary mechanism...
established by the African Commission in relation to the epidemic is the HIV Committee.

**HIV-related resolutions of the African Commission**

3. As described in Chapter III (“Global and African Regional Human Rights Norms Relating to HIV”), the African Commission has had the opportunity to provide guidance on issues related to HIV in the region. For instance, the African Commission has adopted important resolutions to address the link between HIV and human rights. Some of these resolutions include resolutions on the HIV pandemic as a threat to human rights and humanity, access to medicines in the context of HIV, forced or involuntary sterilisation of HIV-positive women as a violation of human rights, and violence against persons on the basis of real or imputed sexual orientation or identity.

4. In the context of education, the Commission issued Resolution 346, which calls on States to “prohibit and prevent all forms of discrimination in education against children with HIV/AIDS based on their real or perceived status.” These resolutions tend to draw the attention of States to important human rights issues in the context of HIV that warrant their urgent response.

5. The African Commission also has issued important guidelines relevant to HIV and human rights in the region. For instance, the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, adopted in 2014, formulates standards, principles and rules that African governments can use to frame legislation. They note that countries should ensure that measures seeking to protect vulnerable populations, including people living with HIV, should not be discriminatory or applied in a discriminatory manner.

6. More recently, the African Commission has issued three general comments (Nos. 1, 2 and 3) to clarify the provisions of the African Charter and the Maputo Protocol. As described in Chapter III, these general comments address non-discrimination, the protection of the sexual and reproductive health and rights of women, the prohibition of forced sterilisation and the interconnection between rights. For example, General Comment No. 3 expands on the contents of the right to life by stressing that this right should be interpreted broadly to include a dignified life and economic rights. It notes that the right to life is aimed not only at securing the continuation of biological life, but of dignified life. The indivisibility of human rights further suggests that the protection of dignified life lies in securing not only the right to life as a civil and political right, but social, economic and cultural rights as well. The right to life should not be interpreted narrowly. In order to secure a dignified life for all, the right to life requires the realisation of all human rights recognised in the [African] Charter, including civil, political, economic, social and cultural rights and peoples’ rights.

7. In addition, General Comment No. 3 notes that the right to life includes the need for countries to “address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems.” Therefore, the right to life is closely connected with access to health services, presumably including prevention of and treatment for HIV. This is important in that it places an obligation on States to prevent death from AIDS-related illness by ensuring universal access to life-saving medications. Failure by States to address barriers to life-saving medications in the context of HIV may infringe the right to life.

8. The protective mandate of the African Commission—which relates to the communication procedure and State reporting process—remains the strongest avenue to hold States accountable to their obligations to respect, protect and fulfil human rights in relation to HIV. While the African Commission has yet to issue any communications specifically dealing with HIV, some of the provisions of the African Charter and the Maputo Protocol provide it with the impetus to interpret them in the context of HIV. For instance,
Article 2 of the African Charter states that every individual shall be entitled to enjoy the rights and freedoms recognised and guaranteed in the African Charter without distinction of any kind on a number of specified grounds or statuses. Further, Article 1 of the Maputo Protocol defines discrimination against women broadly to include “any form of distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women . . . in all spheres of life.” Article 2 of the Maputo Protocol further prohibits discriminatory practices against women.

9. Equality and non-discrimination are fundamental pillars of human rights that are recognised in virtually all human rights instruments. The right to equality and non-discrimination presupposes that all human beings must be treated in the same manner, regardless of their social condition or health status. A distinction is often made between formal and substantive equality: while the former tends to treat all human beings equally without taking into consideration their socio-economic conditions, the latter tends to pay attention to peculiar circumstances of individuals, including their socio-economic differences. A substantive equality approach is crucial in the context of HIV because it recognises the disadvantaged positions of certain groups—including women, children, prisoners and sexual and gender minorities—and the need for their protection. The provision of the Maputo Protocol on non-discrimination is consistent with the notion of substantive equality.

10. The African Commission has stated that Articles 2 and 3 of the African Charter are considered fundamental, linked to the enjoyment of other rights, and that they arguably protect people living with HIV by affording them the rights to equality and non-discrimination. There also are indications that the provisions protect other key populations on other grounds, such as disability, sexual orientation and gender identity. The African Commission has explained the importance and breadth of Articles 2 and 3 of the African Charter on various occasions, noting their application to a range of persons. It has stated that Article 2 lays down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises, while Article 3 is important because it guarantees fair and just treatment of individuals within a legal system of a given country. These provisions are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter.

11. In Legal Resources Foundation v. Zambia, the African Commission noted that the right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. The right to equality is important for a second reason. Equality or the lack of it affects the capacity of one to enjoy many other rights.

12. In Good v. Republic of Botswana, the African Commission described the importance and breadth of the principle of non-discrimination, which it said “guarantees that those in the same circumstances are dealt with equally in law and in practice.” This was in line with its decision on Communication 245/02, Zimbabwe Human Rights NGO Forum v. Zimbabwe, in which the African Commission observed that the principles of equality and non-discrimination apply to all persons.

13. Furthermore, as described in Chapter III, the African Commission has had the opportunity to explain the scope and extent of Article 16, which guarantees the right of every individual to enjoy the best attainable state of physical and mental health and places a duty on State Parties to take the necessary measures to protect the health of all peoples, particularly when they are sick. In Purohit and Moore v. The Gambia, the African Commission stressed in to Article 16 that grounds of HIV and health status.

the “enjoyment of the human right to health . . . is crucial to the realisation of all the other fundamental human rights and freedoms.”

14. The African Commission in Doebbler v. Sudan states that “the prohibition of torture, cruel, inhuman or degrading treatment or punishment is to be interpreted as widely as possible to encompass the widest possible array of physical and mental abuses.” In this decision, the African Commission emphasised that Article 5 of the African Charter prohibits not only actions that cause serious physical or psychological suffering, but also those that “humiliate or force the individual against his will or conscience.” This interpretation could be applied to the HIV context to prevent forced treatment and enforce the requirements for informed consent.

15. In Democratic Republic of Congo v. Burundi, Rwanda, Uganda, the African Commission condemned sexual violence during conflict as a gross violation of the human rights of women. The African Commission noted that rape and other acts of violence violated the right to the integrity of one’s person. This was based on the complaints of the Democratic Republic of Congo that Rwandan and Ugandan forces had been spreading HIV to the population of the Democratic Republic of Congo by raping local women, which Uganda denied. The African Commission did not specifically address the HIV allegation raised in this communication.

16. It is clear from these cases that the African Commission has yet to specifically apply to HIV the human rights protections provided under the African Charter. Lessons can be drawn in this regard from other jurisdictions, such as the European and Inter-American human rights systems, which have already adjudicated on HIV-related issues. In D v. United Kingdom, the European Court of Human Rights held that the deportation of an HIV-positive person to a country where access to treatment could not be guaranteed would amount to a violation of the right to dignity under the European Convention. Further, in the case of Odir Miranda et al v. El Salvador—which involved 27 HIV-positive persons who were denied access to medication that integrated the triple therapy necessary to prevent death and improve their quality of life—the Inter-American Commission admitted the petition on the right to health, although it concluded that there was no violation of this right. It ordered the Government of El Salvador to adopt urgent precautionary measures for the victims in the case in order for them to obtain the relevant medical care and antiretroviral medications. This case is significant in the sense that it portrays how precautionary measures can be applied to good use in the context of HIV.

State reporting and HIV

17. As part of its protective mandate, the African Commission examines State reports submitted under Article 62 of the African Charter and Article 26 of the Maputo Protocol, providing responses in the form of concluding observations. This process provides the African Commission with the opportunity to assess the commitments that States have made to addressing issues relating to HIV and human rights within their jurisdictions. Through this process, the African Commission can clarify if steps taken by a State to address the HIV pandemic are consistent with its obligations to realise human rights in general, and the right to health in particular.

18. In some of its concluding observations to States, the African Commission has drawn the attention of States to gaps in their efforts to address the HIV pandemic. For instance, in one of its concluding observations to the Government of Sudan, the African Commission notes
that while efforts to ensure access to medical services and social security for all (including vulnerable and marginalised groups) have been commendable, the report fails to provide detailed information on access to life-saving medication for people living with HIV in the country. In its response to a report from Gabon, the African Commission recommends that the Government of Gabon strengthen ongoing HIV sensitisation programmes with a particular focus on children and young people. In one of its concluding observations to a report from Cameroon, the African Commission urges the Government to engage with relevant stakeholders with a view towards ensuring the adoption of laws and policies to protect the rights of people living with HIV. It also expresses concern about the judicial harassment of human rights defenders working in the area of sexual orientation and the “discrimination, stigma and violation of the right to life and physical and mental integrity of individuals based on their sexual orientation.”

It goes on to urge the Government of Cameroon to take appropriate measures to ensure the safety and physical integrity of all persons, irrespective of their sexual orientation, and to maintain an atmosphere of tolerance towards sexual and gender minorities in the country.

In its concluding observations to the Government of Ethiopia, the African Commission recommends the enactment of laws to address human rights violations experienced by people living with HIV in the country. It further recommends that the Government develop programmes to prevent the incidence of mother-to-child transmission of HIV in the country. In its fifth periodic review of Uganda, the African Commission recommends that Uganda “review and revise the HIV and AIDS Prevention and Control Act (2014) . . . to ensure that it fully conforms with Uganda’s regional and international human rights obligations.”

The African Commission has also called on Nigeria to repeal its law criminalising same-sex sexual relations because it has the potential to generate violence against persons on grounds of their actual or imputed sexual orientation. This law is also likely to drive underground this group of persons vulnerable to HIV, thereby creating an environment in which it is impossible to effectively address the HIV epidemic in the State. Further, the African Commission recommended that Botswana reform a law that requires minors to be accompanied by their parents when being tested for HIV.

While concluding observations are not binding on States, they do draw their attention to issues that require further attention. Indeed, concluding observations may be likened to advisory opinions of courts on a specific human rights issue.

**HIV within subsidiary organs of the African Commission**

Under Article 23 of the Rules of Procedures of the African Commission, special mechanisms are established to address various human rights violations and accord the protection of rights in several thematic areas. Special mechanisms of the African Commission comprise special rapporteurs, working groups and a Committee. Currently, there are about 14 such mechanisms. Some of the more relevant mechanisms include the following:

- The HIV Committee;
- The Special Rapporteur on Prisons;
- Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
- The Special Rapporteur on Rights of Women;
- The Special Rapporteur on Freedom of Expression and Access to Information;
These mechanisms have important roles to play in addressing HIV in the region. Some have already addressed the epidemic on several occasions. The Special Rapporteur on the Rights of Women in Africa has often recognised the particular needs of women living with HIV, the discrimination faced by women living with HIV and the gendered aspect of HIV. The Special Rapporteur’s Declaration on the Occasion of International Women’s Day in 2009 was specifically focused on “equal sharing of responsibilities between women and men, including providing care in the context of HIV/AIDS.” She noted that women have limited and unequal access to care, antiretroviral medicines and treatment, and that they bear the greatest burden in terms of caring for and supporting people living with HIV, including orphans and the affected. They also are subjected to a very harsh form of stigma and discrimination, manifested through violence of all kinds, particularly expulsion from the home, deprivation of their rights to inheritance and more.

23.

In the Intersession Report of the Mechanism of the Special Rapporteur on the Rights of Women in Africa since its Establishment, the Special Rapporteur noted the need for action by State Parties through the enactment of legislation to protect women with HIV and AIDS from all forms of discrimination and through the establishment of mechanisms to ensure their full participation in the process of providing access to health care and antiretroviral therapy.

24.

An initiative for the protection of women human rights defenders is also worth mentioning. Undertaken in 2015 by the African Commission’s Special Rapporteur on Human Rights Defenders, the Study on the Situation of Women Human Rights Defenders calls on national human rights institutions to pay specific attention to female human rights defenders “working on issues and contexts of criminalised identities, such as the rights of sex workers, women living with HIV accused of deliberate transmission and sexual orientation and gender identity.” The study further calls for the protection of female human rights defenders who are working on issues that are criminalised in their countries.

25.

Similarly, the Special Rapporteur on Prisons—one of the oldest mechanisms of the African Commission—has also addressed the HIV epidemic. For example, in a mission to assess the situation of prisons in Cameroon, the Special Rapporteur on Prisons addressed issues relevant to HIV, including the prevalence of HIV in prison. The Special Rapporteur expressed concern at the failure of the Government to provide her with information on the HIV prevalence rate in prisons, noting that it was not “the acceptable state of affairs given the potential threat posed by the pandemic.” The Special Rapporteur recommended that Cameroon should initiate and intensify information and awareness-raising sessions about HIV for prisoners, encourage voluntary testing for HIV and strengthen structures for psychological care and counselling, particularly before and after testing for those found to be HIV-positive.

26.

The Special Rapporteur on Prisons also addressed policies related to the treatment of prisoners with HIV in reports on prison conditions in Uganda and South Africa. Further, in a 2001 response to a policy in Namibia that prohibited HIV-positive prisoners from working in the kitchen, the Special Rapporteur expressed concern at the potential threat posed by the epidemic in prisons, noting that it was not “the acceptable state of affairs given the potential threat posed by the pandemic.”

27.

The Special Rapporteur on Human Rights Defenders has also addressed the situation of women human rights defenders, noting that they bear the greatest burden in terms of caring for and supporting people living with HIV and AIDS. The Special Rapporteur expressed concern at the failure of the Government to provide her with information on the HIV prevalence rate in prisons, noting that it was not “the acceptable state of affairs given the potential threat posed by the pandemic.” The Special Rapporteur recommended that Cameroon should initiate and intensify information and awareness-raising sessions about HIV for prisoners, encourage voluntary testing for HIV and strengthen structures for psychological care and counselling, particularly before and after testing for those found to be HIV-positive.

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29.

292. The Committee for the Prevention of Torture in Africa (Committee on Torture) was created in October 2002 by the African Commission. Its purpose is to raise awareness of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) and to facilitate the implementation of the Robben Island Guidelines throughout the African Union Member States. The Committee on Torture carries out its mandate by writing letters regarding alleged violations, developing strategies to promote the Robben Island Guidelines, analysing the domestic laws of States and their compliance with international standards, and conducting visits to Member States. For more information, see http://www.achpr.org/mechanisms/ctpt/.

293. The Working Group on Economic, Social and Cultural Rights is tasked with developing and proposing to the African Commission a draft set of Principles and Guidelines on Economic, Social and Cultural Rights, providing a draft of revised guidelines for State reporting, undertaking relevant studies and research, and making a progress report to the African Commission. For more information, see http://www.achpr.org/mechanisms/esrc/.


Rapporteur states that “discrimination against people suffering from HIV/AIDS is not allowed.”

The HIV Committee

28. In recognition of the specific and serious human rights challenges posed by the HIV epidemic in Africa, the African Commission established the HIV Committee in May 2010 through Resolution 163.

Mandate and composition of the HIV Committee

29. The mandate of the HIV Committee was originally authorised for two years, but it has been renewed by the African Commission several times. The African Commission appoints the HIV Committee’s chairperson, members and expert members, either by consensus or by vote. Since its establishment, the HIV Committee has had three members who are Commissioners of the African Commission, one of whom has been appointed as Chairperson.

30. The HIV Committee also has expert members who are not Commissioners. To be appointed as an expert member, candidates must be nationals of an African Union Member State, and they must have expertise in protecting and promoting the rights of individuals living with HIV and those who are at risk, vulnerable to and affected by HIV. When a position is available, the Committee accepts nominations from individuals, non-governmental organizations, Member States, nation human rights institutions and other institutions. Currently there are six expert members on the HIV Committee from various backgrounds.

31. The HIV Committee submits intersession activity reports to the African Commission twice each year. These reports outline the activities that the HIV Committee has undertaken. This information is included in the African Commission’s activity reports, which are submitted to the African Union Assembly twice every year during the summits of the African Union.

Activities of the HIV Committee

32. The HIV Committee undertakes a number of activities, including conducting visits to Member States (with their consent) to engage stakeholders on HIV-related human rights issues. During these visits (also known as “missions”), the HIV Committee engages with government officials and civil society organizations (among others) to learn about the State’s laws, policies, practices and programmes that relate to the human rights of persons living with HIV and other populations. For example, in 2016, the HIV Committee undertook a country visit to Côte d’Ivoire, and in 2017, the Committee completed a country visit to Namibia. After it completes a mission, the HIV Committee publishes a mission report that contains general recommendations to the State. Mission reports also often include specific recommendations to the international community, civil society and other stakeholders.

33. The HIV Committee’s mandate also requires it to recommend concrete strategies to protect the rights of persons living with HIV, those at risk and those vulnerable to HIV. To develop effective strategies, the HIV Committee may conduct studies to better understand the human rights conditions and situations surrounding these persons.

34. The HIV Committee also receives analyses and responds to reliable information from credible sources on allegations of human rights violations. Upon learning of alleged violations, the HIV Committee may write letters to the relevant State and to non-State actors that are involved (including corporations). These letters request information about what steps have been taken to remedy the alleged violations. The HIV Committee may
propose that the African Commission take a certain action or decision.

35. The HIV Committee also obtains and disseminates information through promotional activities, such as panels, training for non-governmental organisations engaged in HIV-related issues and round-table meetings.\textsuperscript{31} The HIV Committee often coordinates these activities with other relevant special rapporteurs and working groups under the African Commission or the UN.

HIV-RELATED ISSUES AND OTHER AFRICAN REGIONAL HUMAN RIGHTS BODIES

**ACERWC**

36. ACERWC draws its mandate from Articles 32 through 46 of the African Children’s Charter. Similar to the African Commission, ACERWC possesses a mandate that is both promotional and protective, but it has not yet addressed HIV specifically in its case law, guidelines, general comments or mission reports.

37. ACERWC has adopted two general comments, but neither has dealt directly with issues relating to HIV and human rights. General Comment No. 1 deals with children of imprisoned parents under Article 30 of the African Children’s Charter. While it does not specifically address HIV and the specific vulnerabilities that such children face with respect to HIV, General Comment No. 1 does make several statements that could be applied to the context of HIV.\textsuperscript{312} For example, it highlights Article 30(1) of the African Children’s Charter, which indicates that State Parties “shall undertake to provide special treatment to expectant mothers.”\textsuperscript{313} This section could be applied to PMTCT activities by requiring States to provide this specific treatment.

38. Additionally, General Comment No. 1 speaks about a child’s “inherent” right to life and right to development, which “entails a comprehensive process of realizing children’s rights in order to allow them grow up in a healthy and protected manner.”\textsuperscript{314} These more general references to the rights of children to be healthy and to access health care on a non-discriminatory basis could easily be applied to the HIV context in the future.

39. Its General Comment No. 2 on Article 6 of the African Children’s Charter on the Right to a Name, Registration at Birth, and to Acquire a Nationality is the second general comment adopted by ACERWC.\textsuperscript{315} It also does not make any specific reference to HIV. In General Comment No. 2, ACERWC adopts a broad interpretation of Article 6 of the African Children’s Charter, noting that the right to a name, to birth registration and to acquire a nationality cannot be fully implemented unless the cardinal principles of children’s rights are carefully observed. The implementation of those rights requires taking into account the best interests of the child, non-discrimination principles, his/her survival, development and protection as well as his/her participation. The implementation of Article 6 also depends on good understanding of the principle of interdependence and indivisibility of children’s rights in general and the interdependence and indivisibility of the three rights provided for under Article 6 in particular.\textsuperscript{316}

40. This interpretation can potentially be applied to advance the rights of children in the context of HIV. Given the serious impact of HIV on children and young people in the region, it is imperative that ACERWC consider adopting a general comment or resolution on this issue. In doing so, it can draw inspiration from its counterparts at the international level, which have directly addressed this issue.\textsuperscript{317}

41. There are more informal ways that ACERWC has addressed HIV. In its 2002 inaugural meeting, one of the thematic issues discussed was orphans living with and infected by HIV.\textsuperscript{318} At its

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\textsuperscript{313} - ACERWC, General Comment No. 1, para. 9.

\textsuperscript{314} - ACERWC, General Comment No. 1, para. 25.

\textsuperscript{315} - ACERWC, General Comment No. 2 on Article 6 of the African Children’s Charter on the Right to a Name, Registration at Birth, and to Acquire a Nationality, 16 April 2014, ACERWC/GC/2/2 (2014).

\textsuperscript{316} - As above, para. 13.

\textsuperscript{317} - See UN Committee on the Rights of the Child, General Comments No. 3 on HIV/AIDS and the Rights of the Child, UN Doc CRC/20/2003/5 (17 March 2003); and UN Committee on the Rights of the Child, General Comment No. 4 on Adolescence Health and Development in the Context of the Convention on the Rights of the Child, UN Doc CRC/2003/4 (1 July 2003).


\textsuperscript{320} - Lloyd, "Report," 329.

\textsuperscript{321} - ACERWC, Concept Note of the 25th Day of the African Child (DAC), 2015 (Addis...
second session in February 2003, the control of HIV and other causes of the ill health, as well as high mortality among children in Africa, were recognised as priorities.\(^{319}\) ACERWC resolved to monitor and report on the impact of HIV and to monitor the relevant activities of governments on these issues.\(^{320}\)

42. HIV is addressed in the Concept Note of the 25th Day of the African Child in 2015. In this document, ACERWC noted that child marriage is caused by “gender inequality due to entrenched societal differentiation between males and females,” including HIV status.\(^{321}\) Not only was HIV status a cause of child marriage, but it was also a result, and ACERWC states that “child brides are prone to disabilities associated with early childbirth. . . including HIV.”\(^{322}\)

43. Under its protective mandate, ACERWC has touched on issues with implications for HIV and the rights of children through its jurisprudence, state reporting process and mission visits. For instance, in addressing children’s health in IHRDA and Open Society Justice Initiative (OSJI) (on behalf of children of Nubian descent in Kenya) v. Kenya,\(^{323}\) ACERWC noted that “statelessness is particularly devastating to children in the realisation of their socio-economic rights such as access to health care.”\(^{324}\) ACERWC further found in this case that denial of basic medical services would violate the right to health.\(^{325}\) This interpretation establishes a state’s obligation to provide basic medical services to children, and it therefore may be useful in the future to ensure access to HIV-related health-care services for children.

44. In Michelo Hunsungule on behalf of children in Northern Uganda v. The Government of Uganda, ACERWC missed an opportunity to clarify the obligations of States in relation to the right to health and protection of the girl child from sexual abuse during a conflict period.\(^{326}\) It rejected the complaints of the applicants, who alleged that by not providing health-care facilities and clinics and by not protecting female children from sexual abuse, the respondent government failed to ensure that children enjoyed the right to health.

45. ACERWC has also addressed HIV in a limited way as part of its guidance on how countries should report on their compliance with the African Children’s Charter. In the States Parties Reporting Guidelines, ACERWC indicates that countries should provide data on the death of children from AIDS-related illness (in addition to other illnesses), measures taken to prevent transmission of HIV from mother-to-child, how many mothers were provided with PMCT services and the percentage of children born with HIV.\(^{327}\) The Guidelines, however, do not require countries to provide any information related to the rights of children and adolescents to HIV-related health care (including health information).

46. Under Article 45 of the African Children’s Charter, ACERWC also is empowered to resort to any appropriate method of investigation in relation to any issue covered by the African Children’s Charter.\(^{328}\) Although the mission reports thus far conducted by ACERWC have a section dedicated to the right to health, HIV was not covered.\(^{329}\) This was a missed opportunity to deal with HIV in the context of children’s rights.

47. Finally, ACERWC issues concluding observations following the consideration of state parties reports. Concluding observations highlight any major issues of concern and make recommendations to countries on the measures that can be implemented to complement the progress achieved and the challenges faced. ACERWC has raised concerns regarding HIV in a number of concluding observations. For instance, in its concluding observations to Guinea, the Committee notes the high infant mortality due to HIV and recommends “raising awareness on HIV.”\(^{330}\) It gave a similar recommendation to Sudan.\(^{331}\)

\(^{322}\) ACERWC, Concept Note of the 25th Day of the African Child (DAC), para. 14.


\(^{324}\) As above, para. 46.

\(^{325}\) As above, para. 59.


ACERWC has also given much more specific and in-depth recommendations to countries. It recommends that Liberia increase the comprehensive HIV information education campaign; make stronger its efforts to ensure proper coverage of HIV testing and antiretroviral medicines provision by giving a particular attention to pregnant adolescents in rural areas and children born to mothers with HIV, and seek technical assistance from the concerned international organizations and [civil society organisations].

In its recommendations to Tanzania, ACERWC recommends that the country expand its youth education on STIs to incorporate this type of education into primary school curriculums. They also recommend that South Africa step up its reproductive health education for school-aged children and work to disseminate antiretroviral medicines more effectively. Despite the ability to give recommendations, there unfortunately is no system by which ACERWC evaluates country reports to ensure compliance on HIV-related issues.

The African Court

The African Court was established to hear cases related to the African Charter and the Maputo Protocol. It was established under the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (the Court Protocol).

The African Court has been silent on the issue of HIV to date, but this could be due to some of the strict procedural limitations that it faces. The African Court’s jurisdiction is relatively limited, as it only applies to States that have ratified the Court Protocol. Furthermore, the Court Protocol does not enable individuals or non-governmental organisations to access the African Court directly unless the respondent State has made a specific Declaration accepting the jurisdiction of the Court (Article 34(6) of the African Protocol). As of October 2017, only eight of the 30 States Parties to the Court Protocol had made the declaration recognising the competence of the African Court to receive cases from individuals and non-governmental organisations.

Although the African Court has not yet received an HIV-related case, it could be a place where future jurisprudence regarding the rights of individuals with HIV is developed. In particular, the advisory jurisdiction of the African Court can be explored by civil society organisations to request authoritative interpretation of the human rights instruments related to HIV in the region. However, in a May 2017 decision, the African Court held that only African non-governmental organisations that have observer status before—the African Union are entitled to bring a request for advisory opinion before it.

CONCLUSION

The African regional human rights system includes institutions and mechanisms that can play a critical role in interpreting and applying human rights norms, and that can support accountability in the context of HIV. At the centre of these mechanisms is the African Commission, the oldest institution and one that has relied on its protective and promotional mandate and special mechanisms to advance the rights of people, including rights related to HIV. Although the African Court has yet to deal with a specific case on HIV and human rights, its advisory mandate provides a platform that can be useful for advancing the rights related to HIV. Furthermore, while ACERWC still awaits its first case on children’s rights and HIV, it also has relied on its thematic issues and promotional and protective mandates to explain how the right to health and medical attention cover children living with and affected by HIV. In its guidelines on State reporting, however, ACERWC has missed the opportunity to oblige States to report specifically on what they do to give effect to the rights of children and adolescents with HIV-related healthcare needs (including a need for health information).

In spite of these positive elements, much more needs to be done to ensure that the full potential of...
the regional human rights system is used to advance HIV-related human rights on the continent. Some of the key challenges currently facing the African system in relation to HIV include the following.

**Limited focus on HIV from all mechanisms**

55. Thus far, very few regional mechanisms (apart from the HIV Committee) have addressed HIV-related issues. The African Commission and the African Court have yet to adjudicate on an HIV-related complaint. There are a number of special mechanisms of the African Commission whose mandates are relevant to HIV, but that are not specifically mandated to address HIV. For example, the Working Group on the Rights of Older Persons and People with Disabilities is developing a Protocol on the Rights of People with Disabilities and Guidelines for State Parties on the implementation of the rights of persons with disabilities. Integrating HIV and human rights issues relevant to persons with disabilities into these documents would be an effective way of infusing HIV into the work of this Group.

56. The HIV Committee has made efforts to link with some of the relevant special rapporteurs in its work, particularly the Special Rapporteur on the Rights of Women in Africa. Broadly speaking, however, related mechanisms fail to regularly address HIV-related issues. This may be due to their lack of the necessary knowledge and expertise to address HIV-related issues and the lack of specific guidelines about how their mandate should address the problem of HIV and human rights in Africa. This, in turn, limits the impact of the regional mechanisms on HIV and human rights-related issues. There is a need for the HIV Committee to reach out to mechanisms such as the respective Special Rapporteurs on Prisons and Human Rights Defenders and the working groups on Indigenous Peoples/Communities and on Older Persons and People with Disabilities.

57. There are a number of key HIV and human rights issues (set out in more detail in Chapter V)—as well as critical related rights contained within the African Charter, the Maputo Protocol and the
African Children’s Charter—that have received limited focus (if any) in relation to HIV. This includes the right to information, which is critical for young people’s access to sexual and reproductive health information, and the right to work. An exposition of the right to health in the context of HIV would also be particularly important for elucidating the sexual and reproductive health rights of vulnerable and key populations and for increasing their access to HIV services. Issues—such as the criminalisation of HIV transmission and exposure and the rights of key populations—need to receive increased focus. The African Commission and its mechanisms have made efforts, both in their work and their country missions, to focus on HIV and human rights issues affecting vulnerable and key populations (such as women and prisoners).341 The African Commission has made several efforts to address the rights of women in the context of HIV and the impact of gender inequality, harmful gender norms and gender-based violence. Despite this, there is a need for a far stronger focus on key populations—including gay men who have sex with men, transgender persons, sex workers, people who inject drugs and indigenous populations—in order for the HIV Committee to affect some of the most critical legal and human rights barriers to fast-tracking the end of AIDS in Africa.

### Limited use of the full range of powers available to the HIV Committee

The HIV Committee has a broad mandate that provides for (amongst other things), the following:
- investigating information on the situation and rights of people living with HIV and affected populations;
- developing guidelines;
- undertaking fact-finding missions;
- engaging with stakeholders on rights-based responses to HIV; and
- making recommendations.

However, the HIV Committee has not made full use of its broad powers, in part due to challenges such as resource constraints and limited awareness about the HIV Committee among civil society. It is critical that the HIV Committee makes greater use of its powers, such as by conducting fact-finding missions or making recommendations on HIV and human rights issues. This work is critical to mobilising accountability for rights-based responses to HIV among States. It is also critical for civil society groups to engage more with the HIV Committee on issues relating to human rights violations in the context of HIV in the region. For instance, civil society groups can explore the urgent appeal powers of the HIV Committee by bringing human rights violations relating to HIV to its attention.

### Limited awareness and visibility of the mechanisms

Affected individuals and civil society organisations are often unaware of the existence of the regional mechanisms. Publicly available information on the regional mechanisms and how to best approach them is not easily available. Civil society organisations and people affected by HIV have limited information on the mandate of the regional mechanisms, the process for making a communication or otherwise interacting with the mechanisms, and how to contact them. Despite this, the HIV Committee has made efforts to interact with government institutions and civil society in country visits and through other forums.342 For example, it has attempted to inform civil society about its work and how civil society organisations can interact with the HIV Committee and the African Commission, and it has conducted training for members of civil society in order to promote greater involvement of civil society in the African Commission’s mechanisms.343 It has also received petitions and communications from civil society in connection with human rights violations.344 Despite these efforts, broader initiatives to raise awareness may be required over and above these ad hoc interactions during country visits.

### Inaccessibility of the mechanisms

The regional mechanisms are inaccessible to civil society organisations and people affected by HIV. To participate in the African Commission’s public session or to lodge a complaint before the African Commission, civil society organisations must have observer status. This can be difficult to obtain...
and travel to public sessions is costly.\footnote{The lack of understanding of the African Commission’s work makes some civil society organizations view attending sessions of the African Commission an unnecessary expense.} Similarly, the African Court does not permit individuals to approach the court on a matter against a State party unless that State has signed the declaration permitting such access. To date, very few countries in Africa have signed the declaration, meaning that people affected by HIV and civil society organisations have limited access to the African Court. Thus, it is unsurprising that the African Court has yet to issue any decision specifically relating to HIV.

\textit{Resource constraints}

62. The African Commission and its special mechanisms are hampered by resource constraints that limit their ability to carry out their activities, such as conducting missions and fact-finding visits. This obstructs efforts to establish a comprehensive approach to HIV and human rights issues, resulting in a tendency towards ad hoc responses where resources allow.
V. KEY HUMAN RIGHTS CONCERNS AND GOOD PRACTICES IN THE HIV RESPONSE IN AFRICA

1. Across the continent, countries have introduced laws and taken other measures to respond to the legal challenges posed by the epidemic and to expand access to HIV prevention, treatment and care services. In spite of these efforts, human rights violations in relation to HIV continue to occur. This includes discrimination and inequality, coercive HIV testing, barriers to treatment access, violations of the human rights of women and girls, failure to uphold the human rights of children, and criminalisation of people living with HIV and members of key populations. These not only represent human rights violations: they are impediments to efforts to end the AIDS epidemic in Africa, stifling health-seeking behaviours and limiting the ability of stakeholders and service providers to address the epidemic.

2. This chapter describes the key HIV-related human rights challenges on the continent—and the good practices and effective measures and approaches adopted to respond to them in some African countries. The aim of this chapter is not to provide an exhaustive description of all human rights challenges, but to highlight key issues and suggest actions that governments

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can take to fulfil their human rights obligations related to HIV care and prevention.

**INEQUALITY AND DISCRIMINATION AGAINST PEOPLE LIVING WITH HIV**

3. People living with HIV in Africa and globally continue to experience high levels of discrimination and stigma on the basis of their HIV status. This environment hinders efforts to end the HIV epidemic because it discourages people living with HIV from disclosing their status to family members and sexual partners, and it undermines their ability and willingness to access and adhere to treatment.

4. Women report stigma, exclusion and harassment within their families, communities, workplaces, schools, health-care facilities, churches and other places of worship. They also suffer from physical and sexual abuse, expulsion from their homes and communities, obstructions to seeing their children and dispossession of property—all of which increase their vulnerability. Individuals from key populations similarly are more vulnerable to human rights abuses because of the intersectionality between their HIV status and other forms of discrimination and stigmatisation.

5. People living with HIV who have TB face the stigma and discrimination of both illnesses. Stigma and discrimination targeting people with TB takes place in the workplace, health-care facilities and communities through travel restrictions and mandatory treatment (to name just a few violations). Health workers also have been known to deny equal access to TB clinics for people living with HIV, sex workers, transgender people and other marginalised populations.

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**EMPLOYMENT STIGMA AND DISCRIMINATION**

In Ethiopia and Tanzania (Zanzibar), 42.1% and 26.8% of respondents, respectively, reported having lost a job or another source of income. In Ethiopia, more than 70% of those reported that this was due inter alia to their HIV status.

In Rwanda, 37.2% reported being refused an employment opportunity in the past 12 months because of their HIV status.

**HEALTH STIGMA AND DISCRIMINATION**

In Rwanda, 65% of men and 81% of women were advised not to have children by a medical practitioner upon HIV diagnosis. In Ethiopia, the same advice was given to 36.5% of men and 43.9% of women.

In Malawi, 46.6% of those who responded to questions about sexual and reproductive health rights reported being advised not to have children after being diagnosed with HIV. A further 11.5% reported being coerced into sterilisation, and 14.5% and 16.3% of those who responded reported being coerced into choice of methods of child birth and infant feeding options, respectively.

In Rwanda, 17% of men and 12% of women reported that antiretroviral therapy accessibility was conditional on use of contraception. In Ethiopia, this applied to 12.2% of men and 14.4% of women.

Source: The People Living with HIV Stigma Index: Country Analysis, 2016

[www.stigmaindex.org/country-analysis](http://www.stigmaindex.org/country-analysis)
Stigma and discrimination have a profound effect on the ability of people living with HIV to enjoy their rights to work, health, privacy, dignity and freedom of movement. Negative social attitudes—including gossip about people living with HIV—remains high (see Figure 4). Forms of discrimination and stigma are similar across the continent, and they include marginalisation from families and communities, verbal harassment, physical assault, workplace discrimination and coercive sexual and reproductive health-care services. A small number of countries also continue to impose travel restrictions on people living with HIV. Seychelles, for example, requires mandatory HIV testing for residence and work permits.

The majority of countries in Africa have constitutional or statutory protections against discrimination on the basis of gender, disability and marital status. An increasing number of countries are starting to introduce protections on the basis of HIV status. Unfortunately, these laws often are narrow in scope and fail to address the layers of discrimination people face due to HIV status.

In many countries where these laws do exist, implementation and enforcement are often lacking. Key decision-makers (including legal professionals, health-care workers and employers) do not always understand HIV or its relationship to the law, and they are therefore not equipped to adequately uphold HIV-related human rights. People living with HIV also are not always aware of their rights, and they often lack access to legal services. This trifecta of stigma, insufficient information on rights and a general lack of resources poses significant barriers to accessing legal services.

A significant number of African countries are taking steps to combat discrimination against people living with HIV. These include anti-discrimination laws that protect the rights of people living with HIV, programmes to strengthen legal support services for people living with HIV, support for litigation to challenge HIV- and TB-related discrimination, and programmes to understand, monitor and respond to stigma and discrimination.

**FIGURE 4: GOSSIP AGAINST PEOPLE LIVING WITH HIV**
10. Around 35 African States have laws to protect people living with HIV from discrimination, many of which are HIV-specific. A number of countries across Africa have conducted People Living with HIV Stigma Index studies and approximately 90% of countries report that their national strategic plans (NSPs) include stigma and discrimination reduction programmes. Many also include training for health workers.

11. Judicial recognition of the rights of people living with HIV continues to be affirmed in case law across the continent. The judiciary in various countries have been ruling in favour of the rights to equality and non-discrimination of people living with HIV. This has been largely in the working environment, with several also ruling in favour of these rights in health-care settings.

12. Countries also are looking for solutions outside of the traditional court arena. For example, Kenya has created an HIV and AIDS Tribunal to specifically address issues arising under its HIV and AIDS Prevention and Control Act. The Tribunal is accessible to applicants, and judges working at the HIV and AIDS Tribunal are trained on HIV-related issues. The Tribunal has addressed hundreds of HIV cases to date, with most falling into one of three categories:

- workplace issues, including mandatory HIV testing and discrimination on the basis of an individual’s HIV status;
- discrimination and abuse in health-care settings and the denial of services based on HIV status; and
- issues involving domestic violence, property and inheritance.

**COMPULSORY AND OTHER FORMS OF COERCIVE HIV TESTING**

13. Ensuring access to HIV testing that is confidential and only performed with free, prior and informed consent is integral to ending the epidemic. Globally, approximately 30% of all people living with HIV did not know their HIV status in 2016. Practices such as mandatory testing, breaches of confidentiality and requirements for parental...
Mandatory and coerced testing occurs across the continent, as do breaches of confidentiality. A review of HIV-specific laws adopted in 26 sub-Saharan African countries shows that they allow for broad exceptions to informed consent. Under these laws, health-care providers can perform HIV tests without informed consent for several purposes: for treatment or care, in the context of personal relationships and for alleged sexual offences or when ordered by the court for judicial proceedings. In some countries, mandatory HIV testing policies exist for employment in sectors such as law enforcement and the army. Mandatory pre-marital testing has been reported in countries such as Burundi, the Democratic Republic of the Congo, Ghana, Kenya, Nigeria, Tanzania and Uganda. In several countries where same-sex sexual conduct is criminalised, cases of involuntary testing of people accused of engaging in consensual same-sex sexual conduct have been reported.

Where laws provide for mandatory testing, particularly for sexual offences, they

> violate the rights to liberty, security of the person and a fair trial;
> provide little guidance as to the purpose, process and timeline for HIV testing;
> are often applied to those alleged to have committed, but who have not yet been convicted of, a sexual offence; and
> are silent on the nature of the sexual offence to which a test can be applied, thus opening the gateway for mandatory HIV testing for offences that carry little or no risk of HIV transmission.

Laws, policies and practices in many countries provide for disclosure of a person’s HIV status to third parties, including to health-care workers, sexual partners or caregivers. Of 26 HIV laws reviewed, 21 were found to have provisions allowing for involuntarily notifying a partner of a person’s HIV status. In 17 of those countries, partner notification can be done at the discretion of a health-care worker. As women are more likely to be tested than men due to their access to antenatal care, this has a disproportionate effect on women, but even so, only four countries provide for non-disclosure where there is a fear of violence.

In particular, adolescents face significant barriers to confidential consensual testing, as medical procedures often requires a parent to consent and know the results when the individual being tested is under the age of 18 years. In contrast, the age of consent for sex can be as low as 14 years.

If it is not carefully circumscribed in law and policy, involuntary partner notification has the potential to infringe on the rights of a people living with HIV, including the rights to confidentiality, health and freedom from violence and discrimination. Failure to allow adolescents access to confidential testing can infringe on their rights to privacy and health (particularly sexual and reproductive health), as well as the right to make decisions in accordance with the developing maturity of the child.

Even where laws and policies allow only voluntary confidential HIV testing with informed consent, implementation can still be an issue. Results can be disclosed to third parties and individuals can be coerced into being tested. For example, pregnant women in South Africa have reported being threatened with refusal of health services if they do not undergo an HIV test.

Testing initiatives also are changing in response to the scale-up of testing and treatment. It is becoming increasingly important to ensure that testing is performed in a manner that respects the
rights of privacy and health, especially as new forms of testing services expand. Traditionally, individuals had to seek out HIV testing of their own volition, the test and results were confidential, and providers had to supply pre- and post-test counselling to people seeking an HIV test.

20. In order to increase the rate of HIV testing, some countries in Africa have implemented additional types of testing, including PITC, community and home testing, routine testing, couples testing and mobile testing. In contrast to voluntary testing and counselling, these approaches aim to integrate HIV testing into a standard element of medical care that can be opt-in or opt-out. They are often aimed at particular populations, such as pregnant women or sex workers. If improperly applied, these new approaches to HIV testing can have serious human rights implications, particularly in terms of confidentiality and informed consent. Issues of gender equality also are relevant because women, particularly pregnant women, are disproportionately subjected to HIV testing without clear measures to ensure their safety and protection from family members.

21. Rights protected under the African Charter and Maputo Protocol—notably the rights to liberty, integrity and the security of person, dignity, health, fair trial, and protection from cruel, inhuman and degrading treatment—have been used in a number of cases to overturn practices and policies around HIV testing. In terms of disclosure, the SADC Model Law and EAC HIV and AIDS Prevention and Management Act tightly limit the situations in which a person’s HIV status can be communicated to a sexual partner at risk of HIV infection in accordance with international guidance.

22. In Zambia, the High Court found that mandatory HIV testing conducted in the Zambian Air Force on two former employees without informed consent constituted a violation of the rights to privacy and to be free from inhuman and degrading treatment.

23. In S v Mwanza Police, Mwanza District Hospital, Ministries of Justice, Internal Affairs, Health, Attorney-General and Ex parte: HB, JM (o.b.o 9 others), sex workers in Malawi were arrested and forced to undergo HIV tests while in custody. Women who were HIV-positive were charged with spreading a venereal disease, which is prohibited under §192 of the Penal Code. Eleven women challenged being subjected to a mandatory HIV test in the High Court, which held that the mandatory tests violated their constitutional rights to privacy, equality, dignity and freedom from cruel, inhuman and degrading treatment.

24. Providing access to affordable, high-quality medicines for HIV and opportunistic infections such as TB is a critical element of fulfilling the right to health. While there has been remarkable progress made in increasing access to treatment in recent years, only some 53% [39–65%] of people living with HIV had access to treatment in 2016. One in two people living with HIV were still not accessing antiretroviral therapy. In East and southern Africa, 67% [54–76%] of adult women (aged 15 years and older) living with HIV and 51% [41–58%] of adult men (aged 15 years and older) living with HIV were accessing antiretroviral therapy in 2016. In western and central Africa, only 44% [32–56%] of adult women living with HIV and 25% [17–32%] of adult men living with HIV in the region were accessing antiretroviral therapy in 2016.

25. Article 16 of the African Charter places an obligation upon Member States to “take the necessary
measures to protect the health of their people and to ensure that they receive medical attention when they are sick” without discrimination. This includes access to affordable life-saving treatments such as antiretroviral medicines. The right to equitable access to affordable medicines in Africa is undermined by the protection of IP laws and the failure to reform or effectively use flexibilities within the IP regime.

26. The prices of first-generation antiretroviral medicines have been dramatically reduced over the past 10 years, primarily due to increased marketplace competition from generic drugs, but access to treatment is becoming more difficult. Demand for second-generation antiretroviral medicines is growing in the face of drug-resistant HIV. Property, trade and counterfeiting laws also render it difficult for countries to provide their citizens with cheaper generic treatments.

27. Countries face a number of barriers when trying to provide citizens with affordable drugs. The WTO’s TRIPS Agreement requires all WTO members to provide at least 20 years of patent protection on pharmaceuticals, restricting the ability of countries to use or import generic versions of medications instead of more expensive brand drugs. Anti-counterfeiting legislation also can limit the ability of countries to manufacture or import generic medicines.

28. Under the TRIPS Agreement, governments can make exceptions for public health reasons. These exceptions include defining standards of patentability and issuing compulsory licenses to increase treatment access. However, few African countries have made use of these exceptions; either their laws predate the TRIPS Agreement or lack provisions to allow for the use of generics, or the provisions have not been utilised. Many African countries also lack adequate frameworks to examine and register patents effectively. Where countries do attempt to use IP laws effectively, they can be met by strong opposition from governments and pharmaceutical companies.

References:
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382 - Global Commission, HIV and the Law
383 - Global Commission, HIV and the Law, 376
387 - Angola, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Comoros, Djibouti, Ethiopia, the Gambia, Guinea, Guinea-Bissau, Lesotho, Malawi, Mali, Mauritius, Mozambique, Niger, Rwanda, Senegal, Sierra Leone, Sudan, Togo and Zambia. See Global Commission, Regional Issues Brief.
388 - Global Commission, Regional Issues Brief.
Good practices

29. The right to health has been successfully used in at least one case to defeat restrictions on the use of generic medicines. In the 2012 case of Ochieng and Others v. Attorney General in Kenya, the High Court upheld an order declaring the Kenyan Anti-Counterfeit Act, 2008, to be unconstitutional. The petitioners argued that the provisions of the Anti-Counterfeit Act failed to exempt generic medicines from the definition of counterfeiting in that legislation. The Court interpreted the right to health as placing an obligation upon the State to ensure people have access to the medicines they require to be healthy, noting that the right to access medicine has been recognised as an essential component of the right to health in other jurisdictions, including South Africa. The provisions of the Anti-Counterfeit Act were held to restrict access to affordable medicines and thus to violate the rights to life, human dignity and health protected under the Kenyan Constitution. The Court declared that “there can be no room for ambiguity where the right to health and life of the petitioners and many other Kenyans who are affected by HIV/AIDS are at stake.”

30. Regional initiatives to reform laws in order to make greater use of the flexibilities in TRIPS and the Doha Declaration include the establishment of the Pharmaceutical Manufacturing Plan for Africa to produce local generic medicines. Mozambique, Zambia and Zimbabwe have all used their laws to issue compulsory licenses for medicines, while other countries have adopted the principle of international exhaustion to permit parallel importation of generic medicines from anywhere in the world.

31. In 2008, Rwanda received 7 million doses of antiretroviral medicine from Canada through the use of flexibility under the WTO IP regime. In doing so, the Rwanda became the first country in the world to implement the WTO General Council Decision of 2003, which permits someone other than the patent holder to manufacture a lower-cost version of a medicine for export to developing countries that do not have the capacity to manufacture such products themselves. The 2003 Decision requires that the developing country announce its intention to use this mechanism; it should then further specify the expected quantity of drugs to be supplied and issue a compulsory license for the drugs. In spite of these restrictions and challenges, the successful shipment of generic antiretroviral medication from Canada to Rwanda demonstrates the possibility of implementing the TRIPS flexibility provided that governments (both developed and developing) and international organisations such as the WTO effectively support such an implementation.

In their September 2016 report, the UN Secretary-General’s High-Level Panel on Access to Medicines notes the barriers created by international trade agreements and the pressure on governments to refrain from using the TRIPS flexibilities. They call for a new deal to close the gaps between health innovation and access to medicines that would include greater transparency in costs related to medical developments and pricing.

OVERLY BROAD CRIMINALISATION OF HIV NON-DISCLOSURE, EXPOSURE AND TRANSMISSION

32. Overly broad criminalisation of HIV non-disclosure, exposure and transmission raises both public health and human rights concerns. There is no evidence that criminalisation deters people from engaging in behaviour that involves the risk of HIV infection. Rather, HIV criminalisation has a profoundly negative effect on HIV prevention and the lives of people living with HIV: it increases people’s vulnerability to scapegoating, blame and marginalisation, and it undermines the relationship between health-care workers and their patients who are living with HIV. It also creates barriers to accessing prevention, treatment and care services and exposes already marginalised groups, such as people who inject drugs and sex workers, to further discrimination and persecution. More than 25 countries in sub-Saharan Africa have overly broad and/or vague HIV-specific criminal statutes.
The fear, misconceptions and other concerns relating to the growing HIV epidemic have led to calls for legislators to adopt provisions to criminalise individuals who are perceived to place others at risk of HIV infection or to apply laws of a general nature to this context. Several sets of arguments often are highlighted to justify the calls for criminalising HIV non-disclosure, exposure and transmission.

First, the criminal law is considered to be a structural intervention that can contribute to reducing new HIV infections by deterring those who are considered to engage in behaviour that places others at risk of HIV infection.

Second, some proponents of the criminalisation of HIV non-disclosure, exposure and transmission argue that it is necessary to support and protect the “victims.” This includes women and girls who in many contexts are vulnerable to the risk of HIV infection due to unequal power relations, which particularly manifests in violence against women. This argument is commonly used in sub-Saharan Africa, where HIV prevalence among young women and adolescent girls is very high.

Third, criminalisation of HIV non-disclosure, exposure and transmission is considered to be an appropriate and valid State response to punish the so-called perpetrator for his or her “moral blameworthiness” and the “harm” that is caused to others, particularly in cases where HIV transmission occurs.

Contrarily to arguments from the proponents of HIV criminalisation, public health evidence and human rights principles call for caution. Over the years, human rights advocates and people living with HIV have challenged the criminalisation of HIV non-disclosure, exposure and transmission and the arguments used to justify it. They have shown that contrary to the arguments made by the proponents of criminalisation, such a stance does not support effective responses to HIV because there is no evidence that criminalisation deters people from engaging in behaviour that involves the risk of HIV infection. They have also shown that HIV criminalisation does not protect women; rather, it exposes them to greater risks of prosecution because of the unequal social and economic power between women and men.

Existing laws and prosecutions for HIV non-disclosure, exposure and transmission in sub-Saharan Africa often are vague and overly broad in scope, which is contrary to key criminal law principles of legality, foreseeability, intent, causality, proportionality and proof. Laws and prosecutions that fail to consider those principles are unfair and may have far-reaching negative impacts on the human rights of people living with HIV.

For example, the law in Zimbabwe prohibits anyone who realises there is a possibility that he or she might be HIV-positive from engaging in any activity that may possibly infect another person. Interpreted broadly, anyone living with HIV in Zimbabwe who has engaged in unprotected sexual activity more than once, regardless of whether they know their HIV status, is at risk of contravening the prohibition against deliberate transmission of HIV, whether or not HIV was transmitted. Similarly, exposing someone to HIV in Benin is sufficient for prosecution: the law does not require transmission of HIV to have taken place. In Togo, the law prohibits people with HIV from engaging in unprotected sex regardless of their partner’s HIV status and/or whether consent has been given.

Overly broad criminalisation is likely to infringe upon the rights to liberty, security, health, privacy, access to justice and non-discrimination. HIV criminalisation also involves a serious risk of selective prosecution. Studies conducted in various countries point out that specific vulnerable or marginalised populations are disproportionately impacted by these laws and prosecutions. This includes migrants, sex workers, people of minority ethnicity, prisoners and in some places, gay men and other men who have sex with men.

**Good practices**

UNAIDS and UNDP have called for the repeal of overly broad laws criminalising HIV non-disclosure,
exposure or transmission. Instead, they recommend that criminal law only be applied to cases of intentional transmission, where a person knows his or her HIV-positive status, acts with the intention to transmit HIV and actually transmits it.\textsuperscript{403} Law reform on this issue is happening in a number of countries. Countries such as the Democratic Republic of the Congo, Guinea, Senegal and Togo have reformed their legislation to restrict the use of criminal law to cases of intentional transmission. Mozambique has amended its HIV legislation to remove the criminalisation of HIV transmission (among other changes).\textsuperscript{404} In 2011, Sierra Leone revised its Prevention and Control of HIV and AIDS Act, 2007, to end the criminalisation of mother-to-child transmission of HIV.\textsuperscript{405} Notably, countries such as Comoros, Mauritius and South Africa have rejected HIV criminalisation in legislation relating to HIV.\textsuperscript{406}

40. In Kenya, the High Court in Aids Law Project v. Attorney General and Others found that Section 24 of the HIV and AIDS Prevention and Control Act—which criminalised HIV non-disclosure and exposure—was vague and overbroad and thus violated the rights guaranteed under the Constitution, including the right to privacy.\textsuperscript{407} The EAC HIV and AIDS Prevention and Management Act adopted on 23 April 2012, is an enforceable law signed by all EAC countries. It seeks to protect the rights of people living with HIV and harmonise regional legislation and policy on the prevention and treatment of HIV.\textsuperscript{408} Significantly, the EAC HIV and AIDS Prevention and Management Act does not criminalise HIV non-disclosure, exposure or transmission, unlike some of the laws in the individual Member States (namely Burundi, Kenya and Tanzania). Rather, the EAC Act focuses on the need for a human rights-based approach, the rejection of coercive approaches and the importance of addressing the root causes of vulnerability to HIV.

CIVIL SOCIETY SPACE AND HIV

42. A vibrant, well-funded, resourced and engaged civil society and community movement is critical to the AIDS response. Civil society plays an important role in delivering testing and treatment services, educating communities on HIV and prevention, building the capacities and resilience of key populations, and advocating for law reform and increased government services.

Despite this, non-governmental organisations are facing increasing restrictions to the establishment, operation and implementation of their mandates.\textsuperscript{409} Governments are restricting the ability of non-governmental organisations to register and operate; they also are placing barriers on the ability of non-governmental organisations to communicate internally and externally and to assemble or raise funds. Such barriers and limitations can directly infringe on several human rights, including the rights to freedom of association and assembly that are guaranteed under the African Charter.\textsuperscript{410} They also have a negative impact on the HIV response.

Some of the types of restrictions facing civil society include the following:

- Requirements to register with the government in order to operate or receive funding. This includes regular re-registration.\textsuperscript{411} Where registration is denied, reasons are not always provided. In some cases, the organisations that are denied registration have no access to judicial review.

- Limitations on the activities of civil society organisations, including forcing them to conform to government development plans or restricting them from working on human rights and democracy issues.\textsuperscript{412}

- Direct actions that hamper the ability of organisations to communicate and operate. This includes the harassment of non-governmental organisations, raids on their offices, the denial of visas for international allies and restrictions on (and monitoring of) means of communications.

- Restrictions on the ability to assemble or protest by requiring permits and permission for public assemblies.\textsuperscript{413} These restrictions often involve
broad police powers to prevent or shut down demonstrations.

- Limits on fundraising, including prohibiting specific types of funding, requiring government approval or compliance with onerous procedures for specific types of funding, and routing funding through the government.

45. Organisations working on HIV or with key populations appear to be finding their work especially difficult because authorities restrict the activities of organisations they see as immoral or as supporting illegal activities. They experience challenges with registration, and the reasons for refusal, delay or denial of registration are not always clear. For example, the NGO Coordination Board in Kenya failed to register the group Transgender Education and Advocacy (TEA). The Board had delayed the registration, claiming that as one of the members of TEA was currently applying for a legal change of name and gender, the registration of the organisation should wait until the legal change was made. The organization took the Board to court, where the Board was then ordered to register TEA.

46. In Zimbabwe, the offices of Gay and Lesbians of Zimbabwe’s (GALZ) have been raided several times by police. During these raids, police often confiscate GALZ’s computers and other publications, including personal information. This limits the ability of GALZ to communicate effectively with partners if they are concerned that such communication places their partners at risk of government harassment. Similarly, HIV meetings organised for key populations in Nigeria and Tanzania are often raided by police, with those attending detained or harassed.

47. These restrictions have been shown to impact the HIV response. In particular, they limit the ability of organisations to raise funds, apply for grants, advocate for a stronger legal environment for the HIV response and provide critical HIV-related services. Such restrictions also drive marginalised populations underground, inhibiting their ability to access testing and treatment, and increasing their vulnerability to violence, abuse, infection and, ultimately, death.

48. Good practices

A number of courts have upheld the right to freedom of association and overturned government decisions that limit the ability of organisations to function. In 2015, the High Court of Kenya held that a refusal to register an LGBTI organisation was unconstitutional. The organisation had been refused registration on the basis that the phrase “gay and lesbian” appeared in the name of the organisation, and the penal code criminalises same-sex sexual conduct. The High Court held that the decision violated the constitutional right to freedom of association and that conceptions of morality cannot serve as a justification to limit fundamental rights.


50. The Court of Appeal in Botswana came to a similar decision in 2016 after the Government had refused to register an LGBTI organisation on the basis that its objectives were unlawful and that homosexual persons were not “persons,” so they were not protected by fundamental rights. The Court held that refusal to register the organisation was a breach of the right to freedom of association.

51. The African Commission established the Study Group on Freedom of Association in 2009 to undertake a study on freedom of association and ensure that States take the study into account in their policies and laws. The study group also issued guidelines on freedom of association and assembly in Africa in 2017. In May 2017, the...
African Commission adopted Resolution 376, which expresses concern about new challenges, in particular the increased threats against defenders working on issues including the right to health, the fight against HIV/AIDS, reproductive health, sexual orientation and gender, extractive industries, promotion of democracy and peace, and women rights defenders irrespective of their area of activity.\(^{422}\)

Resolution 376 calls on African States to take measures to address the shrinking civil society space, including efforts to adopt specific legislative measures to recognise the status of human rights defenders, and protect their rights and the rights of their colleagues and family members, including women human rights defenders and those working on issues such as extractive industries, health and HIV/AIDS, reproductive health, sexual orientation and gender identity, promotion of peace and democracy, fight against terrorism and respect for human rights.\(^{423}\)

### CONFLICT AND HIV

53. Armed conflict and post-conflict periods raise distinct issues related to HIV prevention and treatment. During armed conflict, HIV prevention and treatment services tend to be significantly reduced because of the instability wrought by war. For example, areas of conflict in Côte d’Ivoire reported at least a 75% reduction in health-care staff.\(^{424}\) Without adequate health-care staff, provision of HIV prevention and treatment services is greatly reduced. Armed conflict can also increase the need for flexible HIV prevention and treatment services.

54. People displaced by conflict are at increased risk of not accessing prevention and treatment services.
Knowing where to access such services and having a regular supply of antiretroviral medicines can be difficult in such circumstances. This can result in people living with HIV developing drug-resistant HIV. Refugees, migrants and other groups that are vulnerable for socio-economic reasons are at heightened risk of sexual violence.

**Good practices**

55. A few countries in Africa have attempted to address HIV during and after armed conflict. In response to the high levels of sexual violence in the eastern regions of the Democratic Republic of the Congo, mobile courts were established specifically to try perpetrators of sexual violence. From 2009 to 2012, a mobile court in the province of South Kivu heard 382 cases; this resulted in 204 convictions for rape, 82 convictions for other offenses and 67 acquittals. Such courts permit victims to attain some level of redress and hold perpetrators accountable for sexual violence. Other countries—including Côte d’Ivoire, Liberia, Niger, Sierra Leone and Sudan—provide dedicated staff who are empowered to address HIV during the disarmament, demobilisation and reintegration process. This approach has been successful in addressing HIV during the transition to peace.

**THE FUNDING CRISIS AND ITS IMPACT ON HUMAN RIGHTS AND CIVIL SOCIETY**

56. If Africa is to have any chance of reducing or ending the AIDS epidemic, greater resources are needed now. Many low-income and middle-income countries remain heavily dependent upon international donors to finance their HIV response. As per the latest data available in 2017, 33 low-income and middle-income countries had 75% or more of their HIV financing needs provided by external sources. Twenty-two of those countries were in sub-Saharan Africa. Despite this, civil society organizations surveyed in Africa and around the world feel that international HIV funding from governments and international donors is decreasing.

57. The flattening of resource availability at the country level and the decrease of international HIV funding in selected countries affects many or all areas of HIV efforts, including human rights. In 2017, very few countries reported disaggregated data on stand-alone in-country expenditures on human rights. Among those that did, only US$ 1.46 million was spent on specific stand-alone human rights activities in 10 low-income and middle-income countries. As funding for HIV decreases, human rights-related HIV funding, which is already underfunded, is expected to decrease further. A 2015 UNAIDS study found that 59% of civil society organizations implementing human rights programmes reported decreases in funding.

58. The outlook for funding for organisations working on human rights programming in Africa is mixed. In middle-income African countries, civil society organizations report significant decreases in funding for HIV and human rights work. Civil society organizations in western and central Africa, however, report that they expect an increase in funding for human rights and HIV.

59. The stagnation or decrease in HIV funding is impacting civil society organizations, the human rights response and the ability of African governments to address HIV effectively. The decrease in HIV funding has already led organisations to close in southern Africa, leaving a gap in services. Other non-governmental organizations have attempted to find alternative solutions, including integrating HIV into broader health and other human rights issues and shifting geographical and/or methodological focus.

There are some benefits to such an approach:

- donors will be able to integrate HIV with other human rights issues, including sexual and reproductive health and rights;
- there will be better integration between grassroots mobilisation and government-funded primary care services; and
- lessons from the HIV movement can be learned and used for other issues.
The risks to such integration are that HIV groups lose their sole focus on HIV, thereby limiting their impact on the HIV epidemic. Similarly, organisations take on issues and advocacy work for which they lack the necessary expertise, and the integration of HIV organisations into broader existing movements of marginalised groups may be difficult and result in a shift in priorities.

**WOMEN AND GIRLS**

In 2016, young women accounted for 67% of new HIV infections among young people aged 15–24 years in sub-Saharan African, and women accounted for 56% of new HIV infections among adults. Overall, three in four new HIV infections among those aged 15 to 19 years in sub-Saharan Africa occurred in girls.

The HIV Committee has noted the disturbing feminisation of HIV in Africa, reporting that biological factors that make women and girls more vulnerable to HIV infection are exacerbated by socio-cultural and structural factors, such as poverty, harmful cultural practices, limited decision-making power, lack of control over financial resources, restricted mobility, violence, limited educational opportunities, and lack of quality sexual and reproductive health services.

Across the continent, women continue to be more disadvantaged than men in their daily lives. They lack access to the same levels of education, economic power and political leadership as men, and they report discrimination in the workplace, in courts and in their communities.

Women are not free to make decisions on issues that affect their lives, including in areas such as sexual and reproductive health decisions and access to medical care. Women living with HIV often experience high levels of human rights violations in health-care settings, including coercion, lack of privacy, disrespect, humiliation and denial of services.

Laws, policies and practices that perpetuate gender inequality, harmful gender norms and gender-based violence undermine women and girls, keeping them in poverty and limiting their autonomy and decision-making power, including their ability to access health-care services. All these factors contribute to making women more vulnerable to HIV. Key issues relating to gender inequality and HIV are outlined below.

**Gender inequality in family and personal law**

In personal and family law, gender inequality limits women’s rights to autonomy, equality in relationships, security of property ownership and financial control. Inequitable customary and religious laws often deny women the right to make decisions relating to their lives, the lives of their children, their property and their health care. They also create barriers to accessing marital property. Inequity in family and personal laws can mean women are denied the right to inherit property from their parents, their husband or their clan.

Gender inequality within a relationship increases a woman’s risk of acquiring HIV because dependency on partners and relatives leaves them with few options for negotiating safe sex, ending a relationship or accessing health care (such as HIV testing and treatment).

**Good practices**

A number of African courts have upheld the equality of women with respect to family and personal law. In 2013, the Court of Appeal of Botswana held that customary laws that discriminated against women solely on the basis of their gender are unlawful and unconstitutional. The case challenged a Ngwaketse customary law that arguably denied women the ability to inherit the family home. In finding that women cannot be wholly exempted from inheriting the family home, the Court of Appeal noted that although the Constitution provides an exception for customary law, the exemption only applies if it is in the public interest and does not prejudice the rights and freedoms of others. In Ghana, the High
Court in Akrofi v. Akrofi struck down the rule of male primogeniture, noting that male-only inheritance has “out-lived its usefulness and is at present not in conformity with public policy.”

Alternative dispute mechanisms have also been used to ensure that women have equal access to inheritance. In Kenya, community leaders—with the support of the HIV law and human rights organisation, KELIN—are using traditional dispute resolution mechanisms to support women dispossessed of family property when their husbands die. KELIN has supported elders to work with families to resolve disputes and protect the property rights of widows to return to their original homes and villages or to resettle elsewhere. This model takes the view that customary law changes with society, and that it can change to encompass gender equality. Thus far, the model has been successful in ensuring that widows are not dispossessed of their property.

Violence against women

Africa has the highest reported rates of both physical and sexual violence against women of any region. In more than half of African countries, over 40% of women experience some form of physical violence; that number increases to 64% in some countries.

Women from marginalised populations, such as sex workers and women with disabilities, are at particular risk of violence. Lesbian, bisexual and transgender women are particular targets of sexual violence. Perpetrators may be friends, family, acquaintances or occasionally complete strangers who are keen to establish the victim’s “proper femininity.”

While general criminal laws should theoretically protect women from violence, they are often insufficient in practice. Laws specifically targeting gender-based violence are recommended, but many countries do not have laws protecting women from specific forms of gender-based violence. In 2016, some 14 countries in sub-Saharan Africa reported having legislation that specifically criminalised marital rape, while 29 reported having laws on domestic violence. Where protective laws do exist, they often are inadequately implemented and enforced, again because of factors such as gender stereotypes and inequalities, or barriers that exist within the legislation itself. For example, Zimbabwe criminalises marital rape, but the law requires the consent of the Attorney General for prosecution, which results in few prosecutions.

Good practices

The African Charter and the Maputo Protocol clearly prohibit violence against women. Resolution 275 explicitly recognises violence based on sexual orientation and gender identity as a violation of the right to be free from discrimination and the right to equal protection under the law.

A number of countries have enacted legislation addressing gender-based violence. Namibia has passed the Combating of Rape Act, No. 8 of 2000, which states marriage cannot constitute a defence to rape. Zimbabwe’s Domestic Violence Act of 2006 calls for the creation of an Anti-Domestic Violence Council and counsellors to support the implementation of this Act.

Countries such as Mozambique and Tanzania are also starting to include programmes to

446. WHO et al., Global and Regional Estimates.
453. Namibia Combating of Rape Act, No. 8 of 2000, Art. 2(3).
address gender-based violence in their NSPs on HIV and AIDS.454

Sexual and reproductive health and rights of women living with HIV

76. Women with HIV consistently experience discrimination and coercive practices in relation to their sexual and reproductive health rights. Discriminatory treatment by health-service providers can deprive them of their right to a family, breach their rights to privacy, deny them potentially life-saving treatments or procedures and, in some cases, amount to torture.

Discriminatory and coercive practices include being advised not to have children, being forced to use contraception in order to obtain antiretroviral therapy and being coerced into terminating pregnancy.455 Women with HIV from Kenya, Malawi, Namibia, South Africa, Swaziland, Tanzania, Uganda and Zambia have reported being subjected to forced or coerced sterilisation.456

As outlined above, pregnant women are often subject to mandatory testing, or their HIV status may be revealed to third parties (such as family and abusive partners) without their consent.

77. Very few countries provide abortion services on demand, and when they do, access is still limited.457 Women living with HIV may need abortion services for a variety of reasons. HIV-positive women experience higher rates of sexual assault, or they may be concerned about the health effects of seeing a pregnancy to term. Use of unsafe abortion services also may be more dangerous for women living with HIV, as they are more susceptible to infection and complications.458

Good practices

79. Women have successfully challenged violations of their rights in a number of national courts. The Supreme Court of Namibia found in Namibia v LM and Others that the sterilisation of three women living with HIV without their informed consent was a violation of their rights to physical integrity and to found a family, as was their right under the Constitution.459 However, it dismissed their claim of discrimination on the basis of HIV status. The Namibian Government has thus far failed to address the systemic nature of the problem, only addressing the case of the three women who had raised the issue in court.460 Similar cases challenging the coerced sterilisation of women living with HIV have been filed in Kenya.461

80. A number of countries, including Sierra Leone, are moving towards the legalisation of abortion.462 The importance of accessing abortion to the well-being of women has also resulted in the African Commission launching a campaign to decriminalise abortion in Africa.463

The campaign seeks to bring attention to the impact of unsafe abortions on the lives and health of women in Africa, and to decriminalise abortion in Africa to ensure country compliance with African regional treaty obligations.464

Harmful cultural practices and beliefs

81. Harmful cultural practices, such as child marriage and FGM, can significantly increase vulnerability to HIV among women and girls. Both FGM and child marriage are explicitly prohibited under African human rights instruments. The Maputo Protocol explicitly requires countries to “prohibit, through legislative measures backed by sanctions, all forms of female genital mutilation,” stating that the minimum age of marriage for women shall be 18 years. FGM can place girls at risk of HIV as it exposes them to blood and possibly to unsterilised equipment. There also is a higher prevalence of herpes among women who have undergone FGM, which again increases vulnerability to HIV.465

Communities in almost 30 countries in Africa continue to practice FGM, putting an estimated three million girls at risk of FGM annually.466

639 - Namibia v LM & Others (SA 49/2012) [2016].
642 - Cassie Werber, “Sierra Leone’s President is Delaying a Crucial Decision that Would Save Thousands of Women’s Lives," Quartz, 2 February 2016.
82. Child marriage has long-term, life-threatening sexual and reproductive health consequences for children (especially girls) that lead to maternal morbidity and mortality when pregnancy occurs at a young age.⁴⁶⁷ Girls who are married young have less access to contraceptive and other family planning services, and they thus are unable to control the timing of their pregnancies.⁴⁶⁸ They likely also are less able to negotiate safe sex. A study in Kenya and Zambia found that married girls aged 15–19 years were 75% more likely to have HIV than sexually active unmarried girls.⁴⁶⁹ Sub-Saharan Africa has the highest prevalence of child marriage in the world: in at least five countries in the SADC, almost 40% of children are married before they are 18 years of age.⁴⁷⁰

83. Child marriage and FGM are still legal in a number of countries, and even where they are illegal, many women report being unwilling to oppose them for religious or cultural reasons or because they feel forced to abide by them for fear of recrimination.⁴⁷¹ While a number of countries have begun to outlaw both child marriage and FGM,⁴⁷² exceptions and loopholes continue to exist in relation to marriage.⁴⁷³ But changing laws does not necessarily result in changes to customary and religious practices, particularly where custom and tradition tend to prevail over law.⁴⁷⁴

84. At both international and regional levels, there has been a strong push towards ending harmful cultural practices. In 2011, the African Union recognised that FGM “is a gross violation of the fundamental human rights of women and girls, with serious repercussions on the lives of millions of people worldwide, especially women and girls in Africa.”⁴⁷⁵ In Africa, over 20 countries have enacted laws prohibiting FGM.⁴⁷⁶ Since criminalising FGM in 2011, Kenya has seen 71 cases of FGM taken to court, although as of 2014, only 16 had been convicted.⁴⁷⁷

85. In Zimbabwe, the Constitutional Court recently delivered a landmark ruling in the case of Mudzuru and Another v. The Minister of Justice outlawing child marriage and declaring provisions in civil and customary laws allowing child marriage to be unconstitutional. The Constitution specifically puts the age of marriage at 18 years.⁴⁷⁸

86. Recently, the African Commission—in conjunction with ACERWC—adopted a joint general comment addressing child marriage as a gross human rights violation in Africa.⁴⁷⁹ As mentioned above, a number of countries also have outlawed child marriage. The SADC passed a Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage that addresses the link between HIV and child marriage.⁴⁸⁰

**CHILDREN AND ADOLESCENTS**

87. Children and adolescents are impacted in various ways by the HIV epidemic. In 2016, 1.6% [1.4–1.8%] of young people aged 15 to 24 years in sub-Saharan Africa were living with HIV, with up to 10.7% [9.8–11.4%] of young people in Swaziland affected. An estimated 1.9 million [1.5–2.3 million] children under the age of 15 years were living with HIV, and only 42% [29–53%] of them had access to antiretroviral therapy in 2016.⁴⁸¹ Children and adolescents face various human rights violations in the context of HIV, creating barriers to their ability to protect themselves from HIV transmission or to access the necessary treatment, care and support once they have been infected with or affected by HIV and AIDS.⁴⁸²

88. In 2016, approximately 13.7 million [11.4–16 million] children in sub-Saharan Africa had lost one or both parents to AIDS-related illnesses.⁴⁸³ Orphaned children risk being in youth-headed households, in institutions or on the streets, where they are increasingly vulnerable to abuse, exploitation and to HIV. Other children, while...
not orphaned, may live with chronically ill parents or adults and be required to work or put their education on hold in order to take on household and caregiving responsibilities; this is particularly the case for female children. Similarly, their households may experience greater poverty, and they may be subject to stigma and discrimination because of their association with a person living with HIV.

For many children, access to HIV treatment and care is limited by medical, social, systemic and economic barriers, including the failure to implement appropriate systems and strategies for early diagnosis and treatment of children. Barriers begin with a lack of access to early testing of HIV-exposed infants, which is critical for the survival of HIV-positive children. Despite this, only 51% of children eligible for treatment actually start antiretroviral therapy. Children also suffer from a lack of appropriate paediatric antiretroviral medicines, with the development of paediatric formulations of optimal new drugs lagging several years behind those for adults. Other barriers to initiating and maintaining children on treatment include the following:

- difficulty identifying and testing children who were not tested as infants;
- lack of trained personnel in clinics or at the community level to identify HIV-exposed children, link them to care and provide treatment adherence support; and
- the lack of youth-friendly testing and counselling services.

Stigma and fear are barriers for both guardians bringing children to clinics for HIV testing and treatment and for children adhering to treatment. Further, treatment for children is difficult and their guardians frequently do not have the necessary

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training and support to help care for children living with HIV.\textsuperscript{493}

91. Certain HIV-related laws and policies limit the ability of adolescents and young people to make informed decisions about health and relationships independent of their parents and guardians.\textsuperscript{494} There are often inconsistencies between the age of consent for marriage, sex and access to HIV testing, treatment and sexual health services. Few African countries have laws that set an age at which children can independently consent to medical treatment, HIV testing or accessing contraceptives.\textsuperscript{495} There also are few laws that recognise the rights of young people to sexuality education.\textsuperscript{496} As a result, children are unable to safely access information, prevention, testing and treatment for HIV, even when they are willing to do so. Further, nine out of 17 reporting countries in eastern and southern Africa that responded to the National Commitments and Policy Instrument reported the existence of age restrictions for accessing condoms.\textsuperscript{497} In western and central Africa, seven out of 16 reporting countries reported the existence of these restrictions.\textsuperscript{498}

92. For orphaned children, their recognition in law through birth registration and the legal recognition of the parental rights and responsibilities of their de facto caregivers may be critical to their access to health care, education and social support services. Yet in many countries, children remain unregistered at birth.\textsuperscript{499} Additionally, the rights of orphaned children to family property may be violated in instances where inheritance laws fail to protect their rights in favour of older male relatives.

93. The African Children’s Charter explicitly recognises that children separated from their parents are entitled to special protection and assistance. It further recognises the following:

- a child’s right to be registered at birth, to receive an education, and to be protected from economic exploitation, child abuse and torture; and
- the State’s responsibility to ensure the survival, protection and development of the child, and to assist persons responsible for children, including through the provision of material assistance such as nutrition, health, education, clothing and housing.\textsuperscript{500}

Good practices

94. A number of African countries—including Botswana, Kenya, Lesotho, Madagascar, Malawi, Mozambique, South Africa and Uganda—have developed new children’s laws based on the principles in the Convention on the Rights of the Child. These new laws are generally more responsive to the social context of children’s lives. A number of the HIV laws developed in 26 African countries contain protection for the rights of children affected by HIV and AIDS.\textsuperscript{501}

95. Other sexual and reproductive health services such as HIV testing and accessing contraceptives are important for adolescents. For example, Lesotho’s Children’s Protection and Welfare Act, 2011, provides in Section 240(2) that a child who is at least 12 years of age may independently consent to medical treatment if they are of “sufficient maturity and have the mental capacity to understand the benefits, risks, social and other implications of the treatment or operation.” Likewise, Senegal’s Loi n° 2010-03 Relative au VIH/SIDA provides in Article 12 that a minor over the age of 15 years may consent independently to HIV testing.

96. In December 2013, ministers of education and health from 20 countries in eastern and southern Africa adopted the Ministerial Commitment on Comprehensive Sexuality Education and Sexual and Reproductive Health Services for Adolescents and Young People in Eastern and Southern African, which calls for “bold actions to ensure quality comprehensive sexuality education and youth-friendly sexual and reproductive health services in the ESA region.”\textsuperscript{502} These actions include the “urgent review—and where necessary amend[ment]—[of] existing laws and policies on age of consent, child protection . . .

\textsuperscript{493} UNAIDS, Children and HIV: Fact Sheet.
\textsuperscript{495} Global Commission, HIV and the Law.
\textsuperscript{497} UNAIDS 2017 National Commitments and Policy Instrument.
\textsuperscript{498} UNICEF, Strengthening Birth Registration in Africa: Opportunities and Partnerships.
Finally, countries have introduced child-specific forms of social protection to support orphans and vulnerable children. For example, some countries have legislated broad socio-economic rights within children’s statutes, such as Section 11(1) of the Lesotho Children’s Protection and Welfare Act, 2011, which provides that a “child has a right to access education, preventive health services, adequate diet, clothing, shelter, medical attention, social services or any other service required for the child’s development.”

98. There is limited evidence available on persons with disabilities and HIV. Their marginalised and stigmatised status in society, limited access to health-care services, and experiences of high rates of violence, sexual abuse and poverty render persons with disabilities more vulnerable to HIV and less likely to be able to access services when they are HIV-positive. The limited research undertaken suggests that people with disabilities have a similar, if not higher, risk of contracting HIV than the general population. For instance, a 2012 study in South Africa found an HIV prevalence rate of 16.7% among persons with disabilities, approximately the same as the general population.

99. People living with HIV who have a disability face significant barriers to accessing health-care services. These barriers include the attitudes of health-care providers towards persons with disabilities (particularly in relation to sexual and reproductive health care), the limited accessibility of services and educational materials for persons with disabilities (both physical accessibility and general availability), and the limited provision of services that are tailored to meet their specific needs.

100. People living with HIV are at risk of becoming either permanently or episodically disabled as a result of HIV-related illness. Yet despite the multi-layered needs of persons with disabilities, national responses to HIV fail to recognise, reflect and integrate their specific needs, thus increasing the impact of HIV on their lives.

**Good practices**

101. The African Commission has adopted a draft protocol on the rights of persons with disabilities. The protocol does not specifically mention HIV, but it does call on States to ensure that all persons with disabilities have equal access to health services, including those for sexual and reproductive health. It also calls on States to prohibit discrimination by health-service providers.

102. A number of countries in Africa have committed to the Convention on the Rights of Persons with Disabilities and have begun to develop protective, anti-discrimination laws to protect the rights of persons with disabilities. More than half of the countries in East and southern Africa have included disability-related provisions in their national constitutions, and the EAC includes strong protection for the rights of persons with disabilities in the HIV and AIDS Prevention and Management Law.

**INDIGENOUS PERSONS**

103. The prevalence of HIV and specific risk factors among indigenous populations in Africa is significantly underexplored and data are limited. Indigenous populations in Africa experience particular human rights violations that increase their vulnerability to HIV infection, including political and economic marginalisation, de facto discrimination of non-agricultural groups, loss of land and community, lack of access to health care (often due to geographic isolation) and poverty.

104. The health of indigenous persons, including in relation to HIV, is closely connected to other fundamental rights, such as loss of ancestral lands, cultural identity and traditional ways of life. To fully address the HIV needs of indigenous
populations, more evidence needs to be collected and used to develop policies and programmes that focus on the health and rights of indigenous populations within countries.

**Good practices**

105. Most African countries have affirmatively adopted the UN Declaration on the Rights of Indigenous Peoples. The African Commission has established the Working Group on Indigenous Populations/Communities in Africa, which has the potential to conduct research on issues related to HIV in indigenous communities.

106. Only a few countries have adopted laws and policies seeking to address the rights of indigenous people. In 2006, the Republic of the Congo adopted a law that provides protection for the rights of indigenous peoples. The Central African Republic was the first country in Africa to ratify the International Labour Organisation’s Indigenous and Tribal Peoples Convention, 1989 (No. 169), which outlines the rights of indigenous peoples. These are important legislative steps that should be accompanied by effective implementation, including measures to prevent and respond to health and HIV challenges facing indigenous populations.

**MIGRANTS, REFUGEES AND INTERNALLY DISPLACED PERSONS**

107. At the end of 2015, 65.3 million individuals were forcibly displaced worldwide, including 21.3 million refugees, 40.8 million internally displaced persons and 3.2 million asylum seekers. In Africa, there were 4.4 million refugees in 2015. It is estimated that there are some 1 billion people who live outside of their original places of birth or residence, including both international and internal migrants. Almost half of international migrants are women and girls, and in some countries, women now outnumber men among migrants.

108. Migration and displacement can place people on the move and those they leave behind in heightened situations of vulnerability to HIV. Migrants, refugees and displaced persons may acquire HIV in their country of destination or while in transit; in fact, migration has been identified in certain regions, including southern Africa, as an independent risk factor for HIV. Whatever their diverse reasons for leaving, migrants, refugees and displaced persons often find themselves separated from their spouses, families and familiar social and cultural norms, and this situation increases their vulnerability. For example, they may face numerous barriers, including language, substandard living conditions, exploitative working conditions and lack of social protection (including health insurance). This in turn may lead them to engage in risky behavior, such as unsafe sex or drug use, or it may lead to experiences of sexual violence and other abuses, thus increasing risk of HIV. This vulnerability also affects those who do not migrate: for instance, women who stay behind when their spouses migrate may face ongoing economic challenges and food insecurity precipitated by the husband’s or partner’s migration, making them also vulnerable to increased risk of HIV.

109. The increased HIV risk and vulnerability is exacerbated by inadequate access to HIV prevention, treatment and care services. Migrants, refugees and displaced persons rarely have the same entitlements as citizens or locals to insurance schemes that make health care affordable; they also are more vulnerable to HIV stigma or to discrimination when they seek HIV-related information or support. In particular, undocumented migrants face complex obstacles because they often lack complete access to health-care services or social protection, leaving them highly vulnerable to HIV.

110. Among the population of migrants, refugees or internally displaced persons, women and girls are particularly vulnerable to sexual exploitation, gender-based violence and HIV. Sexual harassment, abuse and rape are experiences commonly reported by female migrants, refugees and internally displaced persons. In Kwa Zulu-
Natal, South Africa, where migration is common, HIV prevalence among young migrant women aged 25–29 years was as high as 63%.\textsuperscript{519}

\textbf{111.} Migrants, refugees and displaced persons often face conditions in their host country that make them vulnerable to HIV. Further violating their rights through compulsory testing and treating them as criminals with detention and deportation can be traumatic. This can be compounded by the stigma and financial consequences of being deported due to an HIV-positive status.

\textit{Good practices}

\textbf{112.} Some countries, such as Ethiopia and Kenya, have recognised the increased vulnerability to HIV of migrants and refugees, and they have used national AIDS strategies to address this. This includes programmes aimed at reaching mobile populations so that they receive effective HIV prevention, treatment, care and support services.\textsuperscript{200}

\textbf{113.} With the exception of Egypt and Mauritius, no country in Africa applies restrictions to the entry, stay and residence of persons living with HIV. In 2010, Namibia lifted its HIV-related travel restrictions, and several African countries—including Burkina Faso,\textsuperscript{211} Congo,\textsuperscript{212} Kenya\textsuperscript{213} and Uganda—have explicitly stated in their national legislation that an HIV-positive status should not be a barrier to the entry, stay or residence of persons living with HIV. These provisions are in line with human rights standards and public health recommendations.

\section*{KEY POPULATIONS IN NEED OF SPECIFIC PROTECTION AND ACCESS TO HIV AND HEALTH SERVICES}

\textbf{114.} The HIV epidemic does not affect all persons equally. Key populations—already marginalised through other forms of stigma, inequality and discrimination—are disproportionately affected. UNAIDS and WHO have identified four main populations to be key populations: gay men and other men who have sex with men, sex workers, transgender people and people who inject drugs.\textsuperscript{523} This report also covers prisoners as a key population as suggested by UNAIDS and WHO in their definition of key populations.\textsuperscript{526}

\textbf{115.} Like all populations, key populations are entitled to full protection of their rights, including the rights to equality, non-discrimination, the highest attainable standard of health care, dignity and freedom from cruel, inhuman and degrading treatment or punishment.\textsuperscript{537} These populations, however, often suffer from punitive laws or stigmatising policies that can increase their likelihood of exposure to HIV. That same stigma, discrimination and violence, coupled with punitive laws, also serves to create barriers to accessing services.\textsuperscript{528}

\textbf{116.} At most, key populations across Africa have received limited protective rights-based responses at the continental, regional and national levels. National HIV laws tend to focus narrowly on the rights of people living with HIV, and national HIV responses fail to include the participation of key populations or to prioritise their needs in HIV-related law and human rights programmes.\textsuperscript{529}

\section*{Gay men and other men who have sex with men}

\textbf{117.} Globally, gay men and other men who have sex with men are 24 times more likely to acquire HIV than men in the general population.\textsuperscript{530} In 2012, some of the highest regional median HIV prevalence rates among men who have sex with men were reported in western and central Africa (14%) and eastern and southern Africa (17%). New infections also appear to be rising in several regions.\textsuperscript{531}

\textbf{118.} Criminalisation, violence, discrimination and other human rights violations based on sexual orientation are contrary to international human rights law. They also have significant negative consequences on the HIV epidemic and public health, contributing to an environment of fear that drives LGBTI people away from HIV services. The possession of HIV and health commodities associated with or labelled for use by gay men and other men who have sex with men (such as
lubricants) has been used as evidence in criminal cases.119 Fear of negative consequences can prevent uptake of health services and hinder gay men and other men who have sex with men from disclosing their sexual behaviour to health-care providers. In Botswana, Malawi and Namibia, more than 80% of gay men and other men who have sex with men have not disclosed their same-sex sexual practices to a health practitioner.120 Poor access to health-care services among gay men and other men who have sex with men translates into “underutilization of services, such as HIV voluntary counselling and testing, and ultimately to low self-awareness of HIV sero-status” among this key population.121

119. In Malawi, only 17% of men who have sex with men reported having been exposed to specific HIV prevention messaging for men who have sex with men, and only 35% had been tested for HIV.133 In Zambia, 73% of men who have sex with men had misinformation about HIV; thinking that anal sex was safer than vaginal sex.134 Lack of HIV prevention tools and messaging for gay men and other men who have sex with men compromises their ability to know and reduce the risk of HIV infection for themselves and their sexual partners. Similarly, treatment and care services to address the specific health needs of LGBTI people, including anorectal health services for gay men and other men who have sex with men, are often limited or not available in many health facilities.135

120. Rights violations against gay men and other men who have sex with men are increasingly reported on the continent. They include rape, murder, harassment, violence, extortion and threats against both individuals and the organisations that support them.136 Over 30 African States criminalise same-sex sexual relationships in some way, often with penalties for those convicted that range from imprisonment (for up to 14 years or life) to the death penalty.137

121. In Senegal, the 2008 arrest for “acts against nature” of nine HIV prevention and outreach personnel working with gay men and other men who have sex with men negatively impacted HIV prevention efforts. According to a study conducted in Senegal following these arrests, all participants reported pervasive fear and hiding among men who have sex with men because of the arrests and subsequent publicity. Many service providers suspended HIV prevention work with gay men and other men who have sex with men out of fear for their own safety, while those who continued to provide services noticed a sharp decline in participation.140

122. In recent years, a number of countries have introduced new laws against these populations, in some cases extending criminalisation to individuals and organisations perceived to support same-sex sexual relationships. This is believed to have led to increased harassment and prosecution on the basis of sexual orientation and gender identity, and to increased difficulties in reaching this population for health workers, in part due to limited funding and national spending intended to meet their specific needs.141 In Nigeria, for example, research has shown the negative impact that the passage of new legislation criminalising same-sex sexual conduct and related activities has had on access to HIV treatment and care, including higher numbers of gay men and other men who have sex with men reporting fear of seeking health-care services.142 As part of a crackdown on same-sex sexual relations in 2016, Tanzania banned the import, sale and distribution of sexual lubricant, a commodity considered by health experts to be critical for preventing HIV during sex.143

Good practices

123. A number of countries, including Mozambique and South Africa, have removed laws criminalising same-sex sexual conduct. South Africa’s law was struck down by the Constitutional Court, which declared it a violation of equality rights and to the rights to privacy, dignity and equal protection.144

124. In 2014, the Constitutional Court of Uganda overturned the Uganda Anti-Homosexuality

332. Global Commission, HIV and the Law, 47
333. Fay et al., “Stigma, Health Care Access, and HIV Knowledge.”
334. Fay et al., “Stigma, Health Care Access, and HIV Knowledge.”
335. Fay et al., “Stigma, Health Care Access, and HIV Knowledge.”
336. Ross D. Cranston, "AIDS and HIV in Africa: Where are we going?"
Act, 2014. The claimants argued that proper procedures for its enactment had not been followed and that the Act breached the Constitutional rights of equality, non-discrimination and dignity. The Court found for the applicants on the basis of procedural issues and declined to explore the human rights arguments. The National Human Rights Commission of Uganda also had publically criticised the Anti-Homosexuality Act as unconstitutional, including providing comments about its effect on the right to health for all persons in the context of HIV.\footnote{546}

125. In 2013, Botswana’s Director of Civil and National Registration refused to register the organisation Lesbians, Gays and Bisexuals of Botswana (LEGABIBO). Fourteen activists from LEGABIBO filed a complaint in the High Court in March 2014 alleging the refusal was unconstitutional. In November 2014, the court held that the failure to register LEGABIBO was unlawful and unconstitutional, violating the applicant’s right to freedom of expression, association and assembly.\footnote{547}

126. Current promising practices tend towards harm reduction rather than law reform, including efforts to provide specialised prevention and treatment programmes for gay men and other men who have sex with men, despite laws that criminalise same-sex sexual relationships within countries. Promising results have been seen with services that find ways to reach less visible populations (e.g. through digital mapping of populations and the provision of home-based testing and counselling services).\footnote{548}

Transgender people

127. Transgender women are one of the most vulnerable groups in relation to HIV, being 49 times more likely to be living with HIV than other adults of reproductive age.\footnote{549} In Africa, there is limited information on the impact of HIV on transgender women and men; for the most part, they are an invisible population in responses to the HIV epidemic.

128. Transgender persons are marginalised, abused and often rejected by their families and society from an early age. Discrimination, gender-based violence and abuse—as well as marginalisation and social exclusion—can damage their health and increase vulnerability to HIV. In the face of such treatment, transgender persons are less likely to seek out health care and testing, even though they are vulnerable to HIV through sexual assault and often are pushed into high-risk jobs, such as sex work.\footnote{550}

129. In 2011, two transgender youths in Cameroon who identify as women were arrested, harassed and tortured in prison before being tried and convicted of homosexuality, primarily based on evidence that they were wearing women’s clothing.\footnote{551} In 2013, the Trans Murder Monitoring Project reported four murders and numerous instances of physical violence against transgender persons in South Africa.\footnote{552}

130. Research conducted in Cameroon, Egypt, Kenya, Tunisia, Uganda and Zambia shows that law enforcement officials work in tandem with medical personnel to subject transgender men and women arrested on homosexuality-related charges to forced anal examinations with the purported objective of finding so-called proof of homosexual conduct.\footnote{553} This practice turns medical personnel into an arm of the State, implicating them in tests that have been described as a form of torture or cruel, inhuman and degrading treatment. This consequently widens the gap in trust between sexual and gender minorities and health-care providers.\footnote{554} In its General Comment No. 4 on The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, the African Commission explicitly lists forced anal and other testing as forms of sexual and gender-based violence that may amount to torture and ill-treatment under the African Charter.\footnote{555}

Good practices

131. Resolution 275 of the African Commission specifically condemns the increasing violence...
and human rights violations of persons on the basis of their gender identity, including systemic attacks of State and non-State actors. It calls on States to end all violence and abuse, including by enacting and applying appropriate laws that punish all forms of violence and ensure proper investigation and prosecution.

A few countries are beginning to recognise the need to include transgender populations in their national HIV responses. South Africa allows transgender persons to legally change their sexual identity.536 For the most part, however, transgender persons remain an ignored population: countries have a limited understanding of the HIV incidence and prevalence amongst transgender persons and of the key HIV-related human rights issues that act as barriers to their access to health-care services.

### Sex workers

Globally, female sex workers are estimated to be 10 times more likely to acquire HIV than women in the general population.537 In sub-Saharan Africa, HIV prevalence among female sex workers is around 27%.538 Prevalence of HIV among sex workers in East and southern Africa ranges from 10% in Eritrea to 72% in Lesotho. Across 12 western and central African countries, the pooled prevalence of HIV among sex workers is 14% [4–24%].539

Female and male sex workers in Africa face exceptionally high levels of stigma, discrimination, violence, extortion, sexual abuse and rape from clients, intimate partners and law enforcement officials. This places them at increased risk of HIV.540 In Ethiopia and Kenya, a survey of female sex workers found that roughly 60% and 79%, respectively, reported violence relating to sex work; another study in Burkina Faso and Togo found that 23.9% and 57.9%, respectively, experienced violence and reported recent condomless vaginal intercourse.541 Sex workers also report stigmatising attitudes and high levels of discrimination when accessing health-care services, which affects their willingness to access health care.542

### Good practices

In the case of S v Mwanza Police, Mwanza District Hospital, the High Court of Malawi held that mandatory or forced testing of sex workers for HIV is a violation of their rights to privacy, equality, dignity and freedom from cruel, inhuman and degrading treatment.543

The second Pan-African Conference on Prison and Penal Reform in Africa—held in 2002 in Ouagadougou, Burkina Faso, under the auspices of the African Commission—adopted the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa, which explicitly calls for the decriminalisation of sex work as a strategy for reducing prison populations by preventing people from coming into the prison system.544

A number of countries have introduced programmes to increase access to justice among sex workers and to support their access to HIV prevention, treatment and care services. In Côte d’Ivoire, the Clinique Confiance, which was established in 1992, provides HIV and STI prevention and treatment services for female and male sex workers. The tailored services for
sex workers provided by Clinique Confiance has increased uptake of HIV and STI prevention and treatment services among sex workers in the areas covered. In Kenya, the training of local sex workers as paralegals helped to educate sex workers about their rights. In Uganda, legal support services for sex workers—including a hotline, legal services, documentation of violations and training on human rights for sex workers—is working towards reducing violations against that key population.

At the regional level, SADC’s HIV Cross-Border Initiative co-ordinates HIV prevention, treatment, care and support services for long-distance truck drivers, sex workers and border communities along major transport corridors in southern Africa. It includes a commitment to advocating for the review of laws and regulatory frameworks that criminalise sex work and the development of policy frameworks to increase access to services.

**People who use drugs**

Globally, it is estimated that people who inject drugs are 24 times more likely to acquire HIV than adults in the general population. Eleven sub-Saharan countries have reported recent data on prevalence among people who inject drugs that show a median HIV prevalence of 9% among three East and southern African countries, and 5% among seven West and central African countries. While the number of people who use drugs in these areas is small in comparison to some other regions of the world, it is growing and the HIV infection rate is growing with it. A number of studies have revealed intersectionality between sex work and injecting drug use, placing individuals involved in both at an even higher risk of acquiring HIV.

Multi-person use of injecting equipment is the primary method of HIV transmission for people who use drugs. Despite this, 68% of countries in southern and eastern Africa reportedly have laws that establish barriers against the provision of harm reduction services (such as needle–syringe programmes). In addition, the criminalisation of drug use and the imprisonment of people who use drugs—combined with widespread societal stigma and the fear of arrest and harassment—discourages access to health-care services and creates legal barriers to the provision of needle–syringe programmes. In Africa, individual drug possession and use is criminalised and highly stigmatised throughout the continent, with people who use drugs facing discrimination at many levels. A survey in Seychelles found high levels of stigma and discrimination against people who inject drugs, with 68% percent of those surveyed reporting being refused a service in the preceding 12 months; more than 50% reported having been arrested in the preceding 12 months. Good practices

A human rights-based approach to drug use requires a move away from criminalisation towards harm reduction and support. The UN Committee on the Rights of the Child, the Committee on ESCR and the Special Rapporteur on the Right to Health have all endorsed a harm reduction approach, as has the Human Rights Council, UN General Assembly and the OHCHR. A number of countries in Africa are moving towards such an approach. Even though drug use is criminalised in Mauritius, the HIV and AIDS Act, 2006, enables people who use drugs to use a range of HIV prevention services, such as accessing clean needles, without penalty. An AIDS Project Management Group evaluation report showed an increase in the quality of life and a decrease in drug-seeking behaviour amongst those who do access services. HIV incidence amongst people who inject drugs has also been dramatically reduced since 2010.

**Prisoners**

HIV and TB risk among prisoners is estimated to be two to 10 times higher than among the general population. While there is insufficient data on HIV and TB prevalence in prisons in African countries to allow any definitive conclusions, the limited research shows a similar pattern. HIV prevalence among prisoners in nine East and southern African countries ranged from 2.5% in Eritrea to 33% in Swaziland; among 13 West and central African countries, the range extended from 1.4% in Benin and Mali to 8.5% in Guinea. Studies in Zambia
show an HIV prevalence that is nearly double that of the general adult population.\footnote{Human Rights Watch et al., Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons (New York: Human Rights Watch, 2010).}

A combination of factors contributes to the high risk of HIV exposure in prisons. These factors range from laws, policies and policing practices that discriminatorily detain certain individuals from key populations to inhumane conditions and a failure to ensure the continuity of prevention, care and treatment, both when people are imprisoned and after they are released. A study of Zambian prisons in 2010 revealed severe overcrowding, minimum ventilation, inadequate sanitation, poor nutrition, limited health-care staff and services for HIV prevention and treatment, and high levels of violence.\footnote{Human Rights Watch et al., Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons (New York: Human Rights Watch, 2010).} Prisons also are sites of unsafe practices such as unprotected sex, rape, drug use, multiperson use of injecting equipment and unsterile tattooing, all of which place prison populations at high risk for HIV.\footnote{Human Rights Watch et al., Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons (New York: Human Rights Watch, 2010).}

Such conditions violate the rights of prisoners to dignity, health and medical care, and to be free from cruel, inhuman and degrading treatment or punishment. Under human rights law, an individual’s liberty can be restricted as a form of punishment for a criminal offence, but prisoners still retain their rights, including the rights to health and to be free from discrimination. Indeed, the very fact of their incarceration can mean that the State has a broader obligation to protect a prisoner’s health than it does for someone who is not totally within the State’s control, as outlined in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).\footnote{OHCHR, Standard Minimum Rules for the Treatment of Prisoners, http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx.}

Criminalisation of certain practices, such as sex between men and drug use, means that policies can exacerbate risks for prisoners. Due to restrictive rules and policies, discrimination or resource constraints, prisons may fail to provide condoms, ensure access to needle–syringe programmes or provide voluntary HIV testing and treatment.\footnote{Leonard S Rubenstein et al., “HIV, Prisoners and Human Rights,” Justice, Health, and Human Rights: Global Health Policy and Criminal Justice, 2014. 147. A number of courts have upheld the rights of prisoners to receive HIV treatment in prison.}

In Nigeria, the High Court held that the denial of medical treatment for HIV-positive prisoners awaiting trial violated the prohibition of torture.\footnote{Libakiso Mathlo, Assessment of the Legal Environment for HIV and AIDS in Lesotho (UNDP Lesotho, 2016).} In Botswana, failure to provide non-citizens with treatment and tests constituted a violation of human rights.\footnote{Libakiso Mathlo, Assessment of the Legal Environment for HIV and AIDS in Lesotho (UNDP Lesotho, 2016).}

A number of countries in Africa have now introduced progressive prison laws, policies, legal support services and jurisprudence to manage HIV and TB within prisons. For instance, the Department of Correctional Services in South Africa has an integrated HIV and TB policy that provides prisoners with condoms and prevention and treatment services for HIV and TB.\footnote{ Republic of South Africa Department of Health, Guidelines for the Management of Tuberculosis, Human Immunodeficiency Virus and Sexually-Transmitted Infections in Correctional Facilities, 2013 (Pretoria: Department of Health, 2013).} Similarly, the Ministry of Correctional Services in Lesotho provides access to condoms for prisoners, despite the existence of laws criminalising sex between men.\footnote{Republic of South Africa Department of Health, Guidelines for the Management of Tuberculosis, Human Immunodeficiency Virus and Sexually-Transmitted Infections in Correctional Facilities, 2013 (Pretoria: Department of Health, 2013).}

The HIV response in Africa continues to face various legal and human rights challenges, including:

- HIV-related stigma and discrimination;
- gender inequality and discrimination towards women;
- failure to uphold the human rights of young people and children;
- restrictive and criminal laws against people living with HIV and members of key populations; and
- failure to address the HIV and health needs of other vulnerable populations (such as persons with disabilities and indigenous populations).

In spite of these challenges, civil society organisations, courts, governments and national and regional human rights institutions are championing and implementing reforms and good practices in many areas of laws, policies and programmes relating to HIV that are based on human rights. These good practices from across the continent demonstrate the feasibility and importance of creating an enabling legal environment to ensure that no one is left behind in the response to the HIV epidemic.
VI. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

1. Addressing the HIV epidemic requires paying due regard to the legal and human rights factors that influence vulnerability to the epidemic and represent barriers to service access for those living with and affected by HIV. Across the continent, gay men and other men who have sex with men, women, young people, sex workers, prisoners and people who inject drugs are among the populations most affected by the epidemic. Factors and conditions that make people vulnerable to the epidemic often are linked to human rights and legal and social environments. Laws, policies and practices have a direct impact on the effectiveness of national responses to the epidemic and the ability of affected individuals and communities to access HIV prevention, treatment and care services.

2. Human rights violations in the context of HIV take various forms and undermine the response to the epidemic. These human rights violations and challenges include inequality and discrimination towards people living with HIV, which has a profound effect on the ability of people living with HIV to enjoy their rights to work, health care, privacy, dignity and freedom of movement. In contexts where anti-discrimination laws exist, implementation and enforcement is often lacking. Together, insufficient information on rights and
legal services, stigma and a lack of resources pose significant barriers to accessing legal services.

3. Compulsory and other forms of coercive HIV testing violate the right to confidentiality. Overly broad criminalisation of HIV transmission, non-disclosure and exposure often involve vague and ambiguous provisions that punish a range of acts that may only pose a hypothetical risk to others.

4. Laws, policies and practices that perpetuate gender inequality, harmful gender norms and gender-based violence undermine women and girls, keeping them in poverty and limiting their autonomy and decision-making power (including their ability to access health-care services). Violence against women is closely correlated with HIV infection: sexual and intimate partner violence places women at increased risk of HIV infection, while men who are violent towards their partners are more likely to have multiple partners and HIV.

5. Children, persons with disabilities and indigenous populations face various human rights violations in the context of HIV. This, in turn, creates barriers to their ability to protect themselves from HIV transmission or to access the necessary treatment, care and support they require once they have been infected or affected by HIV. These barriers include legislation that limits access to HIV services for children and adolescents and that fails to address the specific needs and vulnerabilities of persons with disabilities and indigenous people.

6. Key populations— who are already marginalised through other forms of stigma, inequality and discrimination—are disproportionately affected by HIV. This includes gay men and other men who have sex with men, male and female sex workers and their clients, transgender people, prisoners and people who inject drugs. Members of these populations face legal and social barriers—including prosecutions, harassment and discrimination—that make them vulnerable to HIV and limit their access to health and HIV services.

7. Restrictions to the activities and work of civil society organisations, especially those working with key populations, are an increasing challenge. These organisations face barriers to registration, operation and access to domestic and international funding. The restrictions limit their ability to advocate for a stronger legal environment for the HIV response or to provide critical HIV-related services.

8. Armed conflict and post-conflict periods raise distinct issues related to HIV prevention and treatment. During armed conflict, HIV prevention and treatment services tend to be significantly reduced because of the instability wrought by war. Armed conflict also can increase the need for HIV prevention and treatment services: armed conflicts where sexual violence is more prevalent appear to experience higher rates of HIV transmission. People displaced by conflict also are at an increased risk of acquiring HIV and have greater difficulty accessing prevention and treatment services.

9. In spite of these challenges, national and regional human rights norms and frameworks have been applied to address HIV in many contexts. These include advances in the areas of legislation and policy, progressive rulings by courts and the implementation of rights-based HIV programmes in several countries. Legal and policy advances have involved outlawing HIV-related discrimination through national laws and regional legislation, such as the EAC HIV Prevention and Management Act of 2012.

10. Throughout the continent, courts have enabled critical advances in the protection of human rights in the context of HIV. These have involved decisions that challenge discrimination based on HIV-related status, end mandatory testing for sex workers, defeat overly broad HIV criminalisation, ensure access to HIV treatment for foreign inmates and end forced sterilisation of women living with HIV. Several countries have established programmes to advance human rights and address barriers to HIV services, including for key populations. These include programmes to train police, lawyers and the judiciary on human rights and HIV, as well as
programmes for access to justice for people living with HIV and members of key populations.

11. Many of the advances in the response to HIV in Africa have been made possible by global solidarity and funding from bilateral and multilateral sources. Yet HIV funding for civil society and governments is declining. Reductions in funding poses one of the greatest threats to the response to HIV, particularly for sustaining and expanding the protection of human rights.

12. The global and regional human rights frameworks contain solid foundations for expanding the protection of human rights in relation to HIV in Africa. States on the continent are Parties to numerous international and regional human rights treaties that guarantee critical protections in the context of HIV. These treaties provide for the protection of many human rights that are critical to HIV prevention, treatment, care and support for people living with, vulnerable to or affected by HIV. Notably, this includes the following rights (among others):
   › to non-discrimination;
   › to equal protection and equality before the law;
   › to life;
   › to the highest attainable standard of physical and mental health;
   › to liberty and security of person;
   › to freedom of movement;
   › to seek and enjoy asylum;
   › to privacy;
   › to work; and
   › to education.

13. The protections provided in treaties have been elaborated upon and applied to HIV through global and regional commitments, guidelines and resolutions adopted by bodies at various levels, including the UN General Assembly, the African Union, the African Commission, IGAD, EAC and SADC. In Africa, the African Commission’s adoption of Resolution 163 in 2010, which established the HIV Committee, was a critical breakthrough that localised HIV-related human rights within the work of the African Commission. Human rights protections have also been applied and interpreted through decisions on cases and general comments on HIV-related issues at the global and regional levels. In Africa, General Comments Nos. 1 and 2 of the African Commission on Article 14 of the Maputo Protocol directly relate to the protection of the rights of women in relation to HIV.

14. In spite of the importance and potential role of human rights norms and mechanisms in the response to HIV in Africa, the actual engagement of the regional African human rights system remains limited. This limited engagement by regional mechanisms is due to a number of factors, including lack of awareness of the mechanisms among civil society and community, and limited resources and focus by the regional human rights mechanisms on HIV.

RECOMMENDATIONS

15. To States
   › Take immediate steps to review and amend laws, policies and practices to ensure that they are in line with human rights norms and principles, and that they support effective HIV responses. In particular, steps should be taken to remove laws and other measures that allow for discrimination against and criminalisation of people living with HIV and members of key populations (including sex workers, people who inject drugs, gay men and other men who have sex with men, and transgender persons).
   › Adopt effective measures to prevent and redress human rights violations in the context of HIV, and refrain from discrimination, criminalization or other human rights violations against people living with HIV, key populations and other vulnerable groups.
   › Remove legal, policy, social and other barriers that limit the rights of women and girls to access HIV prevention, treatment, care and support services or those that make them more vulnerable to HIV.
» Remove legal, policy, social and other barriers that limit access to HIV prevention, treatment, care and support services among children and young people or those that make them more vulnerable to HIV.

» Remove punitive and restrictive laws, policies and practices that infringe upon the rights to freedom of association and assembly of organisations and human rights defenders working on health and HIV. Also remove the punitive and restrictive laws, policies and practices that stigmatise and discriminate against particular categories of human rights defenders on the basis of sex, health status, sexual orientation, gender identity and expression, or other status.

» Maintain and expand dialogue and consultation with civil society organisations working on HIV and human rights, including those working with or for key populations.

» Ensure that national mechanisms responsible for the response to HIV (including national AIDS commissions) apply rights-based responses and guarantee the meaningful participation of people living with HIV and key populations in the HIV response, as provided in the good practices identified in this report.

» Take the necessary measures to increase their financial allocation to the health sector in general—and for HIV services in particular—as agreed in the Abuja Declaration.

» Take the necessary measures to establish and expand programmes to reduce stigma and discrimination and to expand access to justice in the context of HIV and health. These measures should include the following:

» Programmes to reduce stigma and discrimination. These can include community interaction and focus group discussions involving people living with HIV and members of populations vulnerable to HIV infection, as well as the use of media, peer mobilization and support developed for and by people living with HIV to promote health, well-being and human rights.

» Programmes to ensure access to HIV-related legal services.

» Programmes on monitoring and reforming laws, regulations and policies relating to HIV.

» Legal literacy (“know your rights”) programmes.

» Sensitization of law-makers and law enforcement agents.

» Training for health-care providers on human rights and medical ethics related to HIV.

» Programmes to reduce discrimination against women in the context of HIV.

16. To the African Union and other regional and sub-regional bodies

» Increase political and technical engagement in efforts to address the HIV epidemic in Africa, including the legal and policy challenges raised by HIV.

» Encourage States to take appropriate measures to address laws, policies and practices that violate human rights and act as barriers to effective responses to HIV.

» Ensure appropriate attention to HIV and human rights issues and challenges in the implementation of key regional and sub-regional priorities, agendas and frameworks, including Agenda 2063 of the African Union.

» Create opportunities for dialogue between States, civil society and other key stakeholders on the challenges, good practices and progress related to the protection of human rights in the context of HIV.

» Continue to provide space for all civil society organisations (including those representing
key populations) to engage States and other stakeholders in the response to HIV at the regional and sub-regional levels, and to ensure their effective participation in regional policy development and decision-making processes.

› Encourage and support full collaboration between States and national, regional and international human rights mechanisms, and support the independence of these mechanisms.

17. To the African Commission
› Continue to raise awareness on the importance of promoting and protecting human rights in the context of HIV, including through country visits, fact-finding missions, urgent appeals and the work of subsidiary mechanisms.

› Systematically monitor and denounce human rights violations that are committed in the context of HIV, including by publishing an annual update developed by the HIV Committee that examines the key human rights progress and challenges facing the HIV response in Africa.

› Fully utilise the protective and promotional mandates to monitor State compliance with all relevant human rights norms and standards relevant to HIV, including through country visits, recommendations on State reports, fact-finding missions, urgent appeals and other means. In particular,

» call on Members States to address the questions provided in the Annex of this study when preparing their state reports under Article 62 reports; and

» ensure that the African Commission and its subsidiary mechanisms use the questions provided in the Annex of this study in their country visits, consideration of State reports and fact-finding missions.

› Encourage Member States to conduct law and policy review and reform, and to adopt, implement and enforce rights-based laws, policies and plans in the context of HIV and AIDS, drawing on international and regional guidance on HIV law and human rights.

› Monitor and ensure the effective dissemination and implementation of HIV-related key resolutions, general comments and guidelines of the African Commission.

› Develop guidelines and recommendations for Member States on particular legal and policy issues affecting the rights of people living with HIV and key populations. Among other issues, these guidelines should address criminal law and its impact on the HIV response.

› Ensure that the HIV Committee has the necessary technical, human and financial resources to fully discharge its mandate as provided in Resolution 163 of the African Commission.

› Ensure the effective dissemination and promotion of the present study and its recommendations, including through seminars, promotional visits and other appropriate means.

› Continue and reinforce collaboration and dialogue with civil society, governments and relevant regional and global institutions working on HIV in order to discuss challenges, good practices, progress and effective accountability to advance human rights-based responses to HIV, including through the work of the HIV Committee.

› Consider the extension of the mandate of the HIV Committee in the medium- to long-term to cover other critical health issues that are affecting the continent.

18. To the ACERWC
› Require specific information on children and HIV from Member States in the States Parties Reporting Guidelines.

› Actively ensure the promotion and protection of the rights of the child in the context of HIV through its mandate, including country visits, reports and resolutions on the rights of the child.
› Develop a general comment focused on the rights of the child in the context of HIV and the obligation of States to respect, protect and fulfill these rights. This should address access to HIV prevention, testing, treatment and care services for children, including access to sexual and reproductive health services.

› Encourage Member States to ensure that domestic legal frameworks protect the rights of children living with HIV and those vulnerable to HIV infection.

› Urge Member States to conduct the necessary law and policy review and reform, and to adopt, implement and enforce rights-based laws, policies and plans in the context of HIV and in accordance with the African Children’s Charter.

› Increase awareness of ACERWC’s mandate among civil society and other organisations working on the rights of the child in the context of health and HIV.

19. To national human rights institutions, gender commissions and similar bodies
› Effectively use their promotion and/or protection mandates to hold States accountable for advancing human rights in the context of the HIV response.

› Establish focal points on HIV and health within the institution or commission, and ensure they are adequately resourced and actively engage all human rights issues affecting people living with HIV and members of key populations.

› Work closely with and regularly engage national authorities and programmes (such as HIV and TB programmes) working on HIV, TB and other health issues, as well as civil society organisations (including those representing key populations) that are working on these issues.

20. To civil society organisations
› Continue to engage national, regional and UN human rights mechanisms to prevent and respond to human rights violations in the context of HIV. In particular, prioritise engagement with the African Commission, its HIV Committee and other regional bodies on HIV and human rights.

› Establish and reinforce regional partnerships and approaches to advance collaboration and intersectional approaches with the African Commission and African Union that build alliances with diverse civil society organisations working on areas such as women and young people, and with human rights defenders working on issues such as health, HIV, sexual orientation, gender identity and expression, civic space, and sexual and reproductive health and rights.

› Develop innovative approaches to engage the general public, all branches of government and other opinion leaders (including the media) on the critical human rights issues relating to the HIV epidemic.

21. To the media
› Maintain and strengthen dialogue with people living with HIV and members of key populations. Support their efforts to advance human rights, the rule of law, social change and development in the context of the HIV response.

› Refrain from inciting hatred against people living with HIV and members of key populations, and promote responsible reporting that advances rights-based and evidence-informed responses to HIV.

22. To religious and traditional leaders
› Maintain and strengthen dialogue with people living with HIV and members of key populations. Support their efforts to advance human rights, the rule of law, social change and development in the context of the HIV response.

› Refrain from inciting hatred against people living with HIV and members of key populations.

› Encourage an inclusive, protective and humane attitude towards people living with HIV and vulnerable and key populations.
ANNEX: INDICATIVE QUESTIONS AND ISSUES ON HIV FOR STATE PERIODIC REPORTING UNDER ARTICLE 62 OF THE AFRICAN CHARTER

1. Data and information relating to the nature, scope and populations most affected by the HIV epidemic and TB. In particular, States should provide information on the following:
   › Specific and disaggregated data on HIV and TB prevalence and incidence for children, women, young people and key populations (namely sex workers, gay men and other men who have sex with men, transgender persons, people who use drugs and prisoners).
   › Information on the availability, accessibility, acceptability and quality of HIV prevention and testing commodities and programmes. This includes male and female condoms, lubricants, voluntary medical male circumcision, pre-exposure prophylaxis and harm reduction services for people who inject drugs.
   › Specific and disaggregated data on access to and quality of HIV and TB treatment for children, women, young people and key populations (namely sex workers, gay men and other men who have sex with men, transgender persons, prisoners and people who use drugs).

2. Specific questions relating to the right to non-discrimination and equality provided under Articles 2 and 3 of the African Charter.
   › Has the State enacted laws in all areas that protect people living with HIV against direct and indirect discrimination due to HIV status, including in employment, education, housing, social benefits and so on? If so, provide information on the progress and challenges relating to the implementation of these laws.
   › Has the State enacted laws or adopted other effective measures to address discrimination and stigma against key populations and other vulnerable populations in the context of HIV? If so, provide information on the progress and challenges relating to the implementation of these laws and measures.
   › Has the State enacted laws, regulations and collective agreements to guarantee non-discrimination in the workplace? If so, provide information on the progress and challenges relating to the implementation of these laws, regulations and other measures.
   › Has the State enacted laws to reduce human rights violations and inequality between men and women, particularly regarding sexual and reproductive rights, property, marital relations, economic opportunities and access to employment? If so, provide information on the progress and challenges relating to the implementation of these laws.
   › What actions is the State taking to promote non-discrimination towards people living with HIV and key populations?

3. Specific questions relating to the rights to liberty and security provided under Article 6 of the African Charter.
   › Has the State adopted laws or policies to prohibit mandatory and other forms of coercive HIV testing or treatment?
   › Has the State enacted laws prohibiting coercive isolation, detention or quarantine solely on the basis of HIV status?
» Has the State enacted confidentiality or privacy laws to protect people living with HIV and key populations against abusive disclosure and other violations of privacy and confidentiality?

» If any of the above laws have been adopted, provide information on the progress and challenges relating to their implementation.

4. Specific questions relating to the right to information provided under Article 9 of the African Charter.

» What information programmes are in place to promote access to scientifically accurate information on HIV-related prevention, treatment and care for all?

» Do these programmes appropriately address the needs and realities of key populations, children, persons with disabilities and other vulnerable populations?

» Provide information on the progress and challenges relating to the implementation of the above programmes.

5. Specific questions relating to the right to freedom of association (Article 10) and the right to freedom of assembly (Article 11) under the African Charter.

» Are people living with HIV allowed to form associations and register them?

» Are key populations (such as gay men and other men who have sex with men, transgender persons, people who use drugs or sex workers) allowed to form associations and register as organisations?

» Are there any restrictions on the ability of organisations to register, operate or receive funding? If yes, please specify.

» Are there restrictions on the ability of people living with HIV and key populations to assemble? If so, please specify.

6. Specific questions relating to the right to freedom of movement and residence provided under Article 12 of the African Charter.

» Does the State apply any restrictions to the entry, stay or residence of people living with HIV based on their HIV status?

» Does the State apply any restrictions to the entry, stay or residence of members of key populations?

» If any of the above restrictions exist, what measures are being taken to remove them? Please specify.

7. Specific questions relating to the right to work under Article 15 of the African Charter.

» Does the State have laws, regulations and specific programmes to protect and promote the rights of people living with HIV to do the work of their choice and to be free from discrimination in access to work? If so, provide information on the progress and challenges relating to the implementation of these laws, regulations and programmes.

» Does the State protect people living with HIV from arbitrary termination of employment? If so, provide information on the nature and implementation of such protection.

» What measures are being taken by the State to create an enabling working environment in relation to HIV in accordance with Recommendation 200 of the International Labour Organization?

8. Specific questions relating to the right to enjoy the best attainable state of physical and mental health under Article 16 of the African Charter.

» Has the State taken measures to ensure the right of people living with HIV and key populations to non-discrimination in access to health services?

» What programmes and measures are in place to ensure access to HIV and TB prevention, treatment and care—as well as other health-care services—for people living with HIV?

» Has the State taken measures to increase access to affordable medicines, including through the use of the flexibilities under the TRIPS Agreement?
9. Specific questions relating to the right to education under Article 17 of the African Charter.
› Has the State taken measures to ensure the right of people living with HIV and key populations to non-discrimination in access to education? If so, provide details on these measures as well as the progress and challenges relating to their implementation.
› What education programmes are in place to promote information on HIV-related prevention, treatment and care for all? Do these programmes appropriately focus on key populations, children, persons with disabilities and other vulnerable populations?

10. Specific measures relating to the right to the family under Article 18(1) of the African Charter.
› Has the State enacted laws protecting the rights of people living with HIV to marry and form a family? If so, provide details on these laws and the progress and challenges relating to their implementation.
› Has the State enacted laws prohibiting child marriage in order to protect the rights of adolescents from harmful norms that place them at risk of HIV exposure? If so, provide details on these laws as well as the progress and challenges relating to their implementation.

11. Specific questions relating to the elimination of discrimination against women under Article 18(3) of the African Charter and to the promotion and protection of the rights of women under the Maputo Protocol.
› Has the State enacted laws, regulations or programmes protecting and promoting the rights of women and girls to HIV and other health-care services? If so, provide information on the progress and challenges relating to the implementation of these laws, regulations and programmes.
› Has the State taken measures to guarantee access to appropriate health and HIV services for women and girls without discrimination? If so, provide information on the progress and challenges relating to the implementation of these measures.
› Do health programmes address the specific health needs—including sexual and reproductive health needs—of women living with HIV? If so, provide information on the progress and challenges relating to the implementation of these programmes.
› Has the State enacted laws to protect women from coercive and forced treatment (such as forced and coerced sterilisation)? If so, provide information on the progress and challenges relating to the implementation of these laws.

› Has the State enacted laws, regulations or programmes protecting and promoting the rights of children and young people to access HIV and other health-care services? If so, provide information on the progress and challenges relating to the implementation of these laws, regulations and programmes.
› Has the State taken measures to guarantee access to appropriate services without discrimination? If so, provide information on the progress and challenges relating to the implementation of these measures.
› Has the State enacted age of consent laws to facilitate access to sexual and reproductive health services for adolescents and young people? If so, provide information on the progress and challenges relating to the implementation of these laws.

› Does the State have policies and programmes to ensure the protection of children and adolescents (including orphans and vulnerable children) and to support their access to HIV services? If so, provide information on the progress and challenges relating to the implementation of these policies and programmes.

› Does the State have policies and programmes to ensure the protection of young key populations and to support their access to HIV services? If so, provide information on the progress and challenges relating to the implementation of these policies and programmes.

13. Specific questions relating to the measures for the protection of older persons and persons with disabilities under Article 18(4) the African Charter.

› Has the State adopted laws, regulations or programmes that protect and promote the rights of older persons and persons with disabilities to access HIV and other health-care services? If so, provide information on the progress and challenges relating to the implementation of these laws, regulations and programmes.

› Has the State taken measures to guarantee that older persons and persons with disabilities can access appropriate services without discrimination? If so, provide information on the progress and challenges relating to the implementation of these measures.

› Does the State have policies and programmes to protect and support access to HIV services for older persons and persons with disabilities? If so, provide information on the progress and challenges relating to the implementation of these policies and programmes.
HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses

Report on the Study of the African Commission on Human and Peoples’ Rights

AFRICAN UNION

UNION AFRICAINE

AFRICAN COMMISSION ON HUMAN & PEOPLES’ RIGHTS

Commission Africaine des Droits de l’Homme & des Peuples

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Tab 5
ILO to partner with Tanzania Employers to conduct trainings on HIV and AIDS

More than 60 HR Practitioners are to benefit from the ILO technical expertise on promoting healthy working environment and getting to zero stigma and discrimination at work.

Dar es SALAAM (ILO News) - More than 60 practitioners in human resource management (HRM) from various Private Sector Organizations (PSOs) will benefit from a joint training seminar on promoting healthy working environment and productive workforce organized by The Association of Tanzania Employers (ATE), in collaboration with the ILO, on 29 March 2017, in Dar es Salaam, Tanzania.

The training is aimed at communicating to the practitioners, knowledge on laws and policies related to HIV in order to promote non–discrimination environment at the workplace and improve workplace compliances to various instruments.

The training will address the legal gap existing among employers to ensure compliance and establishment of appropriate workplace programmes. An action plan for follow up will be developed, especially in reviewing HR policies and nullifications of provisions and actions that denies the right to work among the PLWHIV and establishment of workplace programmes.


Stigma and Discrimination is one of the major challenges that hamper efforts in HIV prevention and treatment. Its impact is significant as it affects health seeking behaviours including HIV testing and adherence to treatment.

In Tanzania, despite the increased knowledge on HIV transmission and existence of laws which prohibit unfair actions and treatment. People Living with HIV (PLWH) still suffer from stigma and
discrimination both at the society and Workplace. This is manifested in many ways including denying PLWH the right to work.

The existence of Pre – employment HIV testing as a ground for confirming person employment is still practiced in most of private sector companies. In some circumstances, it has been done mandatory, secretly and without the prior consent or knowledge of the tested.

Moreover, in other extreme circumstances, employees have been retrenched due to HIV related illness (LEA, 2015). An ILO study conducted in 2014 found that 6% of employees who disclosed their HIV status encountered stigma and discrimination from their employers or supervisors. This behaviour is associated with inadequate knowledge on HIV related laws and policies.

**Background information**

In 2016, the ILO supported the constituents (ATE, TUCTA and the Prime Minister’s Office – Labour and Employment, Tanzania Mainland) to develop a Code of Practice on HIV and AIDS at the Workplace. The Ministry, through its Labour, Economic and Social Council (LESCO) has already adopted the above code providing an opportunity towards improving workplace compliance to HIV related rules and regulations as well as enforcement. The code will also help examine national and sectoral policy Framework on HIV and AIDS and identify important strategies that could be incorporated in the world of work response frameworks and guidelines on HIV and AIDS.

**Tags:** right to work, HIV/AIDS

**Regions and countries covered:** Africa, Tanzania, United Republic of
ILO to partner with Tanzania Employers to conduct trainings on HIV and AIDS

See also

Legal document
Tab 6
HIV and AIDS in Tanzania

KEY POINTS

- Tanzania has made significant gains in the scale-up of its antiretroviral (ART) programmes. The number of people on ART, retained in care and virally suppressed has been steadily increasing since 2010.

- Despite more people living with HIV benefitting from effective treatment, linkage to care after diagnosis remains one of the weakest parts of Tanzania’s HIV treatment cascade.

- Preventing mother-to-child transmission programmes have been successful in reducing the rate of new vertical HIV infections in Tanzania.

- Condom use is declining: in 2017, just 30% of women and 46% of men reported using condoms with casual partners.

- Tanzania was the first country in sub-Saharan Africa to introduce harm reduction programmes. However, access remains patchy as only one in five people who inject drugs are able to access opioid substitution therapy.

- Gender inequality, HIV-related stigma and the criminalisation of certain groups, such as men who have sex with men, continue to act as major barriers to HIV prevention in Tanzania.

Explore this page to find out more about populations most affected by HIV, testing and counselling, prevention programmes, antiretroviral treatment availability, civil society’s role, HIV and TB, barriers to the response, funding and the future of HIV in Tanzania.

In 2018, 1.6 million people were living with HIV in Tanzania. This equates to an estimated HIV prevalence among adults of 4.6%. In the same year, 72,000 people were newly infected with HIV, and 24,000 people died from an AIDS-related illness.
Despite the numbers, Tanzania has done well to control the HIV epidemic over the last decade. Scaling up access to antiretroviral treatment (ART) has meant that between 2010 and 2018, the number of new infections declined by 13% and the number of people dying from an AIDS-related illness has halved.3

**TANZANIA** Progress towards 90 90 90 targets (all ages)

- **78%** of people aware of their HIV status
- **92%** on ART, of which 71% of all people living with HIV
- **87%** virally suppressed, of which 62% of all people living with HIV

Source: UNAIDS Data 2019

Key affected populations in Tanzania

Tanzania’s HIV epidemic is generalised, meaning it affects all sections of society, but there are also concentrated epidemics among certain population groups, such as people who inject drugs, men who have sex with men, mobile populations and sex workers. Heterosexual sex accounts for the vast majority (80%) of HIV infections in the country and women are particularly affected.4

The severity of the epidemic varies geographically. Some regions of Tanzania report no HIV prevalence (Kusini Unguja and Kaskazini Pemba) while other regions have prevalence as high as 11.4% (Njombe).5 Overall, the epidemic has remained steady due to ongoing new infections, population growth and increased access to treatment.
Women are disproportionately affected by HIV in Tanzania. In 2018, 880,000 women aged 15 and over were living with HIV, compared to 580,000 adult men. In the same year, more than 36,000 women acquired HIV, compared to around 27,000 men.

The nationally representative 2016-2017 Tanzania Impact Survey (THIS) found that women aged 15-39 are more than twice as likely to be living with HIV as their male counterparts. HIV prevalence is highest among women aged 45-49, at 12% (compared with 8.4% among men of this age).

Gender inequality is widespread among women of all ages in Tanzania. In 2016, around 30% of women aged 15-49 who had ever been married or in a long-term relationship were estimated to have experienced physical or sexual violence from a male intimate partner in the past 12 months.
increases many women’s vulnerability to HIV, either directly, through sexual violence, or indirectly, through an inability to negotiate condoms or prevent their partner from having other sexual relationships.

In addition, women tend to become infected earlier because they have older partners and get married earlier.10

Young people

It is estimated that more than half the population in Tanzania are aged 19 and under.11

THIS reported HIV prevalence among young people (ages 15-24) at 1%, with young women around four times more likely than young men to be living with HIV (2% prevalence among young women, compared to 0.6% prevalence among young men). Prevalence among children (ages 0-14) is 0.3%.12

In 2018, just under 24,000 young people in Tanzania became HIV-positive; roughly two-thirds of whom were young women (16,000 new infections among young women, compared to 7,600 among young men).13 In 2016/17, 3.4% of women aged 20-24 were living with HIV, compared to 0.9% of their male counterparts.14

The disparity between the sexes is linked to age-related vulnerabilities experienced by young women that intersect with widespread gender inequality. For instance Tanzania’s ‘sugar daddy’ culture, in which young women embark on sexual relationships with older men in exchange for material goods or social advancement, is a key driver of HIV among young women. Despite the fact that their partners come from age groups with higher HIV prevalence than younger men, and may also engage in other sexual relationships, young women are often unable to negotiate condom use due to the unequal power balance in these relationships. This is demonstrated by a study involving 18 to 24 year-old women in Dar es Salaam, which found that in couples of the same age decisions about condom use were made together (48%) or by the young women alone (34%). Decision-making during sex with older men was predominantly made by the male partner (79%).15

I have a child and when I go with a man like him, he can give me something to buy milk for the child.

- Aisha, a young women at a party in the Mkinga district 16

Many young people are also unaware about how to prevent transmission. In 2016/17, just 37% of young people demonstrated adequate knowledge on how to prevent HIV and could correctly reject common misconceptions about how the virus is transmitted.17 Young people, particularly young men, are also less likely than older age groups to test for HIV. As a result, in 2016/17 it was estimated that only half of young people living with HIV were aware of their status.18

People who inject drugs (PWID)

Tanzania is home to a significant population of people who inject drugs (sometimes referred to as PWID).19 In 2014, Tanzania National AIDS Control Programme (NACP) estimated there were 30,000
people who inject drugs in the country, 35% of whom were living with HIV.20

HIV prevalence among women who inject drugs is thought to be twice that of their male peers. The reasons for this are not fully known although possible factors include women who inject drugs being involved in sex work or being last in line when syringes are shared.21

Data on people who inject drugs varies widely between studies, due to the hidden nature of this population.22 Existing evidence suggests heroin use is on the rise and this population group is growing.23

The majority of studies involving people who inject drugs in Tanzania have been conducted in Dar es Salaam and Zanzibar. Zanzibar is a gateway to the African continent and is also situated along a major corridor for drug trafficking. Around one in six people who live in Zanzibar and inject drugs is living with HIV, according to 2010 estimates, although some believe this figure may be higher.24

A 2015 study of 480 people who use drugs in the northwestern city of Mwanza found that 13.5% of respondents injected drugs, 67% of whom shared needles. This study suggests that injecting drug use, particularly heroin, is now a significant issue in a major city outside Dar es Salaam and Zanzibar.25

**Mobile populations**

Migration is common in Tanzania. In particular, the expansion of the mining sector has led to greater urbanisation and mobility between rural and urban areas. This means that young and sexually active men come into close contact with ‘high risk sexual networks’ made up of sex workers, women at truck stops and miners: all of whom have high levels of HIV prevalence.26

Long-distance truck drivers, agricultural plantation workers and fishermen working along coastal trading towns are also at an increased risk of HIV. For example, a 2015 study by the International Organisation for Migration on truck drivers in Dar es Salaam found all those surveyed had established sexual relationships with partners at truck stops whom they considered permanent or second wives (described as ‘Mapoza’).27 A 2018 study involving around 400 people from fishing communities in Tanzania found an overall HIV prevalence of 14%, although this varied widely depending on location, from 7.2% to 23.8%. Around 38% of study participants living with HIV who had been diagnosed had not started treatment.28

It is not only mobile men who are at increased risk of HIV infection. Women who travel away from home five or more times in a year have been found to be twice as likely to be infected with HIV than women who do not travel.29

**Sex workers**

Tanzania criminalises sex work and it is punishable by law. Despite this, it is estimated that around 150,000 people, mainly women, sell sex, especially in Dar-es-Salaam.30

In 2018, HIV prevalence among female sex workers was estimated at 15.4%.31 However, as with many other key population groups, data is limited and previous estimates suggest HIV prevalence among this group is much higher, at around 31%.32 Around 70% of sex workers are estimated to use condoms. This is despite sex workers having poor access to HIV prevention programmes, which are thought to reach around one in five.33
The gender inequalities that result in women being disproportionately affected by HIV in Tanzania are acutely felt by female sex workers. The fact that sex work is also illegal means sex workers are subject to abuse and human rights violations from clients and from those in authority, including police officers and healthcare workers. This means many sex workers are reluctant to access HIV prevention, testing and treatment services while also being exposed to high levels of sexual violence, multiple partners and condomless sex.34

Men who have sex with men (MSM)

Same-sex sexual relations are illegal in Tanzania. As a result, data on this population group is extremely limited, a situation made worse by a government-sanctioned crackdown on LGBT people that began in 2015.35

In 2018, 8.4% of men who have sex with men (sometimes referred to as MSM) in Tanzania were estimated to be living with HIV.36 However previous estimates released in 2014 put prevalence much higher, at 25%. This data suggested there were 49,700 men who have sex with men in the country.37

In 2014, only around 14% of men who have sex with men reported using condoms consistently. However, data from 2013 put condom use levels at 63%, highlighting how patchy the evidence currently is.38

HIV testing and counselling (HTC) in Tanzania

Results from THIS suggests around 65% of adults in Tanzania have taken an HIV test at least once (59% of men and 71% of women) but only a third regularly test for HIV (every 12 months). Around 16% of adults who tested positive during THIS had never been tested for HIV before (20% of men and 14% of women).39

Adolescents (ages 15-19) have particularly low testing levels, despite high levels of sexual activity. THIS found that around 79% of adolescent men and 61% of adolescent women had never tested for HIV before.40

Over the last decade, Tanzania has increased its efforts to get more people testing for HIV. The number of voluntary counselling and testing (VCT) sites in the country has rapidly expanded (around 2,100 as of 2013).41

In the same year Tanzania introduced new HIV testing approaches such as home-based testing, community testing and provider-initiated testing.42

Since then other testing approaches, such as index testing, have also been introduced. 43 As a result of these accelerated efforts, in 2018 the number of people living with HIV who were aware of their status was 78%, compared with 64% in 2015.44

In 2018 the Tanzanian government began to fully scale-up self-testing for HIV and is focusing on providing self-testing kits for hard-to-reach groups. For example, using antennal clinics to provide pregnant women with self-testing kits to pass onto their husbands or boyfriends. Pilot programmes are also being carried out to learn how best to provide self-testing kits to the partners of sex workers and other key and vulnerable populations.45

The Tanzanian government has also begun a campaign called Furaha Yangu! (My Happiness!) to
increase the number of young men and adolescent boys testing for HIV. 46

**HIV prevention programmes in Tanzania**

In 2018, 72,000 people became HIV-positive in Tanzania. Although new infections have declined by 13% since 2010, more needs to be done to reduce HIV transmission.

Tanzania is currently implementing its fourth Health Sector HIV and AIDS Strategic Plan (HSHSP IV), which runs between 2017 and 2022. The strategy aims to increase access to combination prevention services for the general population in order to reduce new HIV infections. The guidelines also commit to implementing comprehensive prevention services for a number of key populations, including adolescent girls and young women, female sex workers, men who have sex with men, people who inject drugs, prisoners and migrant populations.47

**Prevention of mother-to-child transmission (PMTCT)**

Significant progress that has been made in the prevention of mother-to-child transmission (PMTCT) in the past few years in Tanzania. In 2018, 93% of pregnant women living with HIV were receiving effective ART, compared to 75% in 2010. It is estimated that ART coverage among pregnant women living with HIV has averted around 14,000 new infections among newborns. However, 8,600 children still acquired HIV in 2018.48

One of the reasons for HIV transmission still occurring vertically (from parent to child) is that not all pregnant women are tested for HIV. In 2018, 91% of pregnant women attending antenatal services received HIV testing. In addition, only half (47%) of infants exposed to HIV during pregnancy were tested for HIV within eight weeks of birth (known as ‘early infant diagnosis’).49 To reach as many women as possible, the vast majority of PMTCT services are now integrated with reproductive and child health services. 50

Inefficient antiretroviral drug regimens for pregnant women and new mothers, drug stock-outs and poor adherence to treatment also contribute to the continuing transmission of HIV via this route.51

**Condom promotion**

The Tanzanian government recognises condom promotion as an integral part of its fight against the epidemic. The goal of its 2017-2022 HIV prevention strategy is to ensure 85% of people engaged in multiple sexual partnerships use condoms correctly and consistently.52

To achieve this, around 260 million free condoms must be made available annually. However, weak supply lines and a lack of funding means this may not be achievable. In 2018, it was reported that the Global Fund to Fight AIDS, Tuberculosis and Malaria would finance 120 million public sector condoms, PSI would contribute around 18 million and an additional 20 million would be provided by other sources. This leaves an impending shortfall of around 100 million condoms.53

In addition, more effective promotion is needed to encourage people to use condoms. In 2017, it was reported that just 30% of women and 46% of men used a condom the last time they had a sex with a non-marital, non-cohabiting partner.54 These levels are lower than previously reported, suggesting more people are engaging in risky sexual behaviour that leaves them vulnerable to HIV infection.55

Low condom use is also occurring among high-risk groups. For instance, a study involving 18 to 24
year-old women in Dar-es-salaam found that only 32% used a condom during sex with regular boyfriends. Condom use declined even further if the women were involved in transactional sexual relationships with older men, with only 2% saying they always used a condom during these types of sexual encounters.56

**HIV awareness and sex education**

While Tanzania has a fairly broad sex education curriculum, only a third of schoolteachers have been trained on how to deliver these lessons, meaning access is patchy. In addition, certain subjects, such as the examination of minority sexualities, are not covered. Condom demonstration and condom distribution is also not allowed during sex education lessons.57 On top of this, the number of people attending school beyond primary level is low, with only around 19% of people having some form of secondary education. This limits the opportunities to reach older adolescents with sexual health education.58

To fill these gaps, a number of civil society organisations provide additional sexual and reproductive health and HIV education, in and out of school settings.59

**Voluntary medical male circumcision (VMMC)**

Circumcision is an effective HIV prevention strategy, reducing a man’s risk of acquiring HIV by approximately 60%. When used in combination with other prevention measures, circumcision is an important addition to HIV-prevention options for men.

In 2010 the government prioritised 11 regions for scaling VMMC and set a target of 2.8 million circumcisions by 2016.60 Around 2.6 million men were circumcised between 2015 and 2018, equating to around 80% of 15 to 49-year-old men.61

**CASE STUDY: Creating demand for VMMC**

When a VMMC project was first established in the Kaliua District, Tabora, many men were put off by rumours that the removed foreskins would be used for conducting rituals. To dispel these rumours and create demand for the service, peer educators from the project held meetings with community leaders to answer specific questions and address any concerns about the safety of VMMC and the disposal of foreskins.

Targeting influential people within the community paid off. The number of people presenting for voluntary circumcision, which had previously been visited predominantly by boys from a nearby primary school, subsequently increased to an average of between 20-28 adult men each day. The local outreach site and dispensary conducted more than 1,000 VMMCs in 2015.62

**Cash transfer programmes**

Cash transfer programmes form part of a new arm of HIV prevention that focuses on integrated programmes for social protection schemes and sexual health. Across sub-Saharan Africa these types of programmes have been shown to have a positive effect on preventing HIV and other sexually transmitted infections (STIs).
In one Tanzanian pilot, cash incentives of US$10 or US$20 were given to young adults aged between 18 and 30, as long as they were free from STIs. One year into the study, there was a 25% risk reduction in STIs. These programmes show that economic benefit can positively influence people to use condoms more frequently.63

In 2017 the Tanzanian government, in collaboration with UNICEF, began a cash transfer scheme called Cash Plus as part of a programme to empower and strengthen the resilience and wellbeing of adolescents from the country’s poorest households. Cash Plus participants receive tailored, life skills training on various subjects, including sexual and reproductive health, as well as being linked to sexual and reproductive health and HIV services. They also receive financial support to either stay in school or start a small business and are supported by mentors and peer educators throughout.64

Harm reduction

In 2011, with assistance from PEPFAR, Tanzania became the first country in sub-Saharan Africa to implement a harm reduction programme for people who inject drugs.65 A methadone treatment clinic opened up in Tanzania’s largest health facility, based in Dar es Salaam, then extended to a second hospital in the city.66 Although there has since been an increase in opioid substitution therapy (OST) interventions outside Dar es Salaam, access remains limited, with just 20% of people who inject drugs able to access OST in 2018.67 68

This is also the case with needle and syringe exchanges. In 2017, just 15 needles and syringes were distributed per person per year.69 70 As a result, it is estimated that around 14% of Tanzanian-based people who inject drugs are sharing needles when injecting.71

Harm Reduction International also reports that the Tanzanian government has taken “regressive steps” in its harm reduction-related policy in recent years, with policy-makers continuing to favour abstinence-based approaches above harm reduction.72

Pre exposure prophylaxis (PrEP)

In 2018 Tanzania began to scale up pre-exposure prophylaxis (PrEP), a daily course of antiretroviral drugs taken by HIV-negative people to protect themselves from infection, for key populations. The following year, the government announced plans to extend this nationwide, including expanding eligibility criteria to include adolescent girls and young women.73

As of 2019, it was estimated that between 3,200 and 3,700 people were using PrEP in Tanzania. The majority of these people are adolescent girls and young women, although female sex workers and their partners and the HIV-negative partners of people living with HIV are also being targeted by implementation or demonstration projects.74

Antiretroviral treatment (ART) in Tanzania

Tanzania has significantly scaled up its antiretroviral (ART) programmes in recent years, and the number of people on ART has been steadily increasing since 2010.

In 2017, Tanzania introduced the World Health Organization (WHO) recommended ‘test and treat’ guidelines, which makes anyone testing positive for HIV eligible for immediate treatment regardless of the level of HIV in their body.75 This has seen ART coverage expand significantly: in 2018, 71% of
people living with HIV in Tanzania were receiving ART, equivalent to 1.1 million people. This is around a 20% increase from 2015, when 52% of HIV-positive people were on ART. As of 2018, around 90% of people diagnosed with HIV began ART in less than seven days.

HIV-positive women are far more likely to be on treatment than HIV-positive men. In 2018, 82% of women and 57% of men living with HIV were receiving ART.

Children (ages 0-14) are less able to access treatment than adults, with 65% of HIV-positive children on ART in 2018. However, this is an improvement on 2015 levels when just 53% of HIV-positive children were on treatment.

More than 95% of people on treatment are still in care after 12 months, according to 2018 data. This is closely linked to good levels of viral suppression. In 2018, 87% of people diagnosed and on treatment were virally suppressed, with men and women enjoying similar levels of viral suppression (86% and 89% respectively). However, due to gaps in testing and linkage to care, overall only 62% of people living with HIV are virally suppressed.

Studies conducted in various regions of Tanzania have reported low linkage to care for people who test HIV-positive. For example a study following around 1,000 people newly diagnosed with HIV in Mbeya, a rural area, found just 28% were successfully linked to care. Under-resourced, poorly coordinated health services, as well as high levels of HIV-related stigma were the main reasons these people did not begin treatment.

The Tanzanian government has begun to simplify drug regimens and move to fixed-dose combinations while phasing out toxic drugs such as Stavudine. Evidence is currently mixed as to whether levels of pre-treatment and acquired drug-resistant HIV are high enough to be considered a public health issue in Tanzania.

**Civil society's role**

Poverty, poor institutional and infrastructural support, and social and cultural neglect are impeding an effective and progressive HIV response in Tanzania. In 2017, Civicus, the global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society, placed the country on a watch list due to growing threats to civic space. In February of the same year, the government closed 40 healthcare facilities providing HIV services under the premise that they were promoting homosexuality. In June 2017, President Magufuli severely criticised NGOs working for the rights of LGBTI people.

In 2018, Tanzania’s sustained anti-gay crackdown was part of a broader trend of suppression and a disappearing civil society voice. The repercussions have been felt through all key population groups, affecting access to HIV and sexual health services, and increasing stigma and discrimination. It has also resulted in hundreds of LGBT activists going into hiding in order to avoid punishment.
HIV and TB co-infection

The WHO classifies Tanzania within the top 20 high burden countries for tuberculosis (TB) and for TB/HIV.

In 2017, just under 70,000 cases of TB were presented and 98% had a known HIV status. Of this group, 31% were co-infected with HIV, of whom 95% were on antiretroviral treatment. In the same year, 22,000 people living with HIV died due to TB. The death rate has halved since 2010 when there were 44,000 TB-related deaths among HIV-positive people in Tanzania.

The government has prioritised the integration of TB services with HIV services to minimise the burden of these two co-morbidities. Ensuring that people living with HIV are on antiretroviral treatment means that they are in a better place to fight off TB infection. Integrating these two services will also ensure greater access to TB treatment.

The Tanzanian government has done well to keep the country on track to reaching all of the TB targets set within the Millennium Development Goal (MDG) frameworks.

The number of people living with HIV who presented with TB and received treatment for HIV and TB increased from 16% in 2012 to 42% in 2017. However, this still leaves a large portion of people with HIV/TB co-infected without comprehensive treatment.

Barriers to HIV response in Tanzania
Structural barriers

According to the WHO, Tanzania has one of the worst physician-to-patient ratios in the world, with just 0.031 physicians per 1,000 people in 2012. The lack of doctors is a particular problem in rural areas, where there are often only nurses available to treat patients. Additionally, a recent study showed that 40% of all doctors in Tanzania work in the private sector. Qualified doctors and nurses are also emigrating abroad because of better pay, conditions and training opportunities. This means health sector shortages remain a critical problem to the scale up of HIV treatment, counselling and prevention in Tanzania.

Legal barriers

The Tanzanian parliament passed the HIV and AIDS Act in 2008, protecting the rights of people living with HIV and AIDS. The Act makes it illegal to discriminate against someone because of their HIV status.

However, harmonisation with other legislation is needed to ensure different laws do not contradict each other. Criminalisation of high-risk groups, such as sex workers and men who have sex with men, is at odds with the 2008 law as it makes it almost impossible for these groups to access care and treatment. For example, in August 2016, Tanzania announced new plans to suspend the registration of any charity or non-governmental organisation that ‘supports homosexuality’ along with a partial ban on the import and sale of lubricants.

The situation worsened in 2018 when a taskforce was set up to identify and punish gay people in Dar es Salaam. This will likely drive more men who have sex with men away from vital healthcare services, including for HIV prevention and treatment.

Social barriers

Gender inequalities and gender-based violence experienced by women continue to hamper the HIV response in Tanzania.

Men who have sex with men are also at an increased risk of sexual violence. Although data is limited, a study involving around 350 Tanzanian-based men who have sex with men found 94% had experienced some form of violence, including 73% who had experienced sexual violence.

Stigma and discrimination is also a major challenge. In 2016/17, around 25% of those surveyed for the country’s HIV Impact Assessment demonstrated discriminatory attitudes towards people living with HIV.

The Tanzania Stigma Index 2013 Report by the National Council of People Living with HIV shows clear infringements on the rights of people living with HIV in health, work and school settings. For example, 13% of people living with HIV reported being told not to have children by health care providers. Others reported being coerced into sterilisation and termination of pregnancy due to their HIV-positive status.

This type of stigma means that many people living with HIV practise self-censorship and experience guilt that affect their quality of life. Indeed, around 44% of those surveyed for the Stigma Index had low self-esteem, and 30% felt ashamed.
In the government hospitals, we face discrimination. Instead of treating us, they'll call people over: 'Come and see, we have a gay here.' Then they'll say, 'We can't treat you. Get out of here.'

- Adam, an HIV-positive male sex worker from Dar es Salaam.101

Funding

More financial resources are needed in order to scale up Tanzania’s HIV response, especially in line with the adoption of test and treat. More resources are also needed to ensure that proper monitoring and reporting systems are in place for transparency of funding.102

A key issue is that the Tanzanian HIV response is heavily reliant on foreign funding, with 93% coming from international donors in 2017/18.103 Major international donors include the US, Canada and Japan, UNAIDS, the Global Fund and PEPFAR, the latter of which is Tanzania’s largest international funder. 104 In the 2020 financial year, PEPFAR will finance 64% of Tanzania's HIV treatment and care, 100% of VMMC and laboratory activities, 92% of PMTCT services and more than 70% of HIV prevention for priority populations.105

Increasing the Tanzanian government’s domestic contribution and improving accounting and reporting on HIV spending is likely to attract additional donor funding. For example, the Global Fund sets aside 15% of its total country programme to incentivise governments to increase health spending. The current Global Fund co-financing agreement with the Tanzanian government requires the country to invest an additional US$29.3 on specific HIV and TB programmes between 2018 and 2020, compared to 2015 to 2017 spending levels.106

The future of HIV in Tanzania

Although HIV prevalence has fallen in Tanzania over the past decade, tens of thousands of people become infected with HIV every year. Stigma against HIV-positive people, the criminalisation of key population groups, and human resource shortages are preventing a sustained reduction in new HIV infections. There is also a pressing need to improve diagnosis rates and linkages to care, particularly among men and people from key affected populations.

Specific HIV programming for people from hard-hit communities in certain areas is necessary to get Tanzania’s HIV epidemic under control. Focusing on national-level indicators means badly affected districts have previously been overlooked.107

To better understand HIV risk and transmission, age-disaggregated data is also required. In particular, the lack of adolescent-disaggregated data means this vulnerable population group risks being left behind.108 A 2015 analysis by PEPFAR cites health financing, supply chain, and performance and financial data collection as areas where Tanzania’s national HIV response needs improvement. In response to this, the government presented a comprehensive healthcare financing strategy to the Cabinet, with a focus on scaling up health insurance coverage, strengthening value for money, and engaging the private sector.109
These efforts will be necessary if Tanzania is to overcome the debilitating effects the HIV epidemic continues to have on its economy and society. There is also an urgent need to address the lack of domestic funding for the HIV response so that Tanzania is not so reliant on international support to end its HIV epidemic.110

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Last full review:
14 February 2020

Next full review:
14 February 2023
February 3, 2020

“If We Don’t Get Services, We Will Die”
Tanzania’s Anti-LGBT Crackdown and the Right to Health

Available In  English  Kiswahili

A gay man with HIV in a clinic in Dar es Salaam, Tanzania, November 16, 2016. Due to the government’s crackdown on the gay community, the man had been afraid to pick his medicine up for two weeks in spite of the risks to his health. © 2016 Kevin Sieff / Getty Images

Video
Photo Gallery
Map

Summary
Tanzania’s Anti-LGBT Crackdown and the Right to Health | HRW

Tanzania made international headlines in October 2018 when a regional official, Paul Makonda, claimed to have established a task force to round up all men suspected of being gay in the coastal city of Dar es Salaam, “test” them for homosexual conduct, and jail them for life. He called upon Tanzanians to send him text messages reporting anyone they suspected of being gay, and claimed to have received hundreds of such messages.

International pressure led the Tanzanian government to disavow the official’s comments. In a remarkable development given President John Magufuli’s demonstrable indifference to international opinion and the environment of hostility toward lesbian, gay, bisexual and transgender (LGBT) people that he has institutionalized, Magufuli affirmed in a meeting with World Bank officials that the government would end “discriminatory actions related to harassment and/or arrests” on the basis of sexual orientation.

Makonda’s threats did not bear out, but institutional homophobia continued to reign. In April 2019, with disregard to both freedom of association and the right to health, and in clear demonstration of Tanzania’s institutionalized homophobia, the government formally deregistered Community Health Education and Advocacy Services (CHESA), one of Tanzania’s most established organizations working to advance health and rights for LGBT people. The government reportedly accused CHESA of “promoting unethical acts.” In September 2019, the deputy home affairs minister called for arrests of LGBT people, in direct contradiction to the government’s commitment.

—Victor, 25-year-old gay man, Dar es Salaam, interviewed by Human Rights Watch on September 28, 2018
Tanzanian Government Attacks on LGBT Health and Rights

2016-2019

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

Until 2016, although same-sex conduct was criminalized, Tanzania’s health sector acknowledged and made some efforts to address the specific vulnerabilities of men who have sex with men and other groups considered to be “key populations,” meaning that public health initiatives should take particular efforts to address the needs of these groups as part of their
Tanzania’s approach to HIV and AIDS was considered largely successful, due to the fact that it was evidence-based and relatively inclusive.

In contrast, since 2016, the Ministry of Health has prohibited community-based organizations from conducting outreach on HIV prevention to men who have sex with men and other key populations, based on the pretext that such organizations are engaged in the “promotion of homosexuality.” The Ministry closed drop-in centers that provided HIV testing and other services to key populations, run in many cases by international agencies, asserting that these centers, too, were involved in “homosexuality promotional activities.” It banned the distribution of lubricant, an essential HIV prevention tool for key populations and for much of the wider public, including post-partum women.

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

The authorities have also undermined the right to health through a series of police raids on meetings and trainings organized by health and rights activists and their allies, arresting participants, including foreign lawyers, in an effort to silence and instill fear within activist communities as well as service provision groups and their beneficiaries. Among the activities shut down by police have been HIV education sessions, leading LGBT people to fear attending these potentially lifesaving workshops.

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

Human Rights Watch calls on Tanzania’s Health Ministry to immediately reverse its rights-negating health policies, including the ban on distribution of lubricant and the prohibition on HIV and public health outreach and operation of drop-in centers by community-based
examinations, reform laws and policies that discriminate on the basis of sexual orientation and gender identity, and ensure freedom of association for groups working to protect LGBT people’s access to health and rights.

Recommendations

To the President of the United Republic of Tanzania and the President of Zanzibar

- Refrain from anti-LGBT statements and hold government officials accountable for anti-LGBT statements or actions.
- Uphold commitments to end harassment and arrests based on sexual orientation.

To the Office of the Prime Minister

- Ensure that health policy and strategy documents published under the oversight of the Office of the Prime Minister, including the National Multisectoral Strategic Framework for HIV and AIDS and any other output from the Tanzania AIDS Commission (TACAIDS), are evidence-based and aligned with internationally recognized best practices, including with regard to availability of lubricant and community-based outreach.

To the Ministry of Home Affairs

- Instruct the police on the mainland and in Zanzibar to end arrests based on sexual orientation, gender identity, and gender expression and to stop raiding meetings and workshops organized by LGBT rights and health advocates.
- Issue a circular prohibiting police from using anal examinations as a means of seeking evidence in prosecutions for same-sex sexual conduct.
Recommendations

- Issue a directive reversing the ban on distribution of lubricant.

- Allow non-governmental organizations and community-based organizations to reopen drop-in centers providing HIV services and other health services to LGBT people and other key populations.

- Reverse the prohibition on community-based organizations conducting HIV education and outreach targeting men who have sex with men and other key populations.

- Refrain from statements accusing organizations that work to provide health services to key populations of “promoting homosexuality.”

To the Ministry of Health, Community Development, Gender, Elderly and Children (Tanzania Mainland) and the Zanzibar Ministry of Health

- Issue circulars strictly prohibiting health workers from conducting or assisting anal examinations as a means of seeking evidence of homosexual conduct, on the grounds that taking part in such examinations violates medical ethics and that the examinations are unscientific and serve no medical purpose.

- Ensure that health policy and strategy documents published under the oversight of the Health Ministry, including the Health Sector HIV and AIDS Strategic Plan and any other output from the National AIDS Control Programme, are evidence-based and aligned with internationally recognized best practices.

- Take steps to make water-based or silica-based lubricant and high-quality condoms widely available, through non-governmental organizations and community-based organizations as well as at government hospitals and clinics.

- Train government health workers on non-discrimination on the basis of sexual orientation and gender identity. Partner with Tanzanian or regional LGBT organizations in planning and conducting all such trainings.

- Hold health providers accountable through an anonymous complaints mechanism that allows patients to submit complaints regarding discrimination or abusive treatment, and that results in investigation and disciplinary measures against health providers that are
Recommendations

- Approve tailored, community-vetted health messaging crafted to reach LGBT people and provide information regarding healthy sexual decision-making.

- Publicly support and advocate for the decriminalization of consensual same-sex conduct.

To TACAIDS, the National AIDS Control Programme, the Zanzibar AIDS Commission, and the Zanzibar Integrated HIV, Hepatitis, TB, and Leprosy Programme (formerly the Zanzibar AIDS Control Programme)

- Ensure that all health policy and strategy documents drafted are evidence-based and aligned with internationally recognized best practices.

- Leverage your health expertise to advocate with the larger Tanzanian government on best practices on HIV and AIDS, including the need to make available water-based or silica-based lubricant and the importance of targeted outreach and provision of friendly HIV services to men who have sex with men and other key populations.

To the Non-Governmental Organizations Coordination Board and the Registrar of Non-Governmental Organizations

- Reverse deregistration of organizations that work to promote the health and human rights of LGBT people and other marginalized groups, including sex workers, and allow such organizations to register in the future.

- Refrain from invasive measures authorized under the Written Laws (Miscellaneous Amendments) Act No. 3 of 2019, including investigation and evaluation of non-governmental organizations.

To the Tanzania Police Force and the Zanzibar Police Force

- End arrests based on sexual orientation, gender identity, and gender expression.
Recommendations

- End the use of forced anal examinations as a means of seeking evidence of homosexual conduct.

To the Parliaments of Tanzania and Zanzibar

- Through the Standing Committee on HIV/AIDS (Tanzania), conduct an investigation into the consequences of policies implemented by the Ministry of Health since 2016, including the ban on distribution of lubricant, the ban on HIV outreach to men who have sex with men, and the closure of drop-in centers, as well as any instances of refusal of services and discrimination against LGBT people and key populations in accessing HIV/AIDS services.

- Exercise the oversight functions of the Parliamentary Standing Committee on Foreign Affairs, Defence and Security (Tanzania) and the Constitution, Justice and Governance Committee (Zanzibar) by investigating police abuse of LGBT people, including raids on meetings, arbitrary arrests, and the use of forced anal examinations.

- Amend the Non-Governmental Organizations Act of 2002, revoking sections added through the Written Laws (Miscellaneous Amendments) Act No. 3 of 2019 that authorize the Registrar of NGOs to intervene in the activities of non-governmental registrations, including by investigating and evaluating their activities.

- Introduce amendments to decriminalize same-sex conduct between consenting adults by removing articles 138A, 154, 155, and 157 from the Tanzania Penal Code, and articles 150, 151, 153, 154, and 158 from the Zanzibar Penal Code.

To the Ministry of Foreign Affairs and East African Cooperation

- Uphold the October 2018 commitment to “respect all international agreements regarding human rights signed and ratified” by advocating internally within the government for the restoration of health services that are needed to uphold the right to health for LGBT people and for an end to police harassment, arbitrary arrests, and the use of forced anal examinations.

To the Tanzania Communications Regulatory Authority
To the Commission of Human Rights and Good Governance (CHRAGG)

- In accordance with its mandate to proactively monitor human rights violations, document and report on human rights violations affecting LGBT people in Tanzania, including violations of the right to health and the right to freedom of association, as well as arbitrary arrests and forced anal examinations.

- In accordance with its mandates to monitor government compliance with international treaties and to suggest law reform in order to ensure such compliance, call for the decriminalization of consensual same-sex conduct.

To the Office of the US Global AIDS Coordinator and Special Representative for Global Health Diplomacy (OGAC), responsible for the President’s Emergency Plan for AIDS Relief (PEPFAR), and the U.S. Agency for International Development (USAID)

- Require the Tanzanian Ministry of Health, Community Development, Gender, the Elderly and Children to uphold commitments it made in the 2019 PEPFAR reauthorization process, including to undertake health policy reforms and to ban forced anal examinations.

- Ensure that the Key Population Investment Fund provide funds directed to LGBT-led organizations, and that such organizations receive adequate funding and support through all PEPFAR financing streams.

To Joint United Nations Programme on HIV/AIDS (UNAIDS)

- Seek every opportunity to use its convening authority to encourage dialogue between government officials and LGBT communities.
Recommendations

- Conduct a high-level mission to meet with Tanzanian authorities and call for a rights-respecting, evidence-based approach to HIV prevention and treatment.

To the Global Fund to Fight AIDS, Tuberculosis and Malaria

- In accordance with the Global Fund's Sustainability, Transition and Co-financing Policy, ensure that the Tanzanian government take meaningful steps to address human rights and gender-related barriers that block effective national responses to HIV and that it improves the legal and policy environment for LGBT people, and conduct regular evaluations, with LGBT involvement, of government-led human rights programming funded by the Global Fund.

- Ensure that the Country Coordinating Mechanisms (CCM) in mainland Tanzania and Zanzibar are responsive to LGBT people's health and rights concerns and provide LGBT people meaningful space to participate.

To the World Bank

- Hold President Magufuli accountable to his commitment to end harassment and arrests based on sexual orientation, including by monitoring violations, maintaining regular dialogue with LGBT civil society organizations, and calling on the government to take all necessary steps to end violations.

- Undertake risk assessment to ensure that no loans disbursed to Tanzania will contribute to discrimination based on sexual orientation or gender identity, and that no World Bank-funded projects will be implemented discriminatorily.

To Other Donors to Tanzania

- Support LGBT-led civil society organizations, through funding, technical support, and facilitation of dialogue with government authorities.
**Recommendations**

- Make available “emergency response” funds to support LGBT activists that are impacted by crackdowns, violence, and arrests.

- Coordinate with other donors to ensure comprehensive and consistent support to LGBT activists on the ground.

- Engage in public and private advocacy with the Tanzanian government, pressing officials to uphold the rights of LGBT people under international law.

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**Methodology**

This report is based largely on interviews conducted with 35 self-identified lesbian, gay, bisexual, and transgender Tanzanians between May 2018 and June 2019. Because of efforts by the Tanzanian government to prevent independent investigations of human rights violations, Human Rights Watch conducted many of the interviews remotely via telephone and video applications.

Human Rights Watch also worked with a consultant in Tanzania with previous experience with our methodology, who conducted in-person interviews in Dar es Salaam and Zanzibar and by phone with individuals from Tanga, Arusha, and Morogoro, and who assisted Human Rights Watch in connecting with those who were interviewed remotely. Semi-structured Interviews were conducted in English or Kiswahili based on a questionnaire which focused on access to health, but also included questions with regard to arrests and violence on the basis of sexual orientation or gender identity.

All interviewees were informed that the interviews were voluntary and that they could decline to answer any questions and end the interview at any time. No one was compensated for participation in an interview. Most interviewees who are LGBT Tanzanians have been given pseudonyms in this report to ensure their privacy and security; where pseudonyms have been used, this is indicated in the footnotes.
who have sex with men and trans women face a higher risk of HIV and were more likely to be
directly affected by the Health Ministry’s ban on lubricant and withdrawal of friendly
community-based services, they made up a significant portion of our interviewees. However,
because we were also interested in how the anti-LGBT crackdown affected LGBT people of all
identities, we also interviewed transgender men and queer women. In total, twenty-three
respondents were men who have sex with men who self-identified with a range of terms
including gay, bisexual, and kuchu (an inclusive term coined by Ugandan LGBT activists). Five
respondents were transgender women, four were transgender men, two were lesbian or queer
women, and one identified as nonbinary and queer. Because we identified interviewees through
civil society organizations and personal networks, the individuals we interviewed were largely
from urban areas and connected with LGBT services. The voices of some of Tanzania’s most
marginalized and isolated LGBT people, including those in rural areas and those who remain
fully closeted, are not included.

This report also draws on both formal interviews and informal conversations with Tanzanian
LGBT rights activists, human rights activists, and lawyers between 2014 and 2019 and on short
research trips to Tanzania in 2014 and 2017, and on discussions with representatives of over 20
Tanzanian, regional, and international health and human rights organizations and experts,
donors, and UN agencies.

This report builds on previous research conducted in 2012 and 2013 by Human Rights Watch
and the Wake Up Step Forward Coalition (WASO), which was at that time a network of four
Tanzanian organizations focused on health and rights for men who have sex with men (distinct
from another organization currently operating in Tanzania which also goes by the name
WASO). In that research, which resulted in the report “Treat Us Like Human Beings”:
Discrimination Against Sex Workers, Sexual and Gender Minorities, and People Who Use Drugs in
Tanzania, we found that discrimination and violence prevent men who have sex with men, sex
workers, and people who inject drugs from adequately accessing government services. From
2014 through mid-2016, Human Rights Watch researchers maintained regular contact with
LGBT and key population activists in Tanzania as well as other stakeholders in order to
contribute to ongoing advocacy efforts. Some information collected during that time period has
also been used in this report.

Unlike in our 2013 research, for this report we did not conduct interviews with sex workers and
people who inject drugs unless they also identified as LGBT. Although sex workers and people
who inject drugs have also been affected by the withdrawal of essential health services and by increased policing under Magufuli’s government, we chose to focus specifically on the anti-LGBT element of the crackdown. Important work remains to be done on how sex workers and people who inject drugs have been impacted.

Human Rights Watch reached out to the Ministry of Health in the early days of the anti-LGBT crackdown, in August 2016, to express concern regarding the ban on lubricant and to seek clarification of the government’s position. We received no response to the letter. In December 2019, Human Rights Watch sent letters to the Ministry of Health and Ministry of Constitutional and Legal Affairs summarizing the findings of this report and asking for clarification of government positions, but did not receive responses.

Timeline: Tanzanian Government Attacks on LGBT Health and Rights, 2016-2019

2016

April 2016: Tanzania undergoes its Universal Periodic Review (UPR) at the UN Human Rights Council, its second such review overall and its first since the inauguration of President John Pombe Magufuli in November 2015. The Tanzania Key Populations and Sexual Minorities Working Group, comprising 19 Tanzanian organizations, submits a shadow report documenting cases of police abuse, discrimination, and violence.[1] Six states make recommendations on abuses related to sexual orientation and gender identity, including recommendations to decriminalize same-sex conduct and to publicly condemn anti-LGBT discrimination.[2]

May 20, 2016: The Human Rights Council publishes the UPR Working Group report on Tanzania, indicating that Tanzania rejects all six recommendations that relate to sexual orientation and gender identity.[3]

June 28, 2016: Kaoge Mavuto, a Tanzanian trans woman, gives an interview on Clouds TV in which she discusses community-based organizations’ provision of health services, including distribution of condoms and lubricant.[4]
July 2, 2016: The Dar es Salaam regional commissioner (an administrative official appointed by the president), Paul Makonda, makes an inflammatory speech in which he threatens to arrest gays as well as anyone who “follows” homosexuals on social media, and to ban organizations that “promote homosexuality.”[6]

July 8, 2016: The Tanzanian Communications Regulatory Authority orders Clouds TV to issue an apology for airing an interview with a trans woman.[7]

July 15, 2016: At a public event, the health minister for mainland Tanzania, Ummy Mwalimu, announces opposition to the distribution of lubricant in government hospitals and health centers.[8] (Mainland Tanzania and Zanzibar each have their own health ministry, a function of Zanzibar’s partial autonomy. Unless noted otherwise, references to this health ministry or health minister in this report specifically refer to the mainland; the Ministry of Health in Zanzibar has not, to the knowledge of Human Rights Watch, taken specific steps to limit access to the right to health for LGBT people.)

July 19, 2016: The mainland Health Ministry publishes a statement opposing the distribution of lubricant and the “promotion of homosexuality.”[9]

July 23, 2016: The mainland deputy health minister, Hamisi Kigwangalla, tweets that lubricant will still be available at government hospitals, but that the government will no longer allow pharmacies to sell it or NGOs to distribute it.[10]

July 29, 2016: Justice Minister Harrison Mwakyembe threatens to prosecute civil society organizations for “promoting” homosexuality, including by distributing lubricant.[11]

August 1, 2016: CHESA receives a letter from the Registrar of NGOs providing notice of his intent to deregister the organization based on its alleged promotion of homosexuality.[12]

August 11, 2016: Deputy Minister Kigwangalla issues a statement in a newspaper and on social media, summoning LGBT Voice, a group that had spoken out in the media against state-sponsored homophobia, to appear at his office the following day. LGBT Voice does not respond to the summons. [13]
August 15, 2016: Deputy Health Minister Kigwangalla, with police and intelligence officers, raids CHESA’s office, questioning activists, searching the office for lubricant, and confiscating files. The following day, police question CHESA director John Kashiha for approximately eight hours.[14]

August 30, 2016: CHESA files a petition before the High Court of Tanzania challenging the NGO Registrar’s notice of intention to deregister, and the Health Ministry’s search and seizure of CHESA property, as unconstitutional.[15]

October 27, 2016: The Ministry of Health suspends all “community MSM [men who have sex with men] peer outreach activities and MSM Drop In Centers” pending the preparation of new guidelines on HIV programming for key and vulnerable populations.[16]

December 14, 2016: Police raid a meeting on health and human rights at a hotel in Dar es Salaam, arresting eight participants and interrogating them about whether the meeting was a “gay people’s meeting.” Lawyers secure their release the same day, but police hold their identity documents for several days.[17]

December 15 and 16, 2016: Police raid two bars in Zanzibar, arresting men they suspect of being gay.[18]

2017

January 2017: Police arrest more men on suspicion of homosexuality in Zanzibar and take them to Mnazi Mmoja Hospital, where doctors subject them to forced anal examinations.[19]

February 16, 2017: The Health Ministry orders the closure of as many as 40 drop-in centers providing HIV services for key populations, about 30 of which were run by JHPIEGO. The ministry states that key populations should go to government clinics for services.

February 2017: Police arrest two activists for leading a training in Songea on LGBT identities and rights.[20]

February 2017: On Twitter, Deputy Health Minister Kigwangalla orders the arrest of three social media personalities, including Kaoge Mvuto (the transgender woman who provided the 2016 interview to Clouds TV, frequently referred to incorrectly in media reports as a “gay
March 2017: Police in Zanzibar arrest seven men on charges of homosexuality.[23]

March 2017: In Zanzibar, then-Regional Commissioner for Urban West, Ayoub Mohammed, threatens to deregister all organizations “promoting” same-sex acts, accusing such organizations of “destroying our children.”[24]

April 2017: The Ministry of Health publishes new Key and Vulnerable Populations Guidelines which make no reference to lubricant and require all community HIV prevention outreach efforts to be government-managed.[25]

June 22, 2017: President Magufuli accuses foreigners of bringing homosexuality to Tanzania, stating that “even cows, even goats” don’t have same-sex relations: his first known public statement on LGBT issues.[26]

June 25, 2017: Minister of Home Affairs Nchemba threatens to deregister any organizations and deport any foreign activists “promoting” homosexuality in Tanzania.[27]

September 15, 2017: Police in Zanzibar raid a workshop organized by a community-based organization for parents of members of key population groups about HIV prevention and treatment, arresting 20 participants, volunteers, and staff, on grounds of “promoting homosexuality.” Eighteen were released without charge the same day, while two remained in detention for two days.[28] Regional police commander Hassan Ali Nasri threatened to “hunt and prosecute” LGBT people.[29]

October 17, 2017: Police raid a workshop on strategic litigation at Dar es Salaam’s Peacock Hotel, arresting 13 people, including South African and Ugandan lawyer and activists representing the Initiative for Strategic Litigation in Africa (ISLA), representatives of the Tanzanian health and rights organization CHESA, and other Tanzanian activists. They are accused of “promoting homosexuality.”[30]

October 20, 2017: The Office of the NGO Registrar, under the direction of the Ministry of Health, Community Development, Gender, Children and Elderly, issues an order suspending the work of CHESA, on accusations that it is “promoting same-sex marriage.”[31]
circulating the video are also charged. Prosecutors drop charges in May 2019, but police then re-arrest the four accused on the same charges. Their case remains pending as of November 2019. [32]

2018

October 29, 2018: Paul Makonda, the regional commissioner of Dar es Salaam, gives a press conference calling on Tanzanians to send him names of any suspected gay men as well as people using the internet for sex work, and threatens to launch a “hunt” for them the following week. [33]

October 31: Makonda gives another press conference and says he has established a task force to hunt down gay men which will start operations on November 5. He says suspects will be “tested” for homosexuality, offered counseling if they “want to change,” and otherwise be imprisoned.[34]

November 3, 2018: Police arrest ten men at a beach in Zanzibar, accusing them of conducting a “gay wedding.”[35] They are released on bail, but continue reporting to police on a weekly basis through January 2019.

November 4, 2018: Tanzania’s Ministry of Foreign Affairs disavows Makonda’s comments, issuing a statement that “these thoughts are his alone and not the position of the government” and that Tanzania “will continue to respect all international agreements regarding human rights signed and ratified.”[36] The statement follows démarches from several diplomatic partners raising concerns regarding Makonda’s planned crackdown.[37]

November 7, 2018: The World Bank, Tanzania’s largest donor, suspends visiting missions to Tanzania, announcing that due to “harassment and discrimination against the Lesbian, Gay, Bisexual, Transgender (LGBT+) community, all visiting missions to Tanzania have been suspended with immediate effect until we are assured of the safety and security of all employees.”[38]

November 14, 2018: Denmark’s foreign minister announces Denmark will temporarily withhold US$10 million in aid from Tanzania on the basis of human rights, including discrimination based on sexual orientation.[39] Several weeks later, Denmark reinstates the aid.[40]
November 17, 2018: High-ranking World Bank representatives meet with President Magufuli to discuss Tanzania’s policy of excluding pregnant girls and young mothers from secondary school, its law outlawing the publishing of statistics contrary to government data, and the anti-LGBT environment. Following the meeting, the World Bank lifts the suspension of visiting missions, indicating in a statement that President Magufuli “assured the Bank that Tanzania will not pursue any discriminatory actions related to harassment and/or arrest of individuals, based on their sexual orientation.”[41]

2019

January 2019: Local officials order the arrest of 13 men in a small town on the basis of their perceived sexual orientation. Police subject them to forced anal examinations. Following the intervention of diplomatic missions, they are released on bail. However, three of them are later rearrested in Dar es Salaam and held for two weeks before being released.[42]

March 2019: At a U.S. President’s Emergency Plan for AIDS Relief (PEPFAR) meeting in Johannesburg, South Africa, PEPFAR calls on the Tanzanian government to ban forced anal exams. Tanzania’s Health Ministry shares a circular issued in January 2019, previously unknown to civil society activists present at the meeting, which instructs hospitals to conduct anal examinations only when there is a valid court order. Activists insist this circular is insufficient, and PEPFAR joins them in calling for a full ban.[43]

April 2019: NGO Registrar Neema Mwanga announces that the Non-Governmental Organisations (NGO) Co-ordination Board, a government body that operates under the aegis of the Ministry of Health, Community Development, Gender, Children and Elderly, has revoked the registration of six organizations, including CHESA. CHESA and two other organizations are accused of “promoting unethical acts.”[44]

April 2019: Civil society organizations launch a petition calling on the Health Ministry to uphold its commitment prohibit forced anal examinations.[45]

September 2019: While in Zanzibar, Deputy Home Affairs Minister Hamad Masauni calls for arrests of anyone “promoting” homosexuality.[46]
I. Background

“We are like ants fighting with elephants.”
—Toni (not her real name), transgender activist in Tanzania, October 9, 2018

Tanzanian law has criminalized consensual same-sex conduct since the period of British colonial rule (1919-1961).[47] For decades, social stigma combined with legal repression has led most LGBT people to remain closeted, and for those who are known or thought to be LGBT, discrimination is rife.[48] But since President John Magufuli assumed power in 2015, LGBT Tanzanians have been subjected to unprecedented and systemic rights violations at the hands of the state. The government is unapologetic in its rejection of basic rights for LGBT people: during its Universal Periodic Review process before the UN Human Rights Council in 2016, the government not only rejected recommendations to decriminalize same-sex conduct, but also refused to “[c]ombat impunity for crimes committed against sexual minorities, ensure that their right to assembly and association is upheld and ensure the right to equal treatment in accessing health services and justice.”[49]

Political Context

President Magufuli’s party, Chama Cha Mapinduzi, has governed Tanzania since independence. Magufuli was elected on a campaign platform promising rapid economic development and an end to corruption. In his previous role as public works minister, Magufuli was nicknamed “The Bulldozer” for his infrastructure projects, a moniker that stuck in large part due to his governance style, road-building aside.[50] Since assuming power, Magufuli has targeted corruption and wasteful government spending, sometimes through unexpected, highly publicized visits to government departments. However, his “clean up” rhetoric soon extended to those whom he portrays as socially undesirable, including sex workers and drug users. [51] From a rural, conservative Catholic background, Magufuli has described himself as acting in accordance with “the will of God.”[52]
Magufuli’s administration has been marked by efforts to silence criticism, including through closure of media outlets and arrests of activists and opposition members.

In June 2019, Magufuli signed into law The Written Laws (Miscellaneous Amendments No. 3 of 2019) Bill, which amends the NGO Act to give the Registrar of NGOs broad powers to investigate and evaluate NGOs and to suspend their operations.[53] This followed a 2018 revision of NGO regulations that required NGOs to publicly declare sources of funds, as well as expenditures and activities they intend to undertake, within 14 days of obtaining such funds, under threat of deregistration.[54] Authorities have also more directly threatened and sought to silence civil society groups. When the Legal and Human Rights Centre held a press conference in January 2018 alleging election-related security force abuses, the Tanzania Communications Regulatory Authority fined five television stations for broadcasting it, claiming the content was “seditious.”[55] Police have detained activists working on local governance issues in mining areas. [56]

Independent media is also under attack. Under the Cybercrimes Act (2015), at least four journalists were prosecuted in 2018 for alleged crimes such as the publication of false information. Four newspapers were banned in 2017 for publishing content deemed critical of the government, while others were temporarily suspended.[57] Police have physically assaulted and detained journalists without charge.[58]

In 2016, Magufuli ordered that all political activities be suspended until 2020, seeking to hamstring the opposition. Police have implemented the order vigorously, arresting members of parliament who were visiting or holding rallies in their own constituencies and charging them with criminal offenses.[59] In 2019, Parliament amended the Political Parties Act, giving the registrar of political parties wide powers to deregister parties and providing prison sentences for conducting unauthorized civil education.[60] Numerous officials from the Chadema opposition party have faced criminal charges for carrying out political activities. Unknown assailants have killed and assaulted other Chadema officials in attacks that appeared to be politically motivated.[61]

Reversing Gains

Given Magufuili’s assault on civil liberties, it is not surprising that LGBT people, too, came under attack.
occasional homophobic statements from politicians. Prior to Magufuli’s election, public discussion of sexual orientation and gender identity was almost nonexistent apart from occasional homophobic statements from politicians.

Former president Jakaya Kikwete, when asked about the criminalization of same-sex conduct in a 2014 media interview, equivocated by stating only that it would “take time for our people to accept the norms that the West is accepting.” Nevertheless, between 2007 and 2015, Tanzania made progress on issues related to LGBT rights under the framework of addressing the HIV epidemic by including key populations, including men who have sex with men, transgender people, sex workers, and people who use drugs in health policy planning.

LGBT organizations did not operate with complete freedom under Kikwete’s administration. In 2014 the Ministry of Community Development, Gender and Children, which then oversaw NGO registration, banned what was then one of Tanzania’s largest LGBT organizations, the Tanzania Sisi Kwa Sisi Foundation (TSSF), on the grounds that it promoted illegal activity. TSSF’s deregistration, in what proved to be a precursor to what was to come in 2016, followed the publication of comments on the organization’s Facebook page criticizing the government’s reluctance to allow non-governmental organizations to import lubricant as an HIV prevention commodity. Other organizations were generally able to function, particularly if they kept a low profile.

But under Magufuli, government officials launched an assault on civil society organizations working with LGBT communities. Minister of Constitutional and Legal Affairs Harrison Mwakyembe announced in July 2016 that he would prosecute organizations “promoting” homosexuality. This statement was followed by increased scrutiny of organizations working on LGBT issues and even those working on public health and HIV more broadly, along with several waves of raids, arrests, threats to deregister organizations, and eventually the actual deregistration of several organizations, including Community Health Education and Advocacy Services (CHESA) in April 2019. Meanwhile, the Ministry of Health whittled away services for LGBT people and key populations, as documented in section II of this report.

President Magufuli was initially silent on the topic of LGBT rights. He broke his silence in June 2017 with a statement that foreigners brought homosexuality to Tanzania, along with drugs and rape. He stated, “Men and men, women and women – even cows, even goats have never done that.”

Magufuli’s efforts to centralize power, while at the same time vilifying minorities, echo tactics used by authoritarian populist regimes around the globe. Human rights activists working on an array of issues are framed as representing “foreign” interests and working against
Tanzania. People were used to KPs [key populations] and LGBT people, but after the government statements, people think LGBT have been brought in from outside. Everyone is scared.”[71]

One impact of Magufuli’s full-throttled attack on civil society is that mainstream human rights organizations in Tanzania—which have, with few exceptions, not offered vocal support for the rights of LGBT people—have become even more hesitant to take up their cause, for fear that it will discredit them or, in some cases, on the basis of their own entrenched antipathy toward LGBT people.[72]

**Legal Context**

Tanzania’s laws prohibiting consensual sexual relations between people of the same sex are among the harshest in the world. In mainland Tanzania, section 154 of the Penal Code, which dates back to British colonial rule, punishes “carnal knowledge against the order of nature.” The law originally prescribed a sentence of 14 years in prison, but after independence, in a series of several penal code reforms, the Tanzanian government lengthened the sentence to 30 years to life in prison. Section 155 punishes any “attempt” to commit such acts with up to 20 years in prison.[73]

In addition, section 157 punishes “gross indecency between males.” In a perverse attempt to equalize the impact of these invasive laws, in 1998 the Tanzanian government passed the Sexual Offenses Special Provisions Act, thereby adding to the Penal Code a new section, 138A, which punishes “gross indecency between both men and women with up to five years in prison.”[74]

In semi-autonomous Zanzibar, laws punishing same-sex conduct have also been expanded in recent years. The Zanzibar penal code punishes “carnal knowledge against the order of nature” (section 150) and “gross indecency” (section 154) with 14 and 5 years in prison respectively, but Zanzibar also directly criminalizes sexual relations between women after adding a new provision to its penal code on “acts of lesbianism” (section 158) in 2004. Zanzibar also punishes same-sex “unions” (section 158).[75]

The law does not prohibit “homosexuality” in itself, and no law prohibits “promoting homosexuality,” although this bogus charge has at times been used by Tanzanian police as a justification for arrests.
While Tanzania's constitution prohibits "all forms" of discrimination, and enumerates several protected grounds, including "nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life," there is no express prohibition in Tanzanian law on discrimination based on sexual orientation or gender identity.[76]

II. Attacks on the Right to Health

“The Tanzanian government should educate its healthcare providers how to treat us makuchu [LGBT people] without slandering us with insults or stigmatizing us when we are people like other people.”
—Human Rights Watch interview with King (not his real name), a gay man, May 21, 2018

Tanzania’s crackdown against LGBT people began with a television talk show. Interviewed in June 2016 on a popular TV channel, a transgender woman, Kaoge Mavuto, discussed her involvement with civil society organizations that provided condoms and lubricant as part of their HIV prevention efforts.[77]

The next day, a member of parliament accused the television channel, Clouds TV, of “glorifying gayism.”[78] Several days later, on July 2, Dar es Salaam’s regional commissioner, Paul Makonda, gave an inflammatory speech pledging to arrest gays as well as anyone who “followed” openly gay people on social media. Makonda, an appointed administrative official who claimed to have President Magufuli’s blessing for his remarks, also pledged to ban organizations that “promote homosexuality.”[79] The following week Tanzania’s Communication Regulatory Authority ordered Clouds TV to issue an apology.[80]

Lubricant, an important HIV prevention tool, was among the first casualties of the ensuing moral panic. On July 15, at the opening of a USAID-supported hospital, Health Minister Ummy Mwalimu announced opposition to the distribution of lubricant in government hospitals and health centers. “We don’t agree with the promotion of homosexuality and homosexual acts,” she declared emphatically. “We should do these HIV/AIDS interventions, but my goodness, to distribute lubricants for men who have sex with other men in the United Republic of Tanzania... In fact, I ban it in the entire country.” [81]
and Zanzibar each has its own health ministry, a function of Zanzibar’s partial autonomy. Unless noted otherwise, references to the health ministry or health minister in this report specifically refer to the mainland.) Under former President Kikwete, Tanzania’s approach to HIV and AIDS was considered a relative success: evidence-based and at least somewhat inclusive of key populations.[82] Between 2010 and 2015, Tanzania scaled up access to antiretroviral treatment, piloted needle and syringe programs, and emphasized partnerships with community-based organizations. New HIV infections and AIDS-related deaths declined.[83]

HIV prevalence among men who have sex with men was estimated at 25 percent in urban areas in mainland Tanzania in 2014,[84] compared to 4.7 percent among the general population (ages 15-49) in 2018,[85] down from at 5.1 percent in 2012.[86] No formal statistics exist on HIV prevalence among trans people in Tanzania—or in most other countries in Africa[87]—but studies in other regions demonstrate that trans women are also at high risk of contracting HIV.[88]

Statistics made clear that a gap in reaching men who have sex with men and other key populations was undermining overall HIV prevention efforts in Tanzania: only 14 percent of men who have sex with men were benefiting from HIV prevention efforts targeted to their needs, according to a 2014 Global Fund concept note,[89] while the government estimated in 2013 that only 25 percent of men who have sex with men had been reached through any HIV prevention program at all.[90] But the Prime Minister’s Office and the Ministry of Health issued a series of HIV strategy documents between 2008 and 2014 seeking to address that gap, advancing strategies to stem the epidemic among key populations, including by addressing stigma and discrimination. One strategy document even called for decriminalization of same-sex conduct.[91] Government bodies such as the Tanzania AIDS Commission (TACAIDS) and the National AIDS Control Program in mainland Tanzania and the Zanzibar AIDS Commission in Zanzibar increasingly invited key population representatives to the table to ensure inclusive health programming.

Following advocacy by non-governmental organizations, the Global Fund to Fight HIV, Malaria and Tuberculosis, and eventually even the Health Ministry itself, the Prime Minister’s Office included provision of lubricant in Tanzania’s Third National Multisectoral Strategic Framework on HIV and AIDS, published in 2013. The nongovernmental organization PSI imported the first bulk shipment of lubricant for an HIV prevention program targeting men who have sex with men in 2015, with the Health Ministry’s blessings.[92]
In June 2016, Tanzania publicly supported a UN General Assembly resolution entitled “Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030.” According to the declaration, adopted by consensus, all states:

Reaffirm that the full enjoyment of all human rights and fundamental freedoms for all supports the global response to the AIDS epidemic, including in the areas of prevention, treatment, care and support, and recognize that addressing stigma and discrimination against all people living with, presumed to be living with, at risk of and affected by HIV is a critical element in combating the global HIV epidemic.[93]

Tanzania’s Deputy Health Minister Hamisi Kigwangalla stated, “The government applauds the work done on drafting the declaration. The translation of such global policies at local level will be key going forward.”[94]

Just weeks later, Tanzania changed its tune. It began implementing a series of policies that negated rights, inhibiting the HIV response. This included banning personal lubricants, prohibiting outreach activities, and forcibly closing drop-in centers that provided HIV and other health services to LGBT people and key populations.

A health ministry that LGBT activists had generally perceived as an ally began to stoke fear around the so-called “promotion of homosexuality:”

Recently there emerged reports that some of the NGOs, in the name of anti-HIV activities, have been promoting activities toward same sex relationships which is against the law.... The Ministry of Health, Community Development, Gender, Elderly and Children would therefore like to clarify that it adhered to the best practices and recommendations as advised by the WHO and other International Organizations, but these have to be adapted to the Tanzanian context through stakeholder’s consultation, to ensure that they are in accordance with the countries’ laws, customs and traditions. This includes being cognizant to the Penal Code.[95]

Public health experts have long recognized that criminalization, along with stigma and discrimination, inhibits LGBT people’s access to health and undermines efforts to tackle HIV.
Criminalisation, violence, discrimination and other human rights violations based on sexual orientation are contrary to international human rights law. They also have significant negative consequences on the HIV epidemic and public health, contributing to an environment of fear that drives LGBTI people away from HIV services. The possession of HIV and health commodities associated with or labelled for use by gay men and other men who have sex with men (such as lubricants) has been used as evidence in criminal cases. Fear of negative consequences can prevent uptake of health services and hinder gay men and other men who have sex with men from disclosing their sexual behaviour to health-care providers.[98]

Health experts also concur that countries should make dedicated efforts to address the HIV epidemic among key populations. The World Health Organization emphasizes that “Without addressing the needs of key populations, a sustainable response to HIV will not be achieved.”[99] Focusing on key populations is essential to reaching UNAIDS’ target of ending the AIDS epidemic by 2030.[100] When governments do not adequately address concentrated epidemics among key populations, they not only fail to protect a vulnerable minority, but also jeopardize public health writ large.

Toni, a trans activist, said some health officials remained committed LGBT and key population health programming, but simultaneously sought to silence activists’ human rights claims:

At some point we went to a meeting where we were told [by government health officials], ‘You should not speak badly against the government, the government is like your father and you should obey.’ If we talk about human rights they say ‘This is not the right time.’[101]

Makame, a trans man, told Human Rights Watch, “My feeling is that the Health Ministry does not really care. They are trying to define us as a behavior to change.”[102] Leticia, a queer woman activist, offered analysis of the breakdown of partnerships with former allies in the health sector: “You know, everyone is scared of our president. They can’t really show up for us. They tell us they know what’s going on, but they have to protect their position.”[103]
Water-based and silica-based lubricants are essential HIV prevention tools. Condoms are more likely to tear when sexual partners engage in anal sex without lubricant, or when they use oil-based lubricants such as Vaseline. UNAIDS guidelines state that HIV prevention programs “should always make water- or silica-based lubricants available with condoms,” noting that lubricants are “highly important for men who have sex with men, sex workers and post-partum women” in order to increase lubrication and decrease friction during sexual intercourse. The World Health Organization describes “comprehensive condom and lubricant programming” as essential to the HIV response among key populations, including men who have sex with men, transgender people, sex workers, people in prisons and other closed settings, and people who inject drugs. The WHO recommends both water-based and silica-based lubricants, but because water-based lubricant is more widely available, some interviewees, as well as some Tanzanian officials, used the term “water-based” lubricant when referring to any non-oil-based natural lubricant.

Water and silica-based lubricants are not produced in Tanzania. Before 2015, while lubricant was not strictly prohibited, it was considered a medical commodity that could not be imported without authorization of the Tanzania Food and Drug Administration (TFDA), part of the Ministry of Health, and in 2013 and 2014 TFDA impounded at least two lubricant shipments that non-governmental organizations working in the public health sector had ordered. As discussed in Section I above, controversy over the wider availability of lubricant contributed to the government’s deregistration of the Tanzania Sisi Kwa Sisi Foundation (TSSF) in April 2014. On the other hand, Muhimbili University was authorized to distribute packets of lubricant to participants in a research trial in 2012.

Accountability International (formerly AIDS Accountability International), a South Africa-based research and advocacy organization that aims to hold governments accountable to their public health commitments, coordinated a meeting in Dar es Salaam in May 2014 attended by 78 Tanzanian civil society organizations, which met to help develop priorities for the Global Fund in its work to address HIV/AIDS in Tanzania. They listed “friendly low-threshold services for key populations,” including access to condoms and lubricants, as the second highest priority for Global Fund resources. Tanzania’s health ministry published national guidelines on HIV programming for key populations in September 2014, affirming that “Increasing the availability, accessibility, affordability and use of... condom-compatible lubricants among people from key populations through targeted distribution programmes is an essential component of the HIV response.” Zanzibar’s HIV strategy documents had already called for access to...
called for increased access to water-based lubricant for men who have sex with men and sex workers.[113]

PSI, a US-based organization, eventually received authorization to import lubricant in 2015 as part of a project funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria. PSI’s project, involving social marketing of HIV prevention commodities to men who have sex with men, ended shortly thereafter. At one point, the Tanzania Food and Drug Administration sought to block a shipment of lubricant. The oversight committee within the Global Fund’s Country Coordinating Mechanism made a formal recommendation to the government to release the shipment, noting that lubricant was included in the National Multisectoral Strategic Plan. The Health Ministry wrote to TFDA requesting the release of the lubricant. TFDA complied.

Another US-based organization, JHPIEGO, began importing and distributing lubricant in 2016 as part of its PEPFAR/USAID-funded Sauti project, which included peer-led HIV outreach to key and vulnerable populations.[114]

JHPIEGO’s distribution of lubricant was short-lived. Health Minister Ummy Mwalimu effectively declared war on lubricant in her July 15, 2016, speech, quoted above.[115] On July 19, the Health Ministry published a statement restating the ban, claiming the distribution of lubricant “conflicts with our customs,” and opposing the so-called “promotion of homosexuality.”[116]

On July 23, Deputy Health Minister Hamisi Kigwangalla posted on Twitter that lubricant would still be available at government health centers, but that the government would no longer allow NGOs to distribute it to men who have sex with men.[117] The following day, a statement on Mwalimu’s Facebook page clarified that the ban did not apply to all lubricant distribution, but specifically to “non-governmental organizations (NGOs) that buy and distribute lubricant to men who have sex with men.” The statement threatened to deregister organizations that do not obey the directive.[118] Human Rights Watch wrote to Mwalimu in August 2016 to raise concern about the health impacts of the ban (see Annex I) but did not receive a response.

When Kigwangalla led a police raid on the non-governmental organization CHESA on August 15, discussed further in Section III below, one of the raid’s objectives was to search for lubricant, although police did not find any.[119]

Mwalimu issued a second statement in October 2016 that seems to suggest that not only distribution but even individual use of lubricant as an HIV prevention tool is prohibited:
Human Rights Watch asked 26 of the gay and bisexual men and trans people we interviewed in 2018 and 2019 whether they had any access to water-based or silica-based lubricant. Sixteen said they did not. Some interviewees said they used coconut oil for lubrication, while others used petroleum jelly products such as Vaseline or baby oil, all of which can damage condoms.[121] Some said they used saliva, which provides inadequate lubrication and can result in condom breakage.[122] These interviewees said they were aware of the benefits of water-based lubricant for HIV prevention and the risks of using oil-based lubricants—mostly as a result of outreach work by LGBT organizations that are no longer permitted to operate—but had no alternative.

Ahmed, a 39-year-old bisexual man who works with an organization focused on health and rights for men who have sex with men, explained: “Now the situation is horrible, [lubricant] is nowhere to be found... I had some lubricant from the office that I kept and was still using and giving others in secret, but now it is not there anymore.”[123]

Several gay men said they were able to buy water-based or silica-based lubricant in pharmacies. But others could not afford it.[124] Even for those with means, some pharmacies erected other obstacles. Jephter, a 27-year-old gay man in Dar es Salaam, said “Even getting KY [jelly] is a challenge, because if you go to a pharmacy to buy it, they want a prescription from a doctor, and if you don’t have one, they often won’t sell it to you.”[125]

Victor, a 25-year-old gay man in Dar es Salaam, said that some pharmacies also discriminated based on gender expression:

Before banning of lubricants, I [could] get it from drop-in centers and LGBT NGO health services. But after banning it, I don’t find a place to find it. Sometimes I go to a pharmacy and just buy KY but it’s very complicated, there are so many questions, and the pharmacists don’t give us support because of our appearance.... if we don’t look like straight people, they ask ‘Why do you want to use KY?’[126]
When you talk about anything related to LGBT issues, lubricant, condoms, it’s very complicated in a government hospital. Because our regional commissioner says ‘We don’t want to see LGBT people.’ I tried so many times for lubricant but they did not accept me. They ask, ‘For what? are you sick?’ I tried at Mwananyamala, at Amana, and at Kibamba Hospital.\[127\]

The Ban on Drop-in Centers and Community Outreach for HIV Prevention

A groundbreaking October 2019 *Lancet* study found that hostile legislation was associated with lower levels of HIV testing and awareness of HIV status among men who have sex with men in Africa. It concluded, “Further expansion of community-led services...along with increased treatment support or counselling from LGBT-friendly organisations, will be essential to engage more MSM with HIV testing and treatment.”\[128\] UNAIDS has also emphasized that community-based, peer-led initiatives are among the best ways to reach marginalized groups with HIV education.\[129\] In countries where same-sex conduct is criminalized, service providers—especially community-based organizations, but sometimes international NGOs as well—may face some level of harassment for providing LGBT-inclusive health services. \[130\] But in Tanzania, the government formally prohibits such services, denying LGBT people the right to both HIV prevention and HIV treatment.

In the years leading up to the crackdown, a number of non-governmental organizations, national and international, established drop-in centers targeting key populations for HIV services, as an alternative to public hospitals and clinics where discrimination was rife. These centers provided voluntary HIV testing and counseling, and information related to HIV and sexual and reproductive health. Some served as anti-retroviral therapy (ART) distribution points. Some drop-in centers provided mental health services and even allowed beneficiaries living on the margins to have a meal and a shower.\[131\] Drop-in centers became sources of community for LGBT people in Tanzania, in some cases including lesbian and bisexual women who were not directly targeted by the HIV services provided but who found the centers a safe space for health services, meetings, and simply catching up with friends.\[132\] Staff were trained in the health needs of LGBT people and key populations and were committed to non-discrimination.
October, the ministry issued a statement that effectively shut down the activities of civil society organizations that were carrying out the critical, life-saving work of educating men who have sex with men about HIV prevention and treatment.\[133\] The statement also suspended drop-in centers targeting men who have sex with men:

> Health facility KP programs will continue to be implemented for all key populations and vulnerable populations. **However, community MSM peer outreach activities and MSM Drop in Centers will await development of a standardized package of HIV services within the community.**\[134\]

Many of the centers affected were part of the Sauti Project, a PEPFAR-funded project aimed at reducing HIV prevalence among marginalized groups, implemented by USAID and managed directly by the international non-profit organization JHPIEGO, affiliated with Johns Hopkins University. JHPIEGO, one of the largest providers of HIV services to key populations in Tanzania, immediately suspended its outreach work targeting men who have sex with men.\[135\] Community-based organizations were also affected. Toni, a trans woman who works with an organization that provides HIV services to trans women and men who have sex with men, told Human Rights Watch “It’s impossible for us to do much work now. Actually, you’re marked.” She added, “We had a meeting with [government health officials] and they said they don’t want to hear anything in terms of issues of LGBT. They claim we are recruiting.”\[136\]

Makame, a 27-year-old trans activist, described the work that his organization carried out before the ban and how it had been stymied:

> Before, we had a program of outreach activities whereby we find transgender people and then we take them to a health clinic whereby they access free service for cervical cancer treatment, and HIV treatment, and treatment for other sexual issues like gonorrhea. We did lots of provision of education on HIV prevention and treatment and also providing counseling to the trans groups. The friendly hospitals that we were using were all backed by the government – the government was aware of what we were doing. The program was stopped and things actually changed. There was increase in dropping out of people who were taking ARVs. The environment wasn’t friendly, we couldn’t do anything. All the funders are also stagnant at
Many gay men said they relied on civil society outreach as a primary source of health information. King explained the range of benefits he had drawn from civil society outreach:

> I used to be able to get education about issues related to HIV and STIs and the correct use of ARVs, healthy eating, and other issues related to health, and I was also able to educate others who didn’t have the opportunity to participate in such activities. Now, this no longer takes place.[138]

Amy, a gender non-conforming queer person, said that through such outreach activities, “I benefited a lot because I was able to learn life skills which helped me understand myself and my value. I was also educated about HIV and STIs.”[139] She added:

> The Tanzanian government should have sat down with the organizations and some of the representatives from our community and listened to our opinions before deciding to shut down the organizations that do work to reduce the transmission of HIV among LGBT communities. It should know that we are part of Tanzanian society. It’s not fair to take away our right to friendly services. The absence of these organizations is a big challenge for our community, because it will result in an increase in transmission of HIV and STIs among us.

In February 2017, the Health Ministry went further, ordering as many as 40 drop-in centers serving key and vulnerable populations (not just men who have sex with men), 18 of them run by JHPIEGO, to close their doors. Health Minister Mwalimu claimed a “special investigation” by the Ministry of Constitutional Affairs had found that “apart from engaging in HIV and AIDS activities, some implementing partners were promoting homosexuality, contrary to the laws of the land.” She therefore directed: “The use of ‘Drop in Centers’ for provision of health and HIV services to KVPs will not be allowed.”[140]

LGBT people interviewed by Human Rights Watch were deeply affected by the closure of drop-in centers. Ronnie, a 28-year-old trans man, felt LGBT people were being uniquely excluded. “There are services for blind people, for deaf people, but they are leaving other groups behind.”[141]
Victor, a 25-year-old gay man who is HIV-positive, said that drop-in centers had provided him with more thorough treatment than government hospitals:

> Makame, a trans man, said that doctors at the drop-in centers were aware of gender diversity. He did not have to suffer the indignity of constantly explaining his trans identity.

> For Leticia, a queer woman, it was well-known that in order to reach key populations, alternatives to government hospitals were necessary:

> Some people don’t feel like going to government health facilities. This has been a problem for years. So why are we losing our drop-in centers that we thought were friendly, and being forced to go to those that are operated by the government?

Jephter, a gay man, described the health workers at the drop-in centers as “really good people.” In contrast, Jephter feared going to government hospitals so much that he had never been to one at all, despite being HIV-positive, because he believed he would be subjected to stigma.

The drop-in centers had provided referrals to other LGBT-friendly practitioners for health issues that they were not equipped to handle themselves. Medard, a 38-year-old gay man, recalled:

> Whenever I had a health problem, I could go to those centers for help or to be connected to a healthcare provider that did not discriminate, that treated me like everyone else. These days, even if I have a health problem, I don’t
Medard concluded, “I would like the government of Tanzania to allow kuchus [LGBT people] access to health services. If we don’t get services, we will die.”[147]

Ahmed, 39, said that although he was aware that some organizations continued to provide HIV education to men who have sex with men while maintaining a low profile, he was afraid to seek out such services because of the risk of arrest. “There have been a number of people arrested because they are gathering together, getting education about HIV issues and all that. So I’m afraid to go for that, because I might be arrested as well.”[148]

**Stigma and Discrimination at Government Health Facilities**

Health Minister Ummy Mwalimu, in her February 2017 statement banning LGBT-friendly drop-in centers for HIV services, asserted that LGBT people should seek services from government hospital and clinics. She also directed health facilities to “ensure that health and HIV services are being provided to all those in need without any discrimination.”[149] Indeed, under Tanzania’s own 2008 HIV Prevention and Control Act, health practitioners who deal with persons living with HIV must provide services “without any kind of stigma or discrimination.”[150]

According to the February 2017 Health Ministry statement, if any “KVP individual” (referring to key and vulnerable populations) faces discrimination at a government health center, “he/she should inform the District Medical Officer (DMO), or the Regional Medical Officer (RMO) of the respective Council/Region, and if necessary even the MoHCDGEC [Ministry of Health], through the Communications Unit.”[151] None of the people Human Rights Watch interviewed about discrimination in the health sector had registered a complaint with any government office. Criminalization combined with stigma creates obstacles to formally outing oneself as LGBT to a government office in order to allege discrimination.

Despite the lack of reporting, discrimination in the health sector is rife, as detailed below. Human Rights Watch and WASO documented similar accounts of discrimination in health care in 2013.[152] Several LGBT activists told Human Rights Watch that between 2013 and 2016 they were involved in partnerships between government health agencies and international NGOs
but that they lacked the breadth and depth to foster significant change in discriminatory attitudes over a relatively short period of time.

Osman, a 24-year-old HIV-positive gay man, said that in October 2017, a health worker at a government hospital, Sinza Palestina, where he sought out HIV treatment, told him, “You're a good boy, why do you have gay sex? That’s why you got AIDS, because those acts angered God.” Osman added, “They also told me to stop these games and get saved, to chase out Satan, who caused me to have sex, and to find a wife, get married and have a family.” Each time he returned to the hospital, he faced increased harassment, until he left and found an NGO, Pasada, that provided friendly services. Osman said that at times, before he found Pasada, he refrained from seeking out services altogether: “I didn’t want anything to do with that hospital [Sinza Palestina] because of their cruelty.”[153]

Suleiman, a 25-year-old gay man in Dar es Salaam, went to Mwananyamala Hospital in September 2018 for an HIV test. He recounted his experience:

They didn’t respond well when I told them I was gay. They were talking bad language to me, the receptionist and the doctor and nurse, all of them. I told them I was gay because I needed to be open with them. They told me that I have to find another hospital to take care of my health, not that hospital, but they gave me the test and it was negative. They were using bad language – ‘If you’re gay, another time don’t come to this hospital, because we’re not treating people like you.’ They said this in front of other people. I was feeling bad. I just kept quiet and picked up my things and went home.[154]

Victor, a gay man, said that when he went to Mwananyamala hospital in 2018 with symptoms of what he thought might be anal gonorrhea, a doctor shouted at him, “Why do you do this?” and called him “evil.” Afraid other people in the vicinity would overhear and attack him, Victor left the consultation and instead self-medicated at a pharmacy.[155]

Leila, a trans woman, told Human Rights Watch that in 2016 a health provider at Mwananyamala Hospital told her, “Your actions do not please God.” The provider, who perceived her as a gay man, told her to get married, have children, and have respect for her family and society. On other occasions, Leila said, at Mwananyamala Hospital, “A group of doctors was called in to express shock over me being a kuchu [LGBT person].”[156]
Ronnie, a 28-year-old trans man, said nurses at Mwananyamala Hospital asked stigmatizing questions about his gender expression:

Hassan, a trans woman from Tanga, affirmed that trans people face particular challenges at government hospitals. “If you let them know [your gender identity]... they see us as freaks, and sometimes they even deny you services. So you just go to the pharmacy and buy medicine and drink it.”

Many people we interviewed said they did not feel comfortable being open about their sexual orientation or gender identity at government health facilities. Ethan, 22-year-old trans man, had sought out services at government hospitals, but without being open about his gender identity: “I was afraid to tell them about my gender, because I knew they would be shocked.” When patients cannot speak frankly to their health care providers, including about their sexual orientation or gender identity, practitioners may not be able to give them the level of care they need.

Stigma and discrimination in health care settings can lead LGBT people not to seek treatment at all. Abdi, 22-year-old gay man, said, “I’ve faced so much stigma that sometimes I hate going to those government hospitals. Because you go there to get health services, but instead, the nurses or doctors start preaching to you, like, ‘What you’re doing is not good, try to stop and return to your God,” or sometimes, ‘It’s demons that make you like this, you need to go to church and pray.’” Abdi said that he had decided many times not to seek treatment rather than put up with this kind of discriminatory treatment.

Stanley, a 28-year-old trans man, said he had been afraid to seek out government health services since undergoing chest surgery to remove his breasts outside the country. “I knew they would stigmatize me, because many government health service providers don’t understand trans issues.” In the absence of drop-in centers with staff who had undergone specific training...
The closure of LGBT-friendly drop-in centers and discrimination at government hospitals means that some LGBT people seek health care at specific private hospitals and clinics which are reputed to be more welcoming. But for many, such services are financially out of reach. Victor, a gay man who said that he used to do sex work, told Human Rights Watch: “I have had sex with doctors two times in order to get services – with two different doctors. This is how I can pay. I don’t have money to pay them. So if they ask me for sex, I have to say yes.”[162]

Limited Access to Anti-Retroviral Therapy (ART)

Access to friendly, non-judgmental HIV services is literally a life-or-death issue, as highlighted by several interviewees above. One of the most disturbing things Human Rights Watch heard from both LGBT activists and UNAIDS officials was that at various points between 2016 and 2018, public hostility to LGBT people and the lack of safe spaces to seek treatment meant that a number of HIV-positive people stopped taking their medication. Some of those who stopped taking anti-retroviral therapy died, although Human Rights Watch could not independently verify that the deaths took place due to inability to access treatment.

The World Health Organization recommends that everyone living with HIV be offered ART, regardless of CD4 (a type of white blood cell) count, and Tanzania follows these guidelines, providing universal free access to ART. According to UNAIDS estimates, 72 percent of HIV-positive adults in Tanzania were on ART in 2018, representing significant progress compared to a decade earlier, although Tanzania remained far from the UNAIDS vision of achieving 90 percent treatment by 2020.[163]

The default first line regimen of treatment in Tanzania involves taking three medications once daily.[164] Most HIV-positive people are dispensed treatment once every month, which they can pick up at pharmacies or specialized clinics. Consistent ART use is critical to suppression of the HIV virus, the health of people living with the virus, and prevention of transmission and drug resistance.[165]

Human Rights Watch interviewed several HIV-positive gay and bisexual men who continued to access ART throughout the crackdown with no obstacles. But Victor, an HIV-positive 25-year-old, said:
Makame, a trans activist, said that because of hostile rhetoric from government officials,

Most trans people who were supposed to be taking medicine stopped. They were expecting violence within their area. Trans people are very visible, they are appearing very different, so for them there was insecurity. The ones who had money were sending for doctors to come and treat them at their houses, but others just didn't get services. By now we are trying to call and follow up on those we were referring, and some of them are coming up [for treatment] now. But now they can’t get to the same drop-in centers that have been banned, so we are trying to find other places and make them friendly.[167]

Leticia, a queer woman activist, told Human Rights Watch in an October 2018 interview:

During the short period of time of since the drop-in centers closing, I can name five people who died. These were all role models from MSM and they all died. Afizi had tested himself positive for HIV in 2005 or 2008. But two or three months after the drop-in centers closed, he said there’s no privacy anymore, and he stopped going for his meds and got TB and died. He died in June [2018]. Kaoge, the one who did the interview and caused chaos, she died [in November 2017]. Kaoge said, “There’s no need of me living, let me go.”

Before, all these people were taking their medication. They would come to the drop-in center to say hi and take their medication. [But] we don’t have a drop-in center anymore.[168]

Human Rights Watch asked two other well-connected gay activists about deaths from HIV within the community. One said he knew of 15 people who had died within two years after the
Mental Health Impacts of the Lack of Access to LGBT-Inclusive Services

Two interviewees described stress from the government’s anti-LGBT crackdown leading to mental health issues at the very same time that the closure of drop-in centers, some of which hosted LGBT-friendly counselors, limited safe space to address such concerns.

Toni, an activist, reported psychological trauma after narrowly escaping arrest during two police raids on health and human rights workshops. She said:

"I had to go to Google to understand the type of depression I was facing. It felt like everything was dropping like a house of cards – like someone had just pushed the cards with a stick and everything was falling. I had no guidance on how to get help with issues of mental health."

Ronnie, a trans man, also spoke of the mental health impacts he and other trans men in his organization experienced because of not being able to express their identities openly:

"I have insurance and I can access any hospital, but I won’t tell them that I’m trans – I’ll tell them that I’m a woman and they treat me. But there are a lot of other effects – psychological issues for our members. They can’t say out loud what they think, what they have inside. They will be keeping quiet. They won’t say out loud, “I’ve been infected by my fellow girl,” so it will be eating them inside. It’s tough, it’s difficult, it’s paining, but you can’t do anything."

III. Attacks on LGBT Civil Society Organizing
According to Tanzania’s constitution, everyone has the right “to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.”[172] But the rights to freedom of association and expression are under attack in Tanzania. Members of the political opposition, media, and civil society have all been targeted.[173]

In a context of overall intolerance toward freedom of association and expression, combined with institutionalized homophobia, it is not surprising that LGBT civil society organizations are under attack. Minister of Justice Harrison Mwakyembe’s statement at a regional government meeting in Mbeya in July 2016 that he would work with the Home Affairs Ministry to prosecute any organizations that were supporting or promoting homosexuality, including those that distributed lubricant, marked the beginning of a drawn-out attack on organizations working on LGBT people’s access to health and rights.[174]

Deregistration and Threats to Deregister Non-Governmental Organizations

Civil society organizations in Tanzania must register with the Registrar of Non-Governmental Organizations, which sits within the Ministry of Health, Community Development, the Elderly, Gender and Children. They must provide their name, mission, and a copy of their constitution.[175] Under the NGO Act of 2002, an NGO’s certificate of registration can be suspended if it violates terms of conditions prescribed in the certificate or “operates in variance to its constitution.”[176]

On August 1, 2016, the Registrar of NGOs issued a letter indicating his intention to de-register Community Health Education and Advocacy Services (CHESA), a community-based organization working on health and human rights among men who have sex with men and the LGBT population more broadly. CHESA defines its mission as “the promotion of the health welfare and Human Rights with the aim to ensure universal access to health services, including primary health care, HIV and sexual and reproductive rights health services.”[177] Among its activities at the time, CHESA distributed lubricant as part of the Sauti Project, an initiative of the US-based public health non-profit organization JHPIEGO. The registrar’s letter required CHESA to respond to allegations that it was promoting homosexuality.

On August 15, Deputy Health Minister Kigwangalla led a raid on CHESA’s office in Dar es Salaam, accompanied by police and intelligence officials. The raid, documented on
The law enforcement officials searched the office, seized reports, and interrogated CHESA’s executive director John Kashiha and other staff about their alleged promotion of homosexuality. Kigwangalla asked questions regarding the shadow report that CHESA and other organizations had submitted to the UN Human Rights Council as part of Tanzania’s UPR process, and confiscated copies of the report. Police called Kashiha in for further questioning the following day and interrogated him for approximately eight hours about CHESA’s work before letting him go.[179]

On August 30, CHESA filed a constitutional petition claiming the raid had violated its freedom of association and asked for an injunction against any efforts to deregister them.[180] Kashiha told Human Rights Watch the High Court ruled in favor of the injunction, and CHESA was able to continue operating while its case against the government remained pending.[181]

But the organization again came under attack after police raided a strategic litigation meeting that CHESA was co-hosting with the South Africa-based Initiative for Strategic Litigation in Africa (ISLA) in October 2017, arresting participants, as discussed further below. On October 20, the NGO Registrar issued an order suspending the work of CHESA, on accusations that it was promoting same-sex marriage.[182]

Finally, in April 2019, the NGO Registrar revoked CHESA’s registration certificate altogether, along with the certificates of another LGBT organization and one that works with female sex workers. The registrar charged the three organizations with “promoting unethical acts” and violating “Tanzanian law, ethics, and culture.”[183]

As CHESA has pointed out in an unpublished document shared with Human Rights Watch, given that LGBT people in Tanzania have few allies in government or in mainstream civil society who are willing to take steps to uphold their rights, the failure to ensure LGBT organizations’ freedom of association “leads to failure of protecting other human rights and freedoms of the members of these communities. Taking into account their vulnerability and societal prejudices against them, denying them a right to associate is tantamount to denying them their human rights in general.”[184]

Raid on Health and Rights Workshops and Meetings
organizations and other groups working on health and rights. Under previous governments, LGBT activists could generally meet without impediment in their offices or in welcoming hotels and other venues.

The first such raid took place on December 13, 2016, when police interrupted a key populations strategy meeting at a Dar es Salaam hotel. The purpose of the meeting, convened by Tanzanian organizations working on harm reduction and on LGBT people’s and sex workers’ rights and health, was to discuss challenges around key population programming in light of the Tanzanian government’s crackdown on marginalized groups. Police arrested eight people, including the facilitators. They were released the same day without formal charges, but police held the participants’ IDs and required them to report daily to the police station.[185] Such daily reporting requirements are a form of harassment frequently used in Tanzania when police do not have sufficient evidence to file formal criminal charges.[186]

Stanley, a 28-year-old trans man, was one of those arrested. He recalled:

We were about 20 participants and two facilitators from Kenya. I remember it was on the third day, after lunch, when suddenly police invaded the hotel. They ordered all the activities at the hotel to be stopped, and they started searching from room to room, all throughout the hotel. Some of the participants saw what was happening and managed to run away or pretend to be ordinary hotel guests, but the police managed to arrest about eight of us. They took us to Central Police Station. Then they charged us with promoting LGBT issues in Tanzania, with the help of whites...

A lawyer came and got us out, but on the [police] condition that we report back every day. For two months, we kept reporting back. During that time they kept checking our phones, searching our offices and our homes and the hotel, to get evidence to support their accusations, and finally they couldn’t find any evidence and they decided to let us go.[187]

The next major raid on an LGBT-related meeting was in September 2017, when police in Zanzibar raided a meeting organized by a key population organization that works with LGBT people and sex workers and their families, partners, and friends on HIV prevention and human rights. The meeting was specifically addressing parent involvement in HIV prevention and
Abdulkarim, a participant, reported:

We were in the middle of a training about health issues. Police came and arrested us and accused us of teaching people to be gay and promoting same-sex relations. [188]

Abdulkarim said police detained them for two days before releasing them on bail. Participants had to continue reporting back to the police for four months until the case was dropped.[189]

On October 17, 2017, lawyers and activists representing the Initiative for Strategic Litigation in Africa visited Tanzania to meet with members of CHESA and with other LGBT activists to discuss the possibility of mounting a legal challenge in Tanzanian or regional courts regarding government health policies that amounted to the denial of the right to health for LGBT people.

Amy, a participant who narrowly escaped arrest, described what happened:

We were at a meeting organized by CHESA at a hotel in town, having a tea break, when suddenly we saw someone recording us on their mobile phone... We started to ask ourselves questions, who is this, why are they recording us. We decided to pause the meeting... We were having lunch when suddenly a hotel worker came and told us that about nine police had raided the meeting room and arrested John Kashiha and one of the facilitators called Sibongile... One of my colleagues and I ran to hide in the bathroom, and we stayed in the bathroom from 1 p.m. until 6 p.m. Then we decided to come out, and the hotel personnel told us that our other colleagues had been arrested and taken to Central Police Station.[190]

Sibongile Ndashe, a prominent South African lawyer and the director of ISLA, told Human Rights Watch, “Those who arrested us came carrying our concept note and agenda. Either the group was infiltrated or somehow someone shared that information with them.” At the police station, she said:
homosexuality, what are the elements of the offense?... I called the South African High Commissioner and the chair of the Tanzania Human Rights Commission to the police station. After that, [the police] were no longer really interested in us and they knew they needed to let us go, but did this crazy thing of taking our prints, taking pictures. On the bail forms they wrote “—” [a dash] instead of a charge. We were released into custody of our lawyers and told to come back the following day.[191]

But even after the police who had initially carried out the arrest seemed to give up on pursuing charges, some elements of the police appeared to dig in. The case was transferred to another zone, Ndashe said. On October 20, police took 12 participants back into custody, detaining them at Central Police Station. Dar es Salaam police commissioner Lazaro Mambosasa went to court twice in the following days, on October 23 and 24, seeking authorization to carry out forced anal examinations on the lawyers and activists in an attempt to obtain evidence of homosexual conduct. The magistrate rejected the requests.[192]

On October 26, police again released the 12 detainees on bail. The next day, police took Ndashe and her South African and Ugandan colleagues to immigration for deportation. Ndashe recalled that the chief immigration officer refused to deport the three activists without cause, asking the police to return with a deportation order. Ndashe recalled, “On the deportation letter, it was written ‘promotion of homosexuality.’”[193] ISLA plans to challenge what it considers an illegal deportation in Tanzania’s High Court.

The Tanzanian participants were required to report to police for several days before police told them they no longer needed to report. It is unclear whether any case remains open.[194]

Leticia, a queer woman arrested at the meeting, described how preposterous the arrest was: “We weren’t even talking about our sexuality in that meeting. We just talked about when you want to file a case and you think your rights have been violated, how you do follow up.”[195]

For Makame, a trans man caught up in the raid, the arrest had lasting consequences:

Our arrest made headlines, so when we were out, most people knew our identity. So going back to our neighborhoods and our homes, life was very difficult. Some of us had to shift [to a new home]. Some of us who were
IV. Arbitrary Arrests and Forced Anal Examinations

The Tanzanian government’s assault on the right to health takes place in a broader context of abuses against LGBT people, including arrests of ordinary Tanzanians on the basis of their presumed sexual orientation or gender identity. Arrests in mainland Tanzania take place under article 154 of Tanzania’s penal code, which criminalizes “carnal knowledge against the order of nature” with up to life imprisonment; article 157, which criminalizes “indecent practices between males;” and article 138A, on “acts of gross indecency between persons.”[197] In Zanzibar, the law prohibits “acts of lesbianism” in addition to so-called unnatural offenses and indecent acts.[198]

Arrests based on someone’s presumed sexual orientation or gender identity are by definition arbitrary and violate rights. They also contribute to an environment in which health-seeking behaviors are undermined. Victor, a 25-year-old gay man who is living with HIV, described one way in which fear of arrest interferes with access to health:

My friend is an MSM. He got arrested [for reasons unrelated to his sexual orientation] and was in the police [custody], but it took one month to get him ARVs. He’s still in the police. As activists, we are talking about who can provide ARVs to that guy. Everyone is saying, “If I go to the police, they will arrest me too.” So I sacrificed myself and went, but [the police] asked me every day, “Who are you? How do you know him? Are you from an NGO? Are you with those gays?”… Police identified him as MSM. So that’s why LGBT people are afraid to go there to visit him or give him medicine. They will ask, “Who are you?” If you say, “He’s my friend,” they will ask, “How friendly are you? Are you a gay?”[199]
Human Rights Watch and the Wake Up and Step Forward Network (WASO) reported in 2013 on over a dozen cases between 2007 and 2012 in which police arrested LGBT people on the basis of accusations such as “walking like women,” walking with a same-sex partner, or living with a same-sex partner. In one case, a local official ordered a young gay man’s arrest after he tried to organize a seminar on health issues for men who have sex with men. In several cases, police tortured or sexually assaulted people accused of being LGBT. None of these cases, however, resulted in prosecution. Police generally released people after receiving a bribe, or after holding them for several days with no evidence against them. [200]

That changed, however, under Magufuli’s government. Police appeared to proactively seek evidence against people accused of being LGBT, including by subjecting them to forced anal examinations. A number of accused persons were held for periods longer than a few days, and some were brought before a court. Arrests of persons suspected of being LGBT no longer seemed simply a quick route to an easy bribe for unscrupulous police officers, but rather part of an overarching campaign against the existence of LGBT people in Tanzania.

Arrests Accompanied by Forced Anal Examinations

Forced anal examinations are a form of cruel, inhuman and degrading treatment that can in some cases rise to the level of torture, as discussed in Section VI below. In recent years, countries such as Lebanon, Kenya, and Tunisia have taken steps toward banning forced anal examinations in homosexuality prosecutions, recognizing that the exams constitute a grave abuse. Tanzania, on the other hand, has moved toward institutionalizing their use.

In December 2016, over a period of several days, police in Zanzibar picked up 11 men whom they believed to be gay. Police carried out some of these arrests at home, some at a party, and some on the street. Police released two shortly after arrest and took the nine other men to Mnazi Mmoja hospital (Zanzibar’s largest public hospital) where doctors subjected them to forced anal examinations, the first known use in Tanzania of such exams. The men were detained for about five days before being released on bail. The case against them has never been closed, to the knowledge of activists in Zanzibar, and the men never saw the results of the anal examinations, which doctors handed over to the police.[201]

In February 2017, Deputy Health Minister Kigwangalla publicly ordered the arrest of three social media personalities, including Kaoge (the transgender woman who provided the 2016 interview to Clouds TV, incorrectly described in media reports as a gay man) and two other young people with vibrant Instagram presences, for allegedly “promoting homosexuality.”[202] In March,
Mwananyamala Hospital.[203] Johnnie D. told Human Rights Watch:

They took me to hospital and tested me for HIV. Then they told me to get on knees, they stripped me, and put a stick like a spatula inside me. The police told [the doctor] what to do. I don’t think they had a court order. One police was in the room [during the exam]. It was painful. I felt bad.[204]

Johnnie D. was released on bail but was required to continue reporting to the police for several days, after which he was told to stop reporting, with no explanation as to whether the case was closed.[205]

Police, at the behest of village leaders, arrested about 17 people in a rural area in northern Tanzania on January 25 and 26, 2019, targeting gay and gender non-conforming people as well as people simply suspected of being gay, and detained them for four to six days. One victim, Kim, told Human Rights Watch:

I was at home and two guys came with a motorbike and they told me the head of the police station in [the village] wanted to speak with me. I thought it was because last week I went to report that someone abused me outside the club, and he threatened that he would beat and kill me if I was near him. But sadly they didn’t arrest the guy and the guy ran away, escaped. So when I went to police I thought it was about that case, and I was shocked that they started mishandling me, pushing me, ‘take off your shoes, give us your phone and keys,’ and then they put me in custody without telling me what is the matter. Then, when I was in the cell. I saw someone queer like me and I knew why I was there but I wasn’t sure. And then as the hours went on, others kept coming in with the same story – ‘I was just picked up at work, I don’t know why.’ We all knew each other. Myself and my friend... are the only ones who are open. [Some of the] other people coming in were still in the closet. And others coming in, there are just rumors they may be gay.... Then we were being picked one by one and went to be interrogated, and they were forcing me to say I was engaging in homosexuality which I denied, and they threatened to beat me, and I said I would complain against them in court.[206]
Kim was surprised when the police, on January 28, instead of taking the group to court, took them in a police vehicle from the police station where they were being held to a local bar with a rooftop meeting hall, where village leaders were gathered, along with a man known to Kim as a professional photographer, who took pictures of all the accused persons but, as far as Kim knows, did not publish them in the press or social media. Kim added:

They [the village leaders] started to criticize, insult us, abuse us, take pictures... After that one of the village leaders said ‘You people should be deported away from our country and society, you have bad morals, this is against our religion and our law.’ [207]

On January 29, Kim said, the police took them to the district hospital to undergo forced anal examinations, which doctors conducted while police officers watched. He described the procedure and how it was still causing him pain two weeks later when Human Rights Watch interviewed him:

These doctors did the procedure of anal tests. It was by force. The police officers were there with guns, so many of them. ... We went to the maternal ward where the women go and give birth. They took this metal instrument and they stick it – they penetrate it in our anal [anus], and it was very, very painful. And then they say “Cough, try to cough” while the steel is inside our anal, and when I coughed they were pressing the metal into me. It was very brutal and painful. They were pressing the testicles, the penis. Everything about that testing was very brutal. And they kept the results – we didn’t see the results or have any representative who could take the results for us. The police were so filled with hate. I am now having some blisters because that metal was really huge. Physically, I’m still not fit, even mental, because of the procedure and how they handled it.[208]

The detainees were released, some on January 29, others on January 30, Kim said. Kim fled Tanzania to seek asylum, believing he would no longer be safe in his village.[209]

An activist in Zanzibar told Human Rights Watch that in August 2019, a group of citizens seized two men in Zanzibar whom they suspected of same-sex relations and turned them in to the police. The activist said he spoke to one of the men after his release, who said police had taken him to Mnazi Mmoja Hospital and subjected him to a forced anal exam.[210]
Moral panic around rumored same-sex engagements and weddings has fueled some arrests. In Geita, northern Tanzania, police arrested four people in December 2017 after a video circulated of two women kissing at a bar, which some media described as an “engagement ceremony.” Prosecutors brought gross indecency charges against the two women in the video, specifying that they were accused of “exhibiting homosexual activities of doing romance and mouth kissing in public.” They also charged the proprietor of the bar, with acting as the “mistress of ceremony” and “being a part of the commission of act of gross indecency,” as well as the person who filmed the kiss and posted it online, with “transmission of unsolicited message” under the Cyber Crimes Act of 2015. It was the first known case of women being charged for alleged same-sex relations in Tanzania. In May 2019, in the course of trial proceedings in which the court refused to admit confession statements on the grounds that the accused persons had been forced to sign them, the prosecution notified the court that it would not pursue the charges. However, three days later, police rearrested all four accused persons and prosecutors filed identical charges to those that had just been dropped. At the time of writing, their case remained open.

In Zanzibar, arrests of ten men at what police claimed was a “gay wedding” made international news in November 2018, shortly after Dar es Salaam Regional Commissioner Paul Makonda threatened to round up and arrest all gay men. According to an activist in Zanzibar, the Regional Commissioner responsible for the Urban West area of Zanzibar that includes Stone Town, Ayoub Mohammed had echoed Makonda’s November 2018 call to round up gays.

Human Rights Watch spoke with Fadil, one of the men arrested in Zanzibar. He recounted:

We were having a day out in the countryside at Chwakwa Beach, just enjoying the weekend. We were 13 people. We were just there, eating, when suddenly police captured us and started to hit us. They said insulting things to us, like that we were faggots (wasenge) and that we were there to celebrate a same-sex wedding.

Fadil said a few men managed to flee, but police arrested him and nine others and detained them at Chwakwa Police Station. “When we asked what we had done wrong, they said we were suspected of same-sex relations and also that we were at the beach to solemnize a wedding of two men.”
We were denied food and water. We had to drink water from a [plumbing] pipe. After the news of our arrest spread to every corner of Zanzibar, [a community-based organization] came and helped us get out on bail.[218]

The men were required as a condition of bail to report to the police station every week. Fadil said he stopped reporting in January 2019: “The police were just wasting our time and money.” He was unaware whether the case remained open. [219]

“Walking While LGBT”

In addition to these relatively high-profile incidents, Human Rights Watch interviewed eight other LGBT people who were arrested between 2016 and 2018 while going about their daily lives.

Suleiman, a university student, said two police officers arrested him while he was walking to class with a gay male friend and several female friends in Dar es Salaam in March 2018:

I was just walking in the road with my friends, coming back to the college, and I was shocked when a police came into my face and just took me to the police station. The police were complaining about gays in society. I don’t know why they suspected me, but I think it was the way I was walking.... They took me to the car and then to [Magomeni police post]. They slapped me and spoke bad language to me. They also slapped my friend. They said that I’m embarrassing the society, and asked why I am like this, and they told me to stop doing these things and just be a true man.[220]

Suleiman said the police called his grandparents, who paid a bribe of 50,000 Tanzanian shillings (US$22) for his release. He said the police told his grandparents “to protect me from walking with ladies and walking with other gays to avoid me being like that.”[221]

Others were arbitrarily arrested in bars and in their own homes because police or members of the public suspected they were gay. Victor, a gay man in Dar es Salaam, said he and his partner were arrested at home in March 2017 after neighbors reported them to the police. They were detained for three or four days before paying a bribe of 100,000 Tanzanian shillings ($43) to be
Ahmed was arrested in April 2017 along with four gay friends in Dar es Salaam:

I was in the bar drinking with other gays.... All of a sudden we were caught by the police. They told us, “You were drinking late so you have to be taken to the police.” We were taken to Mabatini and then the issues of sexual orientation came up. I heard them talking about us, saying, “They are kuchus, they are gays, they were drinking late.”

Ahmed said police detained them overnight without explaining the charges against them. They were released after paying a bribe.[223]

Hassan, a trans woman in Tanga, said that in 2017, police arrested her while she was having a drink at a bar, and took her to Chumbageni police post. When she asked police why she was being arrested, she said, “They replied that I am a homosexual leader here in Tanga region, that I have been promoting homosexuality here in Tanga region, and that this is creating a public nuisance.”

Hassan was taken to Kongwe court and charged with being a “rogue and vagabond.” When the judge realized Hassan was a trans woman, she said, they “forced me to take off the women’s clothes I was wearing and gave me male clothes that were there in court, then gave me a warning to immediately stop this same-sex business.” Hassan was released on bail.[224]

Medard, 38, said that in March 2018, the local government chairperson in his Dar es Salaam neighborhood came to his door in the middle of the night with five men, two of whom were armed with guns. They interrogated him about his sexual partners and accused him of “promoting homosexuality” in the neighborhood. Medard said, “They beat me on my back with sticks, and took me to Madale police station. When I arrived at the police station, the police beat me with clubs and insulted me.” He was detained for three days before a neighbor paid a bribe to secure his release.[225]

Fena, a trans activist, said that the Tanzanian police particularly target trans women for arbitrary arrests. She said that on one occasion in late 2019, police arbitrarily arrested her, forced her to strip, and fondled her breasts before letting her go, and that on previous occasions, police had forced her to have sex with them in exchange for her release. She also said
V. Escalating Attacks and International Responses

Tanzania is heavily dependent on foreign aid, including in its HIV response. Since 2016, donors have expressed concern over the anti-LGBT crackdown, including its impact on the right to health. In December 2016, Ambassador Deborah Birx, the US Global AIDS Coordinator and head of PEPFAR, which supplies a significant portion of Tanzania’s anti-retroviral treatment, said:

We have made it incredibly clear that this [PEPFAR] is a response for 100 percent of the people at risk for HIV/AIDS. And I think if there comes a time when it becomes clear that the government of Tanzania doesn’t believe that everyone in their country deserves access to health care, that would be difficult for us to continue that kind of investment in Tanzania.[227]

In the face of increasing clarity that government policies and actions are antithetical to the principle of access to health care for all, international responses have varied. Donors face a complex set of considerations. Given the high percentage of aid from donors for the national HIV program, and specifically for HIV treatment medicines, donors have both leverage and reason to fear that cutting or suspending aid will hurt Tanzanians; and if aid cuts are made specifically in response to violations impacting LGBT people, these communities may become scapegoats in the eyes of the broader public. Yet, continuing funding amidst approaches that are contrary to donor agency policies and to global best practices and commitments can be seen as an endorsement of, or indifference to, discriminatory practices that violate human rights.

A series of incidents documented in this report, including the arrests of lawyers from the South Africa-based Initiative for Strategic Litigation in Africa (ISLA) at a meeting in Dar es Salaam in October 2017 and the use of forced anal examinations as a method of seeking proof of homosexual conduct, have contributed to increasingly vocal international condemnation of Tanzania’s anti-LGBT crackdown. Such condemnation had little visible impact, however, until
would be “tested” for homosexuality, a reference to forced anal examinations. He also said those who wanted to “change” would be offered “counseling” —a reference to conversion therapy, a discredited and harmful method of attempting to change a person’s sexual orientation or gender identity—while others would be jailed for life. He declared, “In Dar es Salaam, homosexuality is not a human right.” [228]

Makonda urged the public to send him the names of suspected gays, and claimed he had already received 200 names, sending a chill through Dar es Salaam’s LGBT communities. In the following days, a number of LGBT people left the city, some returning to their home villages or seeking refuge with friends in provincial towns, where they thought they might be out of reach of Makonda’s alleged task force, while others fled Tanzania altogether.[229] LGBT activists reported to Human Rights Watch that several people who were HIV-positive chose to stay home for days, neglecting to pick up their anti-retroviral treatment for fear of arrest.[230]

Some LGBT people reported an increase in violence by local residents who seemed emboldened to act on their homophobia and transphobia. “It was a shock, and we went through hell,” said Fena, a trans activist, who herself sought refuge in Nairobi, Kenya, for several months, and said that several other trans women faced violence in the days following Makonda’s statement from both members of the public and police.[231]

The response of the international community was vocal, rapid, and robust. UN High Commissioner for Human Rights Michelle Bachelet condemned the crackdown in harsh terms, describing Makonda’s utterances as “a licence to carry out violence, intimidation, bullying, harassment and discrimination against those perceived to be LGBT.”[232] Ireland’s Tánaiste (deputy head of government) sent a letter to Tanzania’s then-foreign affairs minister Augustine Mahiga on November 2, 2018, calling on the government to “disown and put an end to” Makonda’s proposed witch hunt.[233] At least three diplomatic missions in Dar es Salaam formally démarched the Foreign Ministry to condemn Makonda’s comments.[234]

The Tanzanian government took note. On November 4, the Foreign Ministry issued a statement distancing the government from Makonda’s homophobic rhetoric. The statement read, in part:

In his meeting with the press, the honorable regional commissioner announced a campaign to deal with homosexuals in Dar es Salaam. The government of the United Republic of Tanzania would like to clarify that
remind and insist that it will continue to respect all international agreements regarding human rights signed and ratified.\[235\]

But the same day the Foreign Ministry issued its conciliatory statement, the news broke that 10 men had been detained in Zanzibar for allegedly participating in a same-sex wedding.\[236\] Although the arrests themselves preceded the Foreign Affairs statement, senior government officials never acknowledged or condemned the arrests, and the men remained in detention until November 8. Further, on November 9, when interrogated in Parliament by an MP who suggested Tanzania was caving to international pressure to allow same-sex marriage and homosexuality, then-Home Affairs Minister Kangi Lugola stated, “Tanzania is not the right place for such acts; we will never allow such things to happen. We have laws that forbid such things.”\[237\]

The US State Department issued a statement on November 9 condemning the overall climate of violence, intimidation and discrimination as well as the arrests of LGBT people.\[238\] Denmark’s Foreign Minister announced on November 14 that Denmark would withhold $10 million in aid from Tanzania on the basis of human rights, including discrimination based on sexual orientation, and that other funds would be redirected from the government to civil society.\[239\] Denmark reinstated the aid several weeks later without making clear the grounds for the reversal.\[240\]

The Africa Representatives of the International AIDS Society (IAS), writing on behalf of the IAS as a whole, also condemned the anti-gay initiatives in Tanzania including the arrests in Zanzibar and the closure of drop-in centers. The IAS stated in December 2018: “These actions are contrary to Tanzania’s stated commitment to end the AIDS epidemic by 2030.”\[241\]

**The World Bank Intervention**

The World Bank, Tanzania’s largest donor, has rarely engaged client countries on issues of LGBT rights.\[242\] However, after members of the bank’s LGBT staff association/network, GLOBE, learned of Makonda’s inflammatory statements and raised concerns internally, on November 7 the Bank issued a memorandum suspending visiting missions to Tanzania on the grounds that it would not be able to protect its LGBT staff from arrest.\[243\] At around the same time, the bank announced it would withhold a $300 million education loan due to Tanzania’s
On November 17, the World Bank’s vice president for Africa, Hafez Ghanem, and other high-level staff met with President Magufuli to raise concern about both issues, along with Tanzania’s Statistics Act, which criminalized publication of statistics that contradict those officially endorsed by the government.\[245\] At the meeting, Ghanem presented the three issues as non-negotiable, suggesting the bank might no longer be able to do business with Tanzania if it continued persecution of LGBT people and refused to shift course on girls’ access to education and the Statistics Act.\[246\] Following the meeting, the World Bank published a statement that said:

the President assured the Bank that Tanzania will not pursue any discriminatory actions related to harassment and/or arrest of individuals, based on their sexual orientation.

As a member country of the World Bank Group, Tanzania endorsed the Bank’s new Environment and Social Framework (effective October 2018), that strengthens the Bank’s commitment to social inclusion of vulnerable and disadvantaged people and non-discrimination on the grounds of their age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, indigenous heritage and economic status.\[247\]

The meeting, and the World Bank’s significant leverage, appeared to bear some fruit. To date, Tanzania has made no progress in reforming its policies that deny pregnant girls and young mothers access to education. Tanzania did revise its Statistics Act, removing criminal penalties.\[248\] Government officials appeared, for a time, to tone down hostile rhetoric on LGBT rights. When local officials ordered the arrest of 14 men suspected of homosexuality in a small rural town, discussed in Section IV above, diplomats alerted the president’s office. The men were soon after released without charge and the matter was dropped by the court at which they appeared.\[249\]

But access to LGBT-inclusive health services tailored to their needs has remained out of reach for many LGBT people and key populations, as documented in Section VI.
The major funder of HIV prevention and treatment work in Tanzania is the US President’s Emergency Plan for AIDS Relief (PEPFAR), which operates under the US Office of the Global AIDS Coordinator. Each year, PEPFAR issues a new Country Operational Plan for each of the 28 countries and regions that receive support through this program.[250]

On January 16, 2019, the US Global AIDS Coordinator, Ambassador Deborah Birx, who oversees PEPFAR, wrote to the US Embassy in Tanzania to alert the embassy that her office would be reducing PEPFAR funding to Tanzania from $512 million in 2018 to $395 million in 2019. The letter cited “underperformance among implementing partners” and, in particular, highlighted Tanzania’s treatment of sexual minorities, as well as women and girls:

> It is noteworthy that the PEPFAR/Tanzania program faces unique structural impediments to its progress. Formal and informal policy developments in Tanzania undermine efforts to diagnose and treatment persons most vulnerable to HIV infection, including arrests of sexual minorities, anti-contraception messaging, and the expulsion of pregnant adolescent girls and young women from school.[251]

PEPFAR stated that future funding allocations would depend on improvements, including ensuring “that key programs continue to reflect the U.S. government position for addressing the needs of those most vulnerable to HIV infection.”[252]

At a PEPFAR Regional Planning Meeting in Johannesburg in March 2019, attended by PEPFAR officials, Tanzanian health ministry representatives, and civil society representatives, PEPFAR officials suggested to the Tanzanian officials that one way to demonstrate such willingness to address vulnerable communities’ needs would be to ban forced anal examinations of persons accused of homosexual conduct. Forced anal examinations had been conducted by health officials on numerous occasions in Tanzania since 2016, on police instructions. In response, the Ministry of Health shared a circular issued in January 2019 that informs health personnel that anal examinations may only be conducted under court order from a magistrate.[253] The circular did not, however, prohibit the exams. Activists objected to its weak language, and the international network MPact, in collaboration with Tanzanian and international organizations, issued a petition calling for Tanzania to uphold its commitment to PEPFAR and end forced anal exams. Forty-five organizations signed the petition.[254]
health ministry was hesitant to commit to ending forced anal exams but agreed that it would collaborate with representatives of key populations on improving their access to health and working toward a formal prohibition of forced anal examinations.

A PEPFAR official told Human Rights Watch that at an upcoming meeting in Johannesburg scheduled from March 2-6, 2020, the agency would discuss with the Health Ministry and civil society representatives what progress had been made towards engaging key populations in implementing the HIV/AIDS response in Tanzania and eliminating structural barriers for access to services. The official said PEPFAR would make future funding decisions based on these discussions, and other program considerations.[255]

VI. Obligations Under International and Regional Law

Tanzania is party to international and regional human rights treaties under which it is obligated to ensure the right to the highest attainable standard of health, the rights to freedom of association, assembly and expression, the right to privacy, and the right to freedom from discrimination, among other human rights. At a peak moment of international response to Tanzania’s anti-LGBT crackdown, the Foreign Ministry pledged to uphold Tanzania’s human rights commitments. That pledge has not resulted in meaningful steps to adhere to international and African human rights standards, as shown by the cases documented in this report.

The Right to the Highest Attainable Standard of Health

As this report demonstrates, Tanzanian authorities have rejected evidence-based approaches to preventing HIV among marginalized populations and have failed to ensure freedom from discrimination on the basis of sexual orientation and gender identity at government health facilities. The ban on lubricant denies people who are at high risk of acquiring HIV/AIDS an important, proven means of protecting themselves during sexual intercourse. In these and
Tanzania is party to the African Charter on Human and Peoples’ Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women, all of which guarantee the right to the highest attainable standard of health. The Committee on Economic, Social and Cultural Rights, which provides authoritative interpretation of the ICESCR, has concluded that the right to health imposes an obligation on states to take necessary steps for the “prevention, treatment and control of epidemic... and other diseases,” which “requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health.”

The committee stresses the obligation to provide health goods and services without discrimination “in law and in fact.” The obligation to guarantee all rights under the ICESCR without discrimination renders impermissible any form of discrimination on the basis of sexual orientation and gender identity.

Tanzania is also party to the Maputo Protocol on the Rights of Women in Africa. It provides that states must ensure the “the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS.”

Other regional legislative and policy developments also emphasize the obligation to take steps to protect the health of key populations, particularly with regard to HIV. The East African Community HIV and AIDS Prevention and Management Act, enacted in 2016, calls on EAC governments, including Tanzania, to challenge stigma and discrimination against most-at-risk populations; to implement strategies to promote and protect the health of most-at-risk populations; and to ensure that recognized protective methods are available to most-at-risk populations.

Regional and International Guidelines on Realizing the Right to Health

There is abundant evidence of best practices and a clear regional consensus on how to uphold the right to health among key populations. Tanzania’s failure to respect, protect, and fulfil the right to the highest attainable standard of health flies in the face of these realities.
wish to provide them, including international donors and Tanzanian and international non-governmental organizations.

The Southern African Development Community (SADC), of which Tanzania is a member state, has issued a series of standards on addressing HIV and sexual and reproductive health. As the region hardest hit by the HIV epidemic globally, the SADC region has articulated a firm commitment to evidence-based interventions that reach those most in need, regardless of political or cultural considerations. SADC’s 2015 “Minimum Standards” call for states to uphold “nondiscrimination practices in all situations, regardless of HIV status, age, sex, gender, sexual orientation, religion, and sociocultural and economic status.”[262] In addition, the Minimum Standards require states to:

- Develop policies that support access to integrated sexual and reproductive health and HIV services for key populations, including lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.[263]

- Review how their legal frameworks impact access to sexual and reproductive health and HIV services and information for key populations, especially men who have sex with men, and if needed, reform their laws accordingly.[264]

- Enact laws that ensure access to and utilization of sexual and reproductive health and HIV services by key populations.[265]

- Maintain operational plans on sexual and reproductive health and HIV that include “explicit interventions for key populations.”[266]

- Put systems in place, including the necessary facility and community service provision modifications and infrastructure, to facilitate access to sexual and reproductive health and HIV services by key populations, especially LGBTI persons.[267]

In November 2018, SADC approved the Strategy for Sexual and Reproductive Health and Rights in the SADC Region, 2019-2030, signed by health ministers from throughout the region, including Tanzania.[268] Echoing the minimum standards, the strategy calls on member states to “ensure that the legal and political environment is conducive to the realization of SRHR [sexual and reproductive health and rights] for all sections of the population,” with particular reference to key populations.[269] The principles underlying the strategy include “a gender-responsive, visionary, and transformative approach that... protects and promotes bodily
The strategy calls for the removal of policy, cultural, and social barriers that impede the realization of sexual and reproductive health and rights in the SADC region.[270]

Tanzania also publicly supported the 2016 UN Political Declaration on HIV and AIDS. It commits countries to building “people-centered” health systems and policies, in part “by promoting that such policies are based on a non-discriminatory approach that respects, promotes and protects human rights, and by building the capacity of civil society organizations to deliver HIV prevention and treatment services.” UN member states agreed to “[r]ecognize that the AIDS response can be fast-tracked only by protecting and promoting access to appropriate, high-quality, evidence-based HIV information, education and services without stigma and discrimination” and commit to “redoubling non-discriminatory HIV prevention efforts by taking all measures to implement comprehensive, evidence-based prevention approaches to reduce new HIV infections.”[271]

With regard to globally recognized best practices, UNAIDS’ Prevention Gap Report, published in 2016, highlights essential policy shifts to “make the end of the AIDS epidemic a reality by 2030.” The report calls for “easy access to condoms, lubricant and PrEP, as well as efforts to address homophobia.”[272]

The Global Commission on HIV and the Law, a commission of experts that the United Nations Development Programme (UNDP) established in 2010, calls for decriminalizing same-sex conduct.[273] It is well-established that stigma, discrimination, criminalization, and enforcement of discriminatory laws undermine the HIV response among key populations.[274]

Tanzania’s unwillingness to reflect best practices and regional minimum standards in its own approach risks fueling the spread of HIV, undercutting the right to the highest attainable standard of health.

**The Rights to Freedom of Association**

The African Charter on Human and Peoples’ Rights, under article 11, guarantees everyone the right to freedom of association, “subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”[275]
Similarly, under article 22 of the International Covenant on Civil and Political Rights, to which Tanzania is a party, any restrictions to the right to freedom of association must be “necessary in a democratic society,” and “in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” Article 2 of the covenant requires countries to adhere to all the rights in the covenant, including freedom of association, without discrimination.[276]

Tanzanian authorities’ raids of workshops and meetings, suspension of civil society organizations, and attempts to dictate on what issues they can and cannot work cannot be justified as necessary protections for public safety, public health, morals, or the rights of others.

In addition, these abusive practices compromise the right to health. As the African Commission on Human and Peoples’ Rights in its report on HIV and the law points out:

In the context of HIV, freedom of association is necessary to ensure that civil society organisations that work on HIV or with key populations can form and operate effectively. Civil society organisations perform an important role in implementing and supporting activities such as assisting people with HIV, promoting legal reform, combating discrimination and stigma, and preventing HIV transmission. Any restrictions on the freedom to associate must be necessary, proportionate and for a legitimate reason. Organisations working in the area of HIV through service delivery, education, legal reform, advocacy—or those working with key populations—must be allowed to register, fundraise and operate freely without interference or fear. Restrictions on the ability to form an association can have a significant effect on civil society organizations and, by extension, the HIV epidemic.[277]

The Right to Privacy

The criminalization of same-sex conduct between consenting adults in private violates the right to privacy and the right to freedom from discrimination, both of which are guaranteed under the International Covenant on Civil and Political Rights (ICCPR) to which Tanzania is a party.[278] To arrest someone on the basis of consensual same-sex conduct between adults in private is a violation of the prohibition on arbitrary detention.[279]
conduct, but a court could find that laws banning same-sex conduct between consenting adults are unconstitutional.

The Right to Non-Discrimination

The African Commission on Human and People’s Rights found as far back as 2006 that discrimination on the basis of sexual orientation violates non-discrimination provisions in the African Charter on Human and People’s Rights.[281] In its Resolution 275 of 2014, the commission further condemned all forms of discrimination on the basis of people’s real or imputed sexual orientation and gender identity.[282]

Tanzania’s constitution also prohibits discrimination. Article 9, “The pursuit of Ujamaa and self-reliance,” sets forth:

> [T]he state authority and all its agencies are obliged to direct their policies and programmes towards ensuring... that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights... [and] that all forms of injustice, Intimidation, Discrimination, corruption, oppression or favoritism are eradicated.[283]

Article 13 of the Constitution provides for equal protection before the law and prohibits the government from enacting discriminatory laws.[284]

The Right to Be Free from Ill-Treatment

Doctors in both Dar es Salaam and Zanzibar have, under orders of police, subjected men and trans women suspected of homosexuality to forced anal examinations. Forced anal exams constitute a form of cruel, inhuman, and degrading treatment that can in some cases rise to the level of torture.[285] Some of the people Human Rights Watch interviewed said that they experienced the exams as a form of sexual violence, and in Human Rights Watch’s view, they amount to acts of sexual assault.
Detention maintains that, “forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment, whether ... they are employed with a purpose to punish, to coerce a confession, or to further discrimination.”[287]

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has called on states to ban forced anal examinations.[288] Twelve UN agencies condemned the exams in a September 2015 statement on anti-LGBT violence.[289] The UN Special Rapporteur on Torture has described forced anal examinations as “intrusive and degrading”[290] and as a “practice that is medically worthless and amounts to torture or ill-treatment.[291]

The African Commission on Human and Peoples’ Rights, through its Committee on the Prevention of Torture in Africa (CPTA), has called on states parties to:

Ensure that torture or ill-treatment is not perpetrated on individuals on account of sexual orientation or gender identity. In particular, States should forbear from adopting policies or legislation whose effect may be to encourage perpetration of torture or ill-treatment on the basis of such characterisation by State agencies or private individuals or other entities.

[292]

The Commission’s General Comment No. 4 delineates forced anal examinations as a form of torture.[293]

The prohibition against torture is a fundamental principle of international law codified in the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights, and the UN Convention against Torture, all to which Tanzania is party. The prohibition against torture and cruel, inhuman and degrading treatment is absolute and non-derogable. Torture can never be justified under any circumstances.[294]

VII. Acknowledgments
security reasons, and was written by Neela Ghoshal. It was edited by Graeme Reid, LGBT Rights director at Human Rights Watch, and Joe Amon, health and human rights consultant at Human Rights Watch. Jael Akinyi Onyango, intern in the Africa division at Human Rights Watch, also contributed to background research for this report.

The report was reviewed by Joseph Saunders, deputy program director, Michael Garcia Bochenek, acting legal advisor, and Oryem Nyeko, Africa division researcher at Human Rights Watch. Stephen Leonelli and George Ayala of MPact Global Action provided external review, as did several Tanzanian LGBT activists.

Anjelica Jarrett, coordinator in the LGBT Rights Program, provided editorial assistance. Fitzroy Hepkins, senior administrative manager, and Jose Martinez, administrative officer, provided production assistance.

Human Rights Watch gratefully acknowledges and thanks the LGBT people from Tanzania who shared their stories with us, as well as the many Tanzanian and regional LGBT activists, human rights activists, and lawyers who provided feedback on issues related to this report.

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**Glossary**

**Bisexual**: The sexual orientation of a person who is sexually and romantically attracted to both women and men.

**Cisgender**: The gender identity of people whose sex assigned at birth conforms to their identified or lived gender.

**Closeted**: Describes a person who does not acknowledge their sexual orientation to others. People may be “fully” in the closet (not admitting their sexual orientation to anyone), fully out, or somewhere in between.
Drop-in Centers (DIC): In Tanzania, a center providing health services to key populations, with an emphasis on services related to HIV and sexual health, including HIV prevention information, testing, treatment, counseling, needle and syringe programs, and provision of safer sex commodities.

**Gay:** A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is towards other men.

**Gender:** The social and cultural codes (as distinct from sex assigned at birth) used to distinguish between society's conceptions of “femininity” and “masculinity.”

**Gender Expression:** The external characteristics and behaviors that societies define as “feminine,” “androgynous,” or “masculine,” including such attributes as dress appearance, mannerisms, hair style, speech patterns, and social behavior and interactions.

**Gender Identity:** A person’s internal, deeply felt sense of being female or male, both, or something other than female or male.

**Gender Non-Conforming:** Not conforming to stereotypical appearances, behaviors or traits associated with sex assigned at birth.

**Heterosexual:** The sexual orientation of a person whose primary sexual and romantic attraction is toward people of another sex.

**Homophobia:** Fear of, contempt of, or discrimination against homosexuals or homosexuality, usually based on negative stereotypes of homosexuality.

**Homosexual:** The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

**Intersex:** An umbrella term that refers to a range of traits and conditions that cause individuals to be born with chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies.

**Key Populations:** Populations disproportionately impacted by HIV when compared with the general population, irrespective of the epidemic type or local context. The World Health
Key and Vulnerable Populations: Key populations and others who whose situations make them especially vulnerable, or who experience inequality, prejudice, marginalization and limits on their social, economic, cultural and other rights. In Tanzania, “vulnerable populations” is often used to refer to adolescent girls, orphans, street children, and mining and fishing communities.

Lesbian: The sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.

LGBT: Lesbian, gay, bisexual, and transgender; an inclusive term for groups and identities sometimes also grouped as “sexual and gender minorities.”

LGBTI/LGBTQ/LGBTIQ: Umbrella terms used to refer inclusively to those who are lesbian, gay, bisexual, and transgender along with those who are queer and/or intersex.

Men Who Have Sex with Men: Men who engage in sexual behavior with other men, but who may or may not identify as “gay,” “homosexual” or “bisexual.” Sometimes abbreviated to “MSM.”

Non-Binary: Gender identity of people who identify as neither female nor male.

Queer: An inclusive umbrella term covering multiple identities, sometimes used interchangeably with “LGBTQ.” Also used to describe divergence from heterosexual and cisgender norms without specifying new identity categories.

Sexual and Gender Minorities: An inclusive term for people with non-conforming sexualities and gender identities.

Sexual Orientation: The way in which a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or different sex, both, or none.

Transgender: Adjective to describe people whose assigned sex (the sex they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express, if given a choice). A transgender
characteristics in order to conform to their gender.

**Transgender Men:** Persons designated female at birth but who identify and may present themselves as men. Transgender men are generally referred to with male pronouns.

**Transgender Women:** Persons designated male at birth but who identify and may present themselves as women. Transgender women are generally referred to with female pronouns.

**Transphobia:** Fear of, contempt of or discrimination against transgender and transsexual persons, usually based on negative stereotypes of transgender identity.

Region / Country **Africa, Tanzania and Zanzibar**

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ILGA Co-Secretaries General’ Foreword

By Ruth Baldacchino¹ and Helen Kennedy.²

As we celebrate ILGA’s 40th anniversary, we are proud to launch the latest edition of the State-Sponsored Homophobia report to continue providing updates of this unique advocacy tool to member organisations and allies.

In the last few years, each edition of this report has sought to improve the quality and the breadth of the data included and this new edition is definitely no exception. Each section of the report has grown considerably, both in scope and in depth, as has the number of contributors coming from all ILGA regions whose voice adds another dimension to this world-size compendium.

Besides the analysis of legislation in force around the world and the human rights situation in each criminalising UN Member State, since 2012 the report has featured essays written by scholars and activists on the socio-legal situation in different regions around the world (Global Perspectives). This year, more than 30 voices paint the bigger picture of the progress and challenges encountered in the last two years by our communities in all ILGA regions.

As more international courts, bodies and agencies are becoming involved in establishing human rights standards on issues related to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC), it is increasingly difficult to keep up with all of their decisions, cases, and materials. Additionally, the intricacies of legal terminology oftentimes become a barrier to many who are not familiar with the way in which these bodies write, interpret and present their arguments. Aware of these challenges, ILGA World has decided to incorporate a whole new section on International Human Rights Law, written in a more accessible language. This chapter will become an invaluable roadmap to all the legal developments taking place at the multiple fora in which SOGIESC issues are being discussed.

The volume of information in this report is also higher than the previous editions as it covers the developments in the last two years (2017 and 2018). The report has been published annually since 2006 and not publishing a 2018 edition has generated increased levels of expectation among activists, scholars and even State officials. We are aware that many have been waiting for this edition and we are confident that they will not be disappointed (and may even be compensated for the long wait).

We are also aware that this report has become a prominent source of credible information for courts of law, governmental agencies and other bodies at local, national and international levels. In 2018, the Supreme Court of India cited this report in its momentous decision that decriminalised consensual same-sex sexual acts and since the launch of the latest edition of the report in 2017, more than 4,500 media outlets have reported or cited it, as well as many hundreds of academic citations. Moreover, since 2015 the EU Asylum Support Office (EASO) includes State-Sponsored Homophobia and its maps among the key sources to conduct Country of Origin Information (COI) research to support asylum claims.

This level of reliance on our work comes with a great responsibility and leads us to put more efforts and resources into producing ever deeper and reliable data.

¹ Ruth Baldacchino has extensive experience in international LGBTIQ activism and research. Their human rights work started with the Malta LGBTIQ Rights Movement, where Ruth served on the Executive Committee for several years. Ruth has served on a number of boards in the past years including IGLYO, ILGA World and ILGA-Europe. Ruth is Senior Program Officer of the Intersex Human Rights Fund at the Astraea Lesbian Foundation for Justice. Prior to joining Astraea, they worked at the Maltese Ministry for Civil Liberties in the areas of human rights and integration, where they were an active part of the process that led to the passing of the Gender Identity, Gender Expression and Sex Characteristics Act.

² Helen Kennedy became Egale’s Executive Director in 2007. She joined the organization with 22 years of experience in politics both as an elected city councillor and a political staffer. She is a founding member of Canadians for Equal Marriage, widely regarded as the most influential public policy lobbying campaign in Canadian history – which ultimately resulted in Canada being one of the first countries in the world to legalize same-sex marriage. Helen’s work includes the Climate Survey on Homophobia and Transphobia in Canadian Schools, the first national survey of its kind in Canada, and provides critical findings on bullying to schools, educators and governments.
After reviewing this latest edition, it has become apparent that the report has grown out of its title, as it progressively leaves behind a focus exclusively centered around issues of homophobia and sexual orientation, and starts covering broader issues related to gender identity, gender expression and sex characteristics. In this regard, this edition could well be defined as a transitional one, reflective of ILGA Word’s ongoing discussions on how to rethink and streamline its research. These discussions are continuing as this edition is released to the public and is concomitant of the discussions on the organisation’s strategic plan for the next 5 years that will provide the framework for future research initiatives.

Our thanks go to all those who worked on this report, ILGA staff members and external contributors alike, and particularly to all ILGA members whose knowledge continues to sustain this report.
Author’s Preface

By Lucas Ramón Mendos.

It’s been two years since we published our last edition, so there are quite a few things to catch up on!

A roadmap for this edition

If you are reading the PDF version of this report, note that each section has been “bookmarked” so that the content can be easily accessed. Open the bookmarks tab to find a clickable tree with all the sections and pieces within each of them.

As anticipated by our Co-Secretaries General, this edition contains two years’ worth of information, covering events from March 2017 to December 2018. Therefore, the amount of information that had to be processed was significantly higher than in previous editions of the report. Moreover, a few new sections were added. This has led to a considerable increase in the number of pages of the report, so a clear roadmap to navigate this edition appears to be necessary.

Section 1: Introduction

Section 1 contains the main introductory essay written by Cynthia Rothschild. In her piece, Cynthia gives us an overview of the major events related to our quest for equality that took place between March 2017 and December 2018 in almost every corner of the world. Cynthia does an exquisite job of painting a big picture for our readers to appreciate what is going on, both in terms of progress and backtracking, and she shares her views on key issues related to global advocacy strategies, challenges and opportunities ahead. In this same section, Elena Brodealăş and Vlad Levente Viski invite us to think about the implications of putting our rights to a vote and help us understand why there are several reasons for concern when such proposals arise. As we note in the “Criminalisation” section of the report, several countries have been considering launching referendums, so this piece may come in handy for advocates who may need to work on the issue.

Section 2: International Human Rights Law

This is the newest addition to the report. In this chapter, scholars and activists brief us on the current state of SOGIESC-related human rights standards set by international courts, bodies and agencies. Well aware of the complexities and barriers that legalese may pose to all of us who are not familiar with the language used by courts or legal bodies, contributors have sought to explain developments in plain language, making international law less cryptic and more accessible to all.

We have the honour of having two signatories of the Additional Yogyakarta Principles (YP+10), Mauro Cabral Grinspan and Julia Ehrt, explain this invaluable contribution to SOGIESC International Human Rights Law, an instrument that crystallises much of the work and progress made since 2007 in this field.

One of the major breakthroughs of SOGIESC advocacy at the UN has been the 2016 appointment of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Rafael Carrano Lelis and Zhan Chiam were able to capture all the work that the IE has carried out so far and share their overall appreciation of the progress made thus far, anticipating the upcoming vote for the renewal of the mandate.

Diana Carolina Prado Mosquera offers us a privileged perspective of how the third cycle of the UPR is unfolding. In fact, these developments and the extensive opportunities offered by the UPR mechanism are present throughout the

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1 Lucas Ramón Mendos is ILGA World’s Senior Research Officer. He is a lawyer, lecturer and researcher, specialised in international human rights law and sexual and gender diversity issues. He earned his LL.B. degree with a focus on international law from the University of Buenos Aires (UBA), Argentina, and his LL.M. degree on Sexuality and the Law from the University of California in Los Angeles (UCLA). He has worked as an attorney with the LGBTI Rapporteurship of Inter-American Commission on Human Rights (OAS) and the Williams Institute International Program. He has served as a defence attorney for asylum seekers with the Office of the Defender General and as an adviser on SOGIESC issues to the Human Rights Secretariat of the Province of Buenos Aires (Argentina). He has also consulted for LGBTI organisations, including ILGA and RFSL. He was the co-author of ILGA’s 2017 State-Sponsored Homophobia report.
“Criminalisation” section of the report, in each of the entries for every criminalising State.

The jurisprudence of UN Treaty Bodies is among the least explored UN mechanism by SOGIESC advocates. In this edition, Kseniya Kirichenko captures forty years of Treaty Body Jurisprudence to give us a fine overview of what the collective record of individual cases looks like to date and invites us to think of how this mechanism could be better exploited.

UN Agencies are increasingly becoming active players on SOGIESC issues. Although not all of them could be captured, this chapter has specific essays on the specific work carried out by the International Labour Organisation and UNESCO. Gurchaten Sandhu and the UNESCO team, respectively, will brief us on the important work that is being carried out by each of these agencies.

At the regional level, Europe and the Americas have seen important developments. While Lucia Belen Araque walks us through the momentous Advisory Opinion of the Inter-American Court of Human Rights on legal gender recognition and same-sex unions, Luiza Drummond Veado will help us appreciate the work carried out by the Inter-American Commission on Human Rights, especially through its Rapporteurship on the Rights of LGBTI people. Additionally, Marcelo Ferreyra offers us a valuable recap of the advocacy efforts that are being carried out before the political organs of the Organisation of American States (OAS).

On the opposite side of the Atlantic, the vast work on SOGIESC issues carried out by the many bodies of the European Council (including the Parliamentary Assembly, the Commissioner for Human Rights, the European Commission against Racism and Intolerance, the Committee for the Prevention of Torture and the intergovernmental sector’s SOGI Unit) have been captured meticulously by Sarah Burton. In addition, Constantin Cojocaru summarises the main decisions issues by the European Court of Justice on SOGI issues. Last, but not least, Arpi Avetisyan invites to a comparative analysis of the decisions issued by the European Court of Human Rights (ECHR), the European Committee on Social Rights (ECtHR) and the European Court of Justice (CJEU).

Section 3: Global Perspectives

The Global Perspective section offers our readers the opportunity to become acquainted with the main events and realities our communities are going through in every ILGA Region. In this edition, numerous scholars and activists add their voice to reflect the situation in their regions.

The big picture of what is going in each corner of the European continent has been collectively painted by eight activists and scholars: Naoufal Bouzid, Khadija Rouggany, Eric Gutti, Ababacar Sadikh Ndoye, Emma Onékeou, Julie Makuala Di Baku, Jean Paul Enama, and Rui Garrido.

ILGA LAC has very kindly assisted ILGA World in the coordination of the production of their Global Perspective section. The author’s gratitude goes to Luz Elena Aranda, Darío Arias and Pedro Paradiso Sottile for their assistance. In fact, their collaboration makes it possible for us to learn about what is going on in Latin America and the Caribbean from a pallet of six different voices which include Alba Rueda, Bruna Andrade Ireneu, David Aruquipa Perez, Gloria Careaga Perez, Manuel Vázquez Seijido and Francisco Rodríguez Cruz. Additionally, Westmin R. A. James and Lucién D. Govaard make their contributions for the English-Speaking Caribbean and elaborate on the legal peculiarities that lie within that sub-region.

The complexities of an effervescent region, as it is the case of North America, are explored and explained by David J. Godfrey and Kimahl Powell. The attempts of the Trump administration to roll back protections achieved by our communities in the USA, as well as their effects, both domestically and globally, are tracked and analysed in depth.

Capturing what is going on in a region as vast as Asia can be a huge challenge. To this aim, the following activists and scholars have set out to write on the lived realities of our communities from the Middle East to Japan and from Mongolia to Indonesia: Lloyd Nicholas Vergara, Zach ZhenHe Tan, Minwoo Jung, Ripley Wang, Zhanar Sekerbayeva, Syinat Sultanalleiva, Shakawat Hossain Rajeeb, Nazeema Saeed, Samar Shalhoub and Daryl Yang. Additionally, Arvind Narrain will gently walk us through the decision of the Indian Supreme Court that decriminalised consensual same-sex sexual acts in Earth’s largest democracy.

Manon Beury and Yury Yoursky are our hosts in Europe and help us understand the varying realities in a region marked by the contrasts of cutting-edge progress and worrisome regression.

Last but definitely not least, ILGA Oceania assisted ILGA World in producing the Global Perspective on that ILGA Region. The author’s gratitude goes to the regional board members.

All in all, the contributions in this section provides a unique overview of where the world is at in SOGIESC issues.

Note: for reasons that lie beyond ILGA World’s control, the essay on the SOGIESC legal developments within the African Union could not be produced in time for the launch of this report. We expect to be able to add the essay on a future update of this edition.
Section 4: Global Overview

The Global Overview section was first included in this report in its 9th edition, authored by Lucas Paoli Itaborahy and Jingshu Zhu. In this section, the report covers the laws currently in force in all 193 UN Member States (and other jurisdictions) regarding sexual orientation.

The report covers 14 legislation categories classified into 3 major groups: (1) Criminalisation and restriction of rights; (2) Protection; and (3) Recognition.

Under the first group, we track the legality of consensual same-sex sexual acts. An interesting introductory piece on the global trends on the decriminalisation of consensual same-sex sexual acts since 1969, written by Daryl Yang, will give our readers a full perspective the progress achieved thus far in terms of decriminalisation since the Stonewall riots took place.

Legality of consensual same-sex sexual acts is broken down into two major categories: UN Member States that do not criminalise such acts and those that do. The latter category includes all the States in which laws criminalise same-sex sexual intercourse or other kind of same-sex sexual acts (usually captured under vague terms such as “indecency” or “immoral acts”). UN Member States with laws restricting the rights to freedom of expression on SOGI issues and freedom of association with regard to the registration or operation of sexual orientation related (SOR) civil society organisations are also included in this group.

In the protection group, the report lists countries under six categories related to protection from discrimination at different levels, criminal liability for offences committed on the basis of sexual orientation, prohibition of incitement to hatred, discrimination or violence based on sexual orientation, and bans on “conversion therapies”.

Finally, in the recognition group, we list countries under four categories: same-sex sex marriage, partnership recognition for same-sex couples, joint adoption by same-sex couples and second parent adoption by same-sex couples.

Section 5: Criminalising States Updates

In this section we analyse the provisions in force and we explore the human rights situation in each criminalising State (currently 70 in total) with a special focus on the events that took place since our last edition. In this report, we particularly cover events between March 2017 and December 2018.

For the first time, in this edition we systematically include information on statements by public officials on SOGI-related issues, existing legal challenges before local courts, the work of the National Human Rights Institution on SOGIESC issues (where applicable) and information on the UN voting record of each State. In many cases, this information helps understand local realities and how local officials perceive SOGIESC issues. In many cases, this complementary information may provide an indication on the likelihood that authorities will effectively protect LGBTI people at risk.

Additionally, we systematically track the State’s engagement with SOGIESC issues at the UN Universal Periodic Review (UPR) and other relevant instances of international and regional supervision, including UN Treaty Bodies and Special Procedures, as well as other regional bodies where applicable.

Main Findings of this Edition

As of March 2019, there are 70 UN Member States (35%) that criminalise consensual same-sex sexual acts: 68 of them have laws that explicitly criminalise consensual same-sex sexual acts and 2 more criminalise such acts de facto. In addition, other jurisdictions which are not UN Member States also criminalise such acts (Gaza, the Cook Islands and certain provinces in Indonesia).

Progress (and backtracking)

Since the last edition of this report, Angola, Trinidad & Tobago and India repealed such laws. However, Chad has troublingly criminalised such acts in 2017.

Of the 70 UN States, 26 (37%) specifically criminalise only such acts between men. The rest of the 44 criminalising UN States criminalise consensual same-sex sexual acts among all genders.

Criminal Penalties

Six UN Member States impose the death penalty on consensual same-sex sexual acts, with three in Asia.

[3] “De facto” means that even though there are no explicit provisions criminalising consensual same-sex sexual acts in force, other legal provisions are used as the legal basis to prosecute and convict people for such acts.
In addition, the death penalty is a possible punishment in five UN Member States: Mauritania, United Arab Emirates, Qatar, Pakistan and Afghanistan. Though Iraq has been removed from this list following the elimination of the Islamic State (ISIL/ISIS), it remains as a de facto criminalising country due to reports of State prosecution using laws on public indecency, prostitution or others. 31 UN Member States (44%) impose up to eight years’ imprisonment while the remaining 26 Member States (37%) impose even harsher penalties: between 10 and life imprisonment.

**Legal barriers that restrict the freedom of expression and association**

The data presented in this edition shows that at least 32 UN Member States (17%) have introduced or interpreted provisions to restrict the freedom of expression in relation to SOGI issues. This includes laws and regulations that prohibit media or web content as well as propaganda laws that prohibit the promotion of “homosexuality” or “non-traditional” sexual relations.

Additionally, 41 UN Member States (21%) have laws that restrict the possibilities of registering or running NGOs that work on sexual orientation issues. The justification for these restrictions is usually on the basis that these organisations’ activities are illegal, immoral or against public interest.

These two types of laws, frequently found in tandem, pose serious challenges to activists and human rights defenders on the ground.

**Protection from discrimination**

In terms of laws that protect people from discrimination based on sexual orientation, unchanged from the 2017 edition, there are 9 UN Member States (5%) that constitutionally prohibit discrimination on the ground of sexual orientation.

In addition, a total of 74 Member States (38%) have laws prohibiting employment discrimination on the ground of sexual orientation. Of these 74 Member States, 52 (27%) have broad legal protections (usually applicable to goods and services, health and education) on the basis of sexual orientation as well.

39 UN Member States (20%) have enacted laws that punish acts of incitement to hatred, discrimination or violence based on sexual orientation while 42 UN Member States (22%) impose enhanced criminal penalties for crimes motivated by hate towards the victim’s sexual orientation.

The number of UN Member States that have prohibited “conversion therapy” remains at three (2%) though considerable progress has been made at the subnational level, with a growing number of local legislatures in the United States, Spain and Canada having enacted such laws over the past two years.

**Recognition of same-sex relationships**

Since the 2017 edition of this report, four new UN Member States now also legally recognise same-sex marriage: Australia, Austria, Germany and Malta. This brings the total number to 26 UN Member States (13%). Most of these UN Member States are in Europe (62%) and North America (7%), with a small number located in Latin America and the Caribbean (19%) and Oceania (17%). South Africa remains the only UN Member State in Africa to recognise same-sex marriage.

27 UN Member States (14%) also legally recognise same-sex partnerships. 30 UN Member States (16%) provide for second parent adoption while 27 (14%) permit joint adoption.

**Existing legal challenges**

In this edition we were able to track almost 30 existing legal challenges currently litigated before local courts in more than 17 criminalising countries, including in Botswana, Gambia, Grenada, Guyana (concluded), Indonesia, Jamaica, Kenya, Lebanon, Malawi, Malaysia, Namibia, Nigeria, Singapore, Tunisia, the United Arab Emirates, Uganda and Zimbabwe. In these cases, local advocates and activists challenge various laws and regulations on consensual same-sex sexual acts, NGO registration, freedom of expression on SOGI issues, legal gender recognition, forced anal examinations, among others.

This list does not claim to be exhaustive. It is just an enumeration of several prominent cases on which we may be able to provide updates in future editions.

**Authorship and translation**

This 13th edition of the report was authored by Lucas Ramón Mendos; with Daryl Yang and Lucía Belén Araque, as main research assistants. This edition evolved from the original report written by Daniel Ottosson from 2006 to 2010; by Eddie Bruce-Jones and Lucas Paoli Itaborahy in 2011; by Lucas Paoli Itaborahy in 2012; by Lucas Paoli Itaborahy and Jinghu Zhu in 2013 & 2014 by Aengus Carroll and Lucas Paoli Itaborahy in 2015; by Aengus Carroll in 2016 and by Aengus Carroll and Lucas Ramón Mendos in 2017. The report was written in English. Texts originally written in Spanish were translated into English by Jordan Beyga.
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The production of this report was possible thanks to the support, contribution and assistance provided by numerous people.

The author would like to thank Julia Ehrt and André du Plessis for their constant support and assistance.

Aengus Carroll deserves a very special mention. The author is extremely grateful for his permanent support and guidance along the process of producing this report. His generosity, his passion and his humility were a constant source of inspiration.

We are also particularly grateful for the special assistance we received from:

- ILGA Regional Offices:
  - Darío Arias (ILGA LAC);
  - Kevin Haunui (ILGA Oceania);
  - Lieu Anh Vu (ILGA Asia);
  - Luz Elena Aranda Arroyo (ILGA LAC);
  - Naoufal Bouzid (Pan Africa ILGA);
  - Pedro Paradiso Sottile (ILGA LAC);
  - Ymania Brown (ILGA Oceania);

- Anneke Meerkotter;
- Cianán Russel;
- Daniele Paletta;
- Diana Prado Mosquera;
- Dorjjantsan Ganbaatar;
- Francisco Roríguez Cruz;
- J. Andrew Baker;
- Kees Waldijk;
- Kseniya Kirichenko;
- Lucien Govaard;
- Mauro Cabral Grinspan;
- Nazeeka Saeed;
- Rafael Carrano Lelis;
- Ro-Ann Mohammed;
- Rui Garrido;
- Shakhawat Hossain Rajeeb;
- Stijn Deklerck;
- Syinat Sultanaliieva;
- Tashwill Esterhuizen;
- The LGBT Centre (Mongolia);
- Wesmin James;
- Yuri Yoursky;
- Zhan Chiam.

Special thanks

In October and November 2018, ILGA World published a call for feedback and contributions for this edition of the report. We warmly thank all of those who replied with comments, corrections, feedback and useful information.

Special thanks to:

- Aili Kala (Estonian LGBT Association);
- Diane Rodríguez (Asociación Silueta X Ecuador);
- Donny Reyes (Asociación LGTB ARCOIRIS Honduras);
- Elida Guerra (PROMSEX);
- Gabriel Galil (ILGA World);
- Gustavo Adolfo Pérez Rodríguez (Colombia Diversa);
- Joachim Ntetmen (Alternatives Cameroun);
- Nvard Margaryan (Pink Armenia);
- Quiteria Franco (Union Afirmativa Venezuela);
- Rex Wockner (USA);
- Rodolfo Vargas (Colectivo TLGB Bolivia);
- Yuri Guaiana;

- Anneke Meerkotter;
- Cianán Russel;
- Daniele Paletta;
- Diana Prado Mosquera;
- Dorjjantsan Ganbaatar;
- Francisco Roríguez Cruz;
- J. Andrew Baker;
- Kees Waldijk;
- Kseniya Kirichenko;
- Lucien Govaard;
- Mauro Cabral Grinspan;
- Nazeeka Saeed;
- Rafael Carrano Lelis;
- Ro-Ann Mohammed;
- Rui Garrido;
- Shakhawat Hossain Rajeeb;
- Stijn Deklerck;
- Syinat Sultanaliieva;
- Tashwill Esterhuizen;
- The LGBT Centre (Mongolia);
- Wesmin James;
- Yuri Yoursky;
- Zhan Chiam.
INTRODUCTION

STATE-SPONSORED HOMOPHOBIA 2019
Denigration, Distraction and Detraction: Forging Ahead, Even in Crisis

By Cynthia Rothschild

Since the publication of ILGA’s last State Sponsored Homophobia (SSH) report in 2017, there have been great successes within our movements, as has been the norm over the last few years. Whether we call ourselves “lesbian”, “trans”, “intersex”, “bi” or “gay” (or “gender non-conforming” or simply “allies” or “social justice advocates”, for that matter), we can point to any number of victories in our local and global organising.

These wins continue to come at all levels, of course with local specificity and without uniformity. In some places, national legislation shifts as States decriminalise sodomy. Fewer trans people are made to undergo forced divorce or sterilisation or other nonsensical interventions in order to change their legal gender. Public health authorities increasingly depathologise trans people in health classifications. Marriage in many places allows recognition of same sex couples. Same sex couples can sometimes adopt. Conversion therapy is under scrutiny as an unethical and illegal practice, as is the non-consensual surgical intervention used to ascribe gender or sex to intersex infants and young kids. And LGBTI organising remains vibrant from the local to the global—for instance, hardly a session of the United Nations Human Rights Council goes by now without a team of activists challenging governments about their stances on sexual orientation, gender identity and sex characteristics.

Situating our advocacy and our lives: the recent global context

Yet, the two years since the publication of ILGA’s last SSH report have led many to conclude that these are challenging and draconian times all over the globe. The victories seem to be interspersed with abject attacks; determining whether there is a “backlash” as a result of cultural change or simply a continuation of the “hard times that have always been” may not matter. People in many marginalised groups have become and/or still are targets for physical, psychological and verbal abuse in both global North and South alike. Spikes in hate crimes and other violent acts have been noted in many areas, and harassment and threats abound in social media. People unfairly targeted because of their relationship to gender or sexuality—or their appearance, or their expressions of love or desire—are in broad company. Women (generally), immigrants, sex workers, trade workers and union members, journalists, Indigenous Peoples, those with disabilities, poor people and increasingly people who simply identify on the left of the political spectrum face an outpouring of unpolicied hatred.

Governments across regions and—more precisely, the unethical individuals that often comprise them—seem focused on undoing social justice gains of the last decades. It is, indeed, hard to tell whether this is “backlash” against positive trends or just the confrontation of new depths of obstacles. The legal and cultural landscapes are onerous. The human rights system is under attack—in many places, underfunded and maligned. Immigrants and refugees on several continents, including some who might call themselves LGBTI, are denied the legal right to seek asylum. But they are also rounded up, caged, deported and sometimes abandoned at sea. Children are separated from parents, families are broken apart or not recognised legally. Funds are sought and utilised to build walls, to create border checkpoints, to buy missiles, to enact tests of defence systems as acts of intimidation. Voter suppression, too, maintains kleptocracy.

1 Cynthia Rothschild is a human rights, feminist and sexual rights activist. For over two decades she has been an advocate, a trainer / facilitator, and an author. She’s worked with a million NGOs and occasionally with the UN Office of the High Commissioner for Human Rights and donors. Her most recent publications include “Sex at Dusk and the Mourning After: Sexuality Policy in the United States in the Years of Obama” and “Gendering Documentation: a Manual for and about Women Human Rights Defenders.”

2 This essay will use several acronyms, including LGBTI (lesbian, gay, bisexual, trans and intersex) and SOGIESC (sexual orientation, gender identity and gender expression, and sex characteristics). It remains true that “LGBTI” is not a proper umbrella term for all regionally specific and rich names for gender non-conforming people around the world. In occasional instances the term LGBT is used without the I; that is done with intention and for accuracy in terms of the specific references.

3 Of course, there are important nuances within these categories also.
corruption, poverty, xenophobia, racism and white supremacy. And the strategically-used rhetoric of political and religious-fundamentalist officials remains misogynist, homophobic, transphobic and often just stunning in its offensiveness.

In the last few years, and certainly since the last ILGA SSH report was issued, commitments to multilateralism and global governance have come to seem quaint and antiquated. Each day newspapers and the websites that present real news feature stories about conservative populist movements and the failures of and attacks on “cooperation”. Extreme nationalism and xenophobia, cultural and race supremacy and the “toxic masculinity” that has exploded (probably) everywhere are fuelling isolationist and self-righteous policies.

Brexit and the efforts by (parts of) the UK to wrest itself from the European Union have dominated European news since the 2016 public referendum. Some governments (and in particular, the United States) have pulled out from international human rights treaties and defence agreements. Right wing political discourse sometimes maligns the UN overall or regional agreements, including the North Atlantic Treaty Organisation (NATO), the International Criminal Court or the UN Human Rights Council. And governments have defunded, challenged the credibility of and otherwise undermined UN agencies and regional human rights systems in the period in question.

As an aside, it is important to note that despite the legal and regulatory protections some of the “institutions” or “systems” above provide, some people have had valid critiques of these systems for decades. None is or has been without bias. But overall, each has sought to serve a protective function of one form or another. Now, in the current difficult political climate, human rights defenders, including those who focus on sexual rights and gender, are increasingly organising not only to do our own social justice work, but also to strengthen these very institutions, organisations or alliances in the face of conservative political attacks against them. Our resources—already generally meagre—increasingly must go not only to SOGIESC-related organising but also to protecting civil society space all over. This is a shift that must be recognised by donors and others who support political engagement of activists.

These concerns are both disparate and related. But together, and since the last SSH report, all shaped the world within which LGBTI and sexual rights activists formed our movements, priorities and alliances. All, in one way or another, had something to do with gender and sexuality (either overtly or subtly). Sometimes we are subjected to immediate violence and discrimination because of prejudices related to sexuality or gender. And sometimes we are targeted because we are simply engaged in being who we are in the rest of our lives, people with different histories who are of different races.

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4 The concerns are not bound by geographic borders. Consider this article in the Guardian UK from February 2019, which links Cambridge Analytica, Facebook and election “meddling” with Russia, Ukraine, the United States, Nigeria and Israeli intelligence.
castes, classes, and nationalities who actively think about, act and sometimes resist in the world around us. Our communities have lived under these conditions; we have been targeted for violations, we have organised as defenders of many rights, we have also sometimes been the people who discriminate against and judge others, including those within our own movements. All of these realities were manipulated and shaped by right wing and conservative interests—ultimately, many of which are the same interests that deny human rights overall, and specifically the rights of women, LGBTI and gender-non-conforming people.

These global forces have been, and remain, deeply daunting. Yet, sexual rights, women’s rights and feminist activists—including those focused on SOGIESC—have remained focused and strategic in putting forth our legal, political and cultural agendas. And we have partnered across movements to do our own work, to support the work of other social justice agendas, and to fight against the scourges above.

The purpose of naming the details in the section above is straightforward: it is not possible to see SOGIESC concerns and activism related to gender and sexuality in a silo. Nor is it possible to fully understand our successes—whether they are legal or cultural—or the obstacles we face without naming these contexts. Our movements’ interests intersect and are shaped by the external world and specific nuances of region and social location.

When we have a deeper understanding of the forces at play that restrict human rights and rights related to gender and sexuality we can not only engage in deeper strategising, but also savour and celebrate the breadth of what we overcome.

When we have a deeper understanding of the forces at play that restrict human rights and rights related to gender and sexuality we can not only engage in deeper strategising, but also savour and celebrate the breadth of what we overcome.

As this SSH compilation of data and analysis is developed, the ground we stand on shifts again. While these developments don’t fit in the timeframe under review, they are too compelling not to mention: The High Court of Botswana is likely to issue its opinion on decriminalising homosexuality in March, 2019. In January of 2019, Angola revised its penal code, deleted language on “vices against nature” and in effect lifted sanctions against homosexuality. And Kenya may de-criminalise homosexuality in coming months, as may Sri Lanka.

In terms of the main period of review:

- It is likely that the striking of the anti-gay portions of Section 377 of the Indian penal code is the most far reaching legal victory of 2018. Its importance will be felt by millions of people across continents, as activists and policy makers in other countries enduring the legacies of British colonial rule—and British colonial legal homophobia—will use this Supreme Court decision as a basis for their own legislative efforts to decriminalise adult consensual same sex sexual activity. Even just months after this court ruling, sodomy statutes

Accentuate the positive

It is not possible to delineate each of the positive changes that have taken place since ILGA’s last State-Sponsored Homophobia report. The shifts can sometimes be glacially slow, and they sometimes can come with remarkable speed. The following examples show patterns and trends—all of which rest on decades of mobilising and strategising by courageous individuals.
Although conversion therapy in this article obviously focuses on sexual orientation and gender identity, any reference to the practices ought to note what in 2018 became a target of global outrage: China’s detention of and use of conversion therapy with possibly over a million Uighurs in anti-Muslim camps.


7 Generally, it is sex between men that is seen under the law as “same sex sexual activity”. Sodomy statutes tend to focus on male sexual partners, and acts of anal sex.

8 Despite the constructive shift in language addressing gender identity in particular, some were quick to note that the ICD maintains pathologising language related to people who are intersex.

9 Although conversion therapy in this article obviously focuses on sexual orientation and gender identity, any reference to the practices ought to note what in 2018 became a target of global outrage: China’s detention of and use of conversion therapy with possibly over a million Uighurs in anti-Muslim camps.
DENIGRATION, DISTRACTION AND DETRACTION: FORGING AHEAD, EVEN IN CRISIS

Civil unions and then made legal again later in the year.

Taiwan’s Supreme Court set the stage for that country to become the first in Asia to recognise same sex marriage by calling for existing laws to be amended within two years (although there have been recent significant obstacles that may impede this process).

Australia spent millions of dollars in a public marriage referendum which saw a clear majority favouring legalising same sex marriage; post vote, same sex marriage became legal in December of 2017.

Austria removed its same sex marriage ban, which opened the door for legalisation in 2019.

An anti-same sex marriage referendum failed in Romania.

In another groundbreaking regional and binding ruling, the Inter-American Court of Human Rights found that the right to marry should be extended to same-sex couples. The Costa Rican case that moved through the Court led to the opinion in early 2018, yet the government of Costa Rica stirred controversy when it announced plans for an 18-month transition period to the new regulation.

Also at the regional level, the European Court of Justice ruled that Member States should recognise same sex marriages for residency purposes when at least one partner is an EU citizen. The opinion rested on a case involving a Romanian national; soon after the ruling was announced, Slovakia asserted it would recognise same sex marriages performed elsewhere.

Significantly, a bill was passed that prohibited civil servants in South Africa from “opting out” of performing same sex marriage ceremonies based on their perception of “conscience, religion and other beliefs”. This is significant in light of the global trend toward allowing “religious freedom” exemptions in provision of health care and other services.

A new draft of the Cuban Constitution led to vibrant discussion about whether same sex marriage would be legalised. Language referring to marriage being a union of “two people” rather than a “man and a woman” stirred pushback among conservatives; ultimately, there was no reference included to the subjects getting married, therefore, the door remains open to same sex marriage in the future.

Various churches and religious networks also continued the trend toward allowing both same sex marriage and in some cases (such as the United Methodist Church) lesbian and gay clergy. Scotland, Brazil, and New Zealand were among the places where religious orders took “gay-friendly” stances.

And finally,

At the United Nations level, the gains remained steady, with treaty body comments and Special Procedures (including rapporteurs, who are independent experts in a thematic area or in a country) consistently integrating SOGIESC and sexual rights concerns into their research and reporting. The Universal Periodic Review process at the Human Rights Council also provided an opportunity for activists to work with and / or challenge governments on related issues, including comprehensive sexuality education, provision of non-discriminatory health services and a range of economic and social rights.

Some advances linked the legal with the cultural, as in when Kenya temporarily lifted its ban on the film “Rafiki”, which has lesbian content, to allow it to be eligible for Oscar consideration as the Kenyan entry for “best foreign film.” Although the film was seen by Kenya’s national film censorship body as promoting “homosexuality”, a court temporarily allowed the film to be screened. While there were likely nationalist interests in the lifting of the ban, the film played to crowded enthusiastic audiences.

Noting the negative

Other essays in this SSH compilation will go into more depth about some of the specific challenges that appeared or became more entrenched since the last publication. Yet, a few stood out as particularly daunting or disappointing. These included:

- Anti-gay crackdowns took place, with subsequent arrests and torture (generally of men), in Chechnya, Cameroon and Tanzania. Each “round up” was cause for domestic but also international outcry.
- Chad’s new penal code went into effect in 2017 and criminalised male and female same-sex sexual activity; the Democratic Republic of

10 The film did not receive the nomination, but it did play at the Cannes film festival in France.
Congo and Cote D’Ivoire actively used penal code provisions on “public indecency” and “morality” to arrest and prosecute.

In a widely-scrutinised federal election in Brazil, homophobic rhetoric helped catapult a right-wing candidate to the presidency. The effects of this evangelical victory will likely have deep impact in the region.

Also in Brazil, Marielle Franco, a progressive Black feminist lesbian city councillor was assassinated in what has been taken by activists as a politically-motivated killing.

In Israel, male same sex couples were denied the right to adopt children through surrogacy in an unusual legal blow to the LGBTI community.

In a swing to the hard right, the United States shifted its foreign and domestic policy toward anti-SOGIESC positions, appointed known homophobic, misogynist and transphobic people to high level administrative posts to represent interests of conservative and religious right-wing NGOs, denied civil rights protections based on sexual orientation, and created electoral wedge issues by suspending trans protections in the US military and limiting legal protections regarding trans bathroom use.

Anti-propaganda laws continued to present challenges in Russia and neighbouring countries. These efforts to “protect minors” continued to cut off information, limit counselling and place young people, as well as activists and mental health professionals, at risk.

Denigration, Distraction, Detraction

Exposing strategies, and identifying places needing our attention

It’s hard to imagine a country in which attacks on feminist, sexual rights and LGBTI agendas did not take place in the last years. It’s also hard to imagine a site where gender non-conforming people’s bodies did not bear the brunt of brutal assaults. These manifested in many ways, including murder, torture, arbitrary arrest and rape. But other abuses were also evidenced in “administrative” attacks. These included office closures, freezing of bank accounts, denial of NGO registrations and travel bans. In these latter examples, generally government bodies or the police (or both) were responsible for the actions in question. In at least some of these examples, the motivating force behind the abuses was to elicit fear, to achieve a political outcome and / or also to project a national or cultural identity grounded in heteronormativity.

In some cases, government and religious authorities colluded not only to punish agendas or individual defenders, but to distract attention from other broader political issues such as corruption and unemployment.

As noted above, though, the violations against our communities are intrinsically linked to attacks on civil society organising overall, attacks on multilateralism, and attacks on the human rights system itself. The current political moment is a complicated one: economic interests and those of “national security” eclipse all other agendas. That is not new, in itself. But the linking of these interests with the clampdown on rights related to organising, including rights to assembly, political participation, information, speech and expression, to name but a few, makes for a daunting advocacy climate at local, national and global levels. Surveillance of defenders—both in physical terms and in social media—has become even more common, as have efforts to expose activists to risks and denigration. Add to this the fact that organising to challenge gender norms, to seek bodily autonomy and, indeed, to bring down patriarchal (and related racist and colonial) structures is always seen as a threat to the fabric of the family, the State and society overall. We are a dangerous lot, it seems.

Organising to challenge gender norms, to seek bodily autonomy and, indeed, to bring down patriarchal (and related racist and colonial) structures is always seen as a threat to the fabric of the family, the State and society overall. We are a dangerous lot, it seems.

Challenges in defending human rights

These efforts to dismiss us and the human rights agendas we promote are strategic. We and our demands are used as chess pawns in a broader geopolitical game. In fact, even when governments put forward SOGIESC-friendly policies, they sometimes do so with other motivations in mind. “Pinkwashing” continues to provide cover and allow impunity for governments’ anti-civil society policies
in various human rights arenas. And, of course, too many authorities continue to create and promote an anti-LGBTI national heteronormative identity for political reasons.

Unfortunately, these strategies are effective: punish the activists for bringing a “radical” agenda; dismiss their concerns as irrelevant or immoral; use the fact of their legitimate participation as a sign of failure in governance systems; challenge their participation as a means to deter other efforts and undermine the very systems they are trying to change. Ultimately, these tactics allow governments to deflect accountability in all human rights areas.

Although there no doubt were other examples of failures at the regional and global levels in the period under review, these two situations that took place in 2018 stand out for marking blunt attacks on civil society in intergovernmental spaces. Both reveal the lengths to which governments will go to project an identity, to intimidate those who resist “falling into line” and to protect what they see as ownership of the space and the discourse in it.

In June of 2018, the United States pulled out of the UN Human Rights Council because, it claimed, it did not have the support it sought for efforts to reform the UN. Days later, the US’ UN Ambassador sent a blistering letter to approximately 20 NGOs - many of which focused on sexual and reproductive rights and human rights, generally - asserting they had responsibility in the US’ departure because they were blocking a US agenda for the UN. At least two of these groups had a SOGIESC focus. Some had a legacy of promoting women’s rights and access to safe abortion. This read to many as a thinly-veiled hostile attempt by the US to create cover for its own departure from this international human rights body.

Later in the year, the African Union’s Executive Council led the African Commission on Human and Peoples’ Rights to revoke the observer status of the Coalition of African Lesbians. In a throwback to a past era, the Executive Council of the AU implied that CAL promoted “un-African values” and therefore should not be allowed to continue its participation at African Commission meetings as an official civil society member. Despite CAL’s longstanding history of strategic work at the Commission, the Commission’s own work to further attention to violence and discrimination based on sexual orientation and gender identity/expression, and the Commission’s independence as a regional governance body, pressure from the African Union (and the governments within it) proved too much.

In both cases, governments penalised NGOs and their affiliated activists for exercising their rights to political participation, and certainly for having particular political agendas. These groups were used as scapegoats to demonstrate to other organisations that particular agendas and civil society participation in these spaces are at risk.

Other tactics have been employed to achieve the same repressive outcomes. Again, these are not new, but in the period of review were -- speaking euphemistically -- vibrant and omnipresent from local to global levels. Many of the strategies and tactics noted below are enacted by State and religious authorities. Health, education and other officials are also sometimes complicit, as the media can be, as well. In coming months and years, advocates and researchers will need to make deep investment in finding additional responses to these ploys and manipulations by those who oppose us.

Promotion of the “traditional family” and “traditional values”. These efforts are quite prominent and rely on creating a mythical and beleaguered “perfect” patriarchal, heteronormative, gendered past. These are sometimes seen as responses to advances by women’s rights, sexual and reproductive rights and SOGIESC agendas.

For instance, the Human Rights Council and the UN Commission on the Status of Women provide annual playgrounds for those who promote these ahistoric ideas at the intergovernmental level. As governments negotiate language for resolutions and outcome documents, battle lines are drawn as to whether references to “families” (in the plural) will be allowed, or whether references must simply say not only “family” (in the singular), but be modified with the term “the”, implying there is just one: a monolithic heteronormative and paternalistic model.

It’s not just LGBT families who are denied recognition here; members of any family or kinship structure that falls outside the model of “the family” are rendered unworthy of rights protections. In this model, “the family” is mythically valorised as both the holder of rights and a site of safety; it is never a site of struggle, violence or discrimination, which all too often it is for those who defy gender roles or stereotypical gendered appearances.

In recent years, Russia (both the State and the Russian Orthodox Church) and the Holy See have

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11 ILGA was one of the groups that received this letter.

12 See the related joint civil society statement here.
spearheaded some of these efforts at the global levels. They go to great lengths to stifle the truth that around the world, many forms of family exist.

Inherent to these arguments are the ideas that parents are always best suited to make decisions for their children, which denies both the evolving capacities of young people (particularly in relation to sexuality) and the fact that parents are sometimes those who cause harm. This argument also gives parents ultimate authority in overseeing their children’s education and therefore the rights to deny sexuality education and information about contraception, abortion, homosexuality, trans identity, bodily autonomy and condom use.

- **Deployment of “Gender Ideology” rhetoric.**
  This is closely related to the notion of tradition and family as noted above. Often put forward by conservative religious authorities and right-wing NGOs, this has taken root largely in Latin America and Eastern Europe. The Vatican has played a strong role here. In short, anti-human rights, conservative and religious groups have developed a tactic that undermines gender-related rights struggles by naming them as “ideological”. They argue that people who have a broad definition of gender beyond “sex” are using a dangerous “gender ideology”. They see any deviation from the pre-determined definitions and roles of “man” and “woman” as threats. They use vitriolic rhetoric to allege plots and conspiracies among defenders of women’s rights and rights related to sexuality; they claim that our rights agendas will destroy the family, the State and the social order.

The language of “gender ideology” as it’s used by detractors of rights twists truth backwards and inside out. It argues that gender as an idea is dangerous, as is believing that gender can be shaped by social factors and power relationships. It sees biology as determining roles and hierarchies.

Of course, this tactic in itself is also ideological, but that idiosyncrasy is best left for longer analyses. In short, this is a religious and political argument that creates an hysterical response to gender as a useful concept in understanding roles, dynamics, social expression and sexuality. The connections to the promotion of mythical ideas about “tradition” and “the family” as noted above are clear - these are intersectional building blocks in conservative religious agendas.

The language of condemning “gender ideology” has been very effective at local, regional and global levels. It is important for activists, policy-makers and researchers to know that this strategy and these tactics in part have their roots in efforts that appeared decades ago, including at the “Beijing Fourth World Conference on Women” in 1995 and when the Rome Statute of the International Criminal Court was being developed in the late 1990s.¹³

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This “gender ideology” strategy and these tactics to attack the very idea of “gender” in part have their roots in efforts that appeared decades ago, including at the “Beijing Fourth World Conference on Women” in 1995 and when the Rome Statute of the International Criminal Court was being developed in the late 1990s.

At these intergovernmental sites, the Holy See spearheaded efforts that continue to this day; they and others seek to focus on the language of two “sexes” rather than “gender”, marriage existing only between a man and a woman, reproduction being central to and the purpose of sexuality, and “the family” as being the core unit of society.¹⁴

- **Promotion of “religious liberty” or “religious freedom” legal strategies.** This strategy entails conservatives and religious fundamentalists using legal systems to justify people denying provision of various forms of services or goods when they feel they don’t approve either of the “product” or the recipient. So, doctors can try to withhold abortion or other reproductive health care services, pharmacists can try to withhold providing contraception, bakers can try to deny customers cakes for same sex weddings and landlords can deny leases for housing to LGBTI people—all with legal

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¹³ Similar efforts were made at the 1994 International Conference on Population and Development in Cairo.

¹⁴ Other agendas include vehement anti-abortion, anti-sexuality education and anti-contraception positions.
protection. This legal strategy positions conservatives as victims being forced to provide against their consciousness. What it really does, however, is legally allow random discrimination by individuals against other people.

Denial of and attacks on science. Anti-human rights campaigners and religious authorities further entrenched their positions condemning science, fact and evidence-based information. In particular, their efforts focused on condom use, HIV, homosexuality and contraception. These efforts often rely on the promulgation of lies, propaganda and the spreading of what’s become known as “fake news” to sway public opinion. Some of their assertions are ludicrous—and, of course, unproven: for instance, they link abortion to incidence of breast cancer, they argue that masturbation causes illness or that homosexuality is linked to paedophilia.

One strategy that has become clear is the limiting of certain terms on websites and official documentation. In one particularly bizarre effort to censor and reshape the discourse of public health, officials in the US Centers For Disease Control (CDC) suggested that the agency stop or limit use of the terms “evidence-based”, “science-based”, “diversity”, “transgender,” and “foetus”, among a few others, in their budget documents. While this was initially reported as an outright ban, what became clear soon after was that the terms were noted as lightning rods that might trigger denials of funding when those budget documents were reviewed by the Trump administration. So, while this seemed not to be an abject ban, this case does reveal the “chilling effect” on public health officials and open discourse.15

Fear mongering / moral panic. This, too, is an old and effective tactic connected to all of the above. Whether about sexuality or other sets of issues, the creation of an “Other” that poses a threat remains a powerful force in denial of rights. It is here that the anti-gay, the anti-trans, the anti-immigrant, the anti-Muslim, the anti-Semitic, the anti-feminist (and other related sentiments) merge. “Access to abortion will cause a national population crisis”. “These people are massing at the border ready to bring in drugs, rape and take your jobs.” “This group of people is a national security threat.” “Trans people are sick”. “Our children are at risk”. All are fabricated ideas fed to people through manipulated media platforms and manipulative authorities, whether religious or political.

These efforts to create an “other” mark social anxieties among conservatives about liberalism, feminism, progressive ideas, and “political correctness”. They also mark fear of loss of power and a concern about threats to the hegemonic and historic hierarchical position of white heteronormative male privilege.

Overall, these mark social anxieties among conservatives about liberalism, feminism, progressive ideas, and “political correctness” (which, at its core, really is a call to be respectful and aware of history, isn’t it?). They also mark fear of loss of power and a concern about threats to the hegemonic and historic hierarchical position of white heteronormative male privilege.

To improve our own advocacy, we must continue to pay close attention to how our detractors have successfully strategised and mobilised support. As much as we decry them as “bigots” or “religious fanatics”, they are also engaging in long-term effective strategising. We must respond to their campaigning just as they have responded to ours.

And, finally.

Since the last SSH report was issued, the human rights climate has, for many, taken a turn for the worse. But, paradoxically, the visibility and demands of LGBTI communities and gender non-conforming people have generally increased. Sexual and reproductive rights claims have in many places

15 Specific language and pages on websites have also been removed, including in relation to climate change.
become further developed in law and been incorporated in evolving human rights standards, including at the UN level.

This is a long game, our work. The outlook in terms of the political landscape remains bleak; social justice advocates, no matter what our main interests, must be bold and strategic and tenacious in these times. And we must be in partnership and solidarity with one another, always. We must also strengthen our capacity to address tensions in global North and South power dynamics, just as we must become better at addressing racism and sexism within our movements and networks. Our victories may ring hollow if we don’t.

The essays and data presented in the rest of this SSH report can be effective tools in our ongoing advocacy and analysis. The ideas and information in this compilation have been rigorously filtered and are presented with care.

It is up to readers to use the details to oppose the conservative strategies and limiting circumstances addressed above. We must forge ahead making our demands and aspiring to our visions of justice. Even in times of crisis.
The Rights of LGBTQ+ People and Referendums: An Irreconcilable Marriage

By Elena Brodeal and Vlad Levente Viski

Referendums that subject the rights of LGBTQ+ people to popular vote have proliferated around the world. Most of these referendums concerned the issue of marriage equality, supporting or aiming to ban same-sex unions. For example, over thirty states in the US posed the question of marriage equality to a public vote starting with Alaska and Hawaii in 1998, continuing with the famous “Proposition 8” in California in 2008 and ending with North Carolina and Minnesota in 2012.

Referendums on the rights of LGBTQ+ people started being quickly organised in many other countries such as Croatia (2013), Slovenia (2012/2015), Slovakia (2015), Ireland (2015), Armenia (2016), Switzerland (2016), Bermuda (2016), Australia (2017), and more recently in Romania (2018) and Taiwan (2018). Two of these referendums were particularly celebrated by human rights activists—namely the ones in Ireland and in Australia—both of which legalised same-sex marriage. However, many observers remain sceptical about putting such an important issue to a popular vote. For example, commenting on the Romanian referendum aimed at defining marriage as “between a man and a woman” in the country’s constitution, a spokesperson of ILGA-Europe underlined how, although unsuccessful, the popular vote on this question brought to light once again the vulnerability of the LGBTQ+ community.

If the referendums in Ireland and Australia were widely celebrated by LGBTQ+ advocates around the world, this was probably so because of their outcome and not because of the support of putting the marriage equality question to a popular vote. In fact, if referendums can at times be successful in bringing equality for all, they might also hurt LGBTQ+ people in more conservative countries by setting a “dangerous precedent.” If similar referendums are replicated in countries where people still harbour animosity towards non-heterosexuals, there are serious chances that such...
When referendums take place in conservative countries, the LGBTQ+ community is always at risk of dangerous regression. Not only could referendums in these countries lead to restricting the rights of LGBTQ+ people, but they might provide the ground for conservative groups to grow and continue their anti-rights work. In addition, such referendums might capacitate conservative groups to attack the rights of other social groups such as women or ethnic minorities. This is so because referendums, unlike debates before courts or legislatures, necessarily imply a stronger grassroots mobilization and require building serious alliances between groups with a similar agenda.

The referendums that took place over the last period seem to be quite telling of how they help conservative groups grow. For example, the 2013 referendum in Croatia not only led to the ratification of the “heterosexual” definition of marriage in the country’s constitution, but it has empowered conservative groups to push their agenda even further. More precisely, after 2013, such groups became more vocal in the Croatian political sphere, opposing, among other things, the empowerment of the Istanbul Convention aimed at combating violence against women.17 This was also the case in Slovakia where shortly after the failed anti-LGBTQ+ referendum (the turnout requirement was not met), the organisation behind it, the Alliance for the Family, managed to bring over 70,000 people to the streets of Bratislava to march against abortion.18 By the same token, in the United States referendums to forbid same-sex couples’ right to marry emboldened conservative groups to push forward for legislation restricting abortion,19 limiting the access of transgender youth to the bathrooms of their choice,20 or opposing general anti-discrimination measures meant to protect LGBTQ+ individuals.21

Moreover, not only can referendums strengthen anti-rights groups at the local level, but they can also set the base for building transnational anti-LGBTQ+ alliances. This was, for example the case in Eastern Europe, where local groups collaborated in their endeavours to put the question of equality for all to a vote with American conservative organisations such as Alliance Defending Freedom,22 or Liberty Council.23 With this, discourses tailored in North America were transplanted in the region.24 Among these are the ideas that the question of same-sex marriage should not be decided by “nine justices in black robes”25 or that same-sex marriage “is a serious attack to freedom of religion” and it might put people in jail (as was the case of the former American county clerk Kim Davis who refused to grant marriage licenses to same-sex couples after the US Supreme Court legalised same-sex marriage in the famous Obergefell v. Hodges case).26

Another reason for which referendums should not be organised is that their campaigns often lead to an increase in hate speech, harming LGBTQ+ people.

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21 “The 800-Pound Gorilla Of The Christian Right”, Think Progress, 1 May 2014.
23 “Marriage on Romanian Ballot”, Liberty Counsel, 12 September 2018.
26 Obergefell et al. v. Hodges, Director, Ohio Department of Health et al.”, Supreme Court of The United States, October 2014.
Referendum campaigns often lead to an increase in hate speech, harming LGBTQ+ individuals.

For instance, in Romania and Slovakia the proponents of the constitutional ban on same-sex marriage compared LGBTQ+ people to paedophiles. At the same time, the LGBTQ+ legal service in Australia found 220 cases of hate speech during the 2017 plebiscite. Moreover, in the age of social media, when hate speech became harder and harder to sanction, the debates sparked by LGBTQ+ referendums can seriously harm non-heterosexuals. For example, in Taiwan, during the referendum campaign regarding the legalisation of same-sex marriage, conservative groups promoted messages on social media which warned that if gay marriage became legal, “HIV-positive people will [...] [go] to Taiwan and flood [...] [its] health system.” In the same way, in Romania, during the referendum campaign, hate speech messages accompanied by images depicting “decadent” queer individuals. In California, Slovenia, Slovakia, Australia, Taiwan, and Romania, the “protection of children” (from the “harms” of “legitimising homosexuality and immorality”) was a major topic during the referendum campaigns. In turn this led to an increase in hate speech towards LGBTQ+ individuals.

Observers also noted that referendums are generally a poor way of making decisions. Many of these referendums show how their outcome often depends on factors other than the question of whether people of all sexual orientations should enjoy equal rights or not. Such an example is the referendum in Romania, a country often regarded as hostile towards sexual and gender diversity, where, surprisingly, the referendum failed due to low turnout. Although human rights groups asked people not to go to vote in support of equality for all, most of the people did not go to the polling stations for other reasons than equality concerns. These include the dislike for the ruling party or the fact that the referendum was seen as “anti-European” in the conditions in which the Court of Justice of the European Union has recently required Romania to recognise same-sex marriages conducted abroad. Further, when Australia held its plebiscite, Prime Minister Tony Abbott talked about the vote as being about “political correctness” and not about the rights of LGBTQ+ individuals per se. Moreover, when put to referendums, the LGBTQ+ question could be easily instrumentalised and used by political forces to gain votes, defame their opponents, or derail the attention from other pressing problems. This was, for example the case in Slovakia where there same-sex referendum was said to have been used in the preceding presidential electoral campaign as a way to discredit opposition. In Romania, it was alleged that the ruling party used the referendum to turn
people’s attention away from its attempts to weaken the country’s anti-corruption framework. 44

Another issue that speaks against putting the rights of LGBTQ+ people to popular vote is that many of these referendums aim to entrench changes that would be very difficult to change by future generations. In many countries such as the United States, Croatia, 45 Georgia, 46 or Romania, 47 referendums meant to ban same-sex marriages in their constitutional texts. Enshrining constitutional restrictions seriously prevents progress in this field, keeping fundamental laws stuck in a period when respect for diversity and equality were not among the core values of society. Moreover, putting rights to a popular vote suggests that a constitution or the laws in any given country should in all circumstances reflect the views of the majority of the people at a certain moment in time. Yet constitutions and laws do not always contain provisions that are descriptive of the beliefs or the values of a society at a certain point in history. Many constitutions have provisions that are meant to stand as aspirational goals rather than reflections of people’s system of beliefs at the moment when these documents were drafted or amended. The provisions on gender equality are a representative example. In one of her studies on gender and constitutions, Catherine A. MacKinnon showed that countries where gender inequality is widespread have much more gender equality protections in their constitutions than countries where gender equality is more likely to lie at the heart of social relations. 48

The developments taking place over the last period show that the best forums to decide on LGBTQ+ rights remain courts. Not only that, traditionally, the role of the courts was to protect the rights of all social categories, regardless of how popular these categories were, but courts are bound to consider arguments on all sides, have to keep the focus of debates on the question that is being examined and must ensure that all parties are treated with due respect. Courts in many parts of the world assumed their role to protect the rights of sexual minorities in a very serious way. In 2015, the US Supreme Court in the famous Obergefell v. Hodges 49 case struck down all the state level constitutional amendments adopted through referendums that aimed to ban same-sex marriage. At the beginning of 2018, the Inter-American Court of Human Rights delivered an opinion explaining how, under the American Convention on Human Rights, States must grant same-sex couples equal rights, including marriage. 50 Further, in June 2018, the Court of Justice of the European Union delivered its judgement in the Coman case in which it obliged Romania and all the other Members States of the European Union to recognise same-sex marriages concluded abroad for the purpose of freedom of movement. 51 Moreover, courts around the world did not shy away to strike down legislation through which lawmakers meant to disregard their previous case law authorizing same-sex marriage. This is famously the case in Bermuda. 52 After the Supreme Court of Bermuda legalised same-sex marriage in May 2017, the Parliament passed a bill in December 2017 making same-sex marriage illegal once again. Among the reasons for this decision of the legislature was the result of a non-binding referendum on the matter that—although invalidated due to low turnout—showed that the majority of voters opposed same-sex marriage. 53 The Supreme Court of Bermuda, standing by the country’s constitution however, declared the new law unconstitutional shortly after it entered into force in June 2018, being backed by the country’s Court of Appeal later on in November.

In this context, maybe the time has come to further discuss how courts are better forums to decide on sensitive issues such as the rights of LGBTQ+ people. 54 Perhaps it is a growing consensus that courts are better positioned to decide on this issue that can strengthen courts’ legitimacy and their mandate of protecting sexual minorities against “majoritarian” anti-right impulses.

44 “Romanian voters ignore referendum on same-sex marriage ban”, Financial Times, 7 October 2018.
47 “Romanian constitutional ban on same sex marriage fails on low vote turnout”, Reuters, 7 October 2018.
49 “OBERGEFELL ET AL. v. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL”, Supreme Court of The United States, October 2014.
52 “Bermuda’s government fights against same-sex marriage in Court of Appeal”, CNN, 8 November 2018.
53 “Bermuda’s government fights against same-sex marriage in Court of Appeal”, CNN World, 8 November 2018.
54 “Bermuda top court reverses government’s gay marriage ban”, Reuters, 24 November 2018.
The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (YPs) were elaborated in 2006 and released in 2007. The YPs have played a key role in advancing the rights of LGTBI people worldwide through the application of International Human Rights Law.

The YPs support and promote legal reform, policy change, judicial decision, political activism and social awareness and call upon governments to meet their obligations under International Human Rights Law. Throughout the last ten years the body of International Human Rights Law has considerably evolved in relation to sexual orientation and gender identity and new issues have evolved that have not been adequately addressed or solved within the YPs.

By 2016 it was clearly necessary to come back to the YPs to review them, update them and make them ready to support and guide human rights work in the years to come. People from all around the world contributed to the revision and updating through a participatory process. Key challenges, advances, as well as normative and conceptual tools required to address them were identified and a drafting team was appointed to conceptualise and update the YPs. A group of 28 human rights experts was constituted and met for three days in Geneva to discuss, amend and approve the revision. The new YP+10 were presented in 2017.

The YP+10 supplement the original YPs, not replace them. They add 9 new Principles to the previous 29 and add new obligations for States to the existing YPs Principles.

The YPs and the YPs+10 must be read together and, therefore, all their Principles and State Obligations must be considered to refer to sexual orientation, gender identity, gender expression and sex characteristics.

New Principles and State Obligations in the YP+10

Everyone has the Right to State protection (Principle 30). States have the obligation to ensure that everyone is protected from violence, discrimination and other harm. The principle not only calls states to prevent, investigate, punish and eradicate such human rights violations, but also to

1 Mauro Cabral Grinspan is an intersex & trans activist from Argentina. He serves as the Executive Director of GATE. He participated in the elaboration of the Yogyakarta Principles and of the Yogyakarta Principles Plus 10.
2 Julia Ehrt is the Director of Programs at ILGA where she develops ILGA’s programmatic work and manages the programs team. Before joining ILGA she was the Executive Director of Transgender Europe and has been central to TGEU’s growth and development in the last decade. She is a member of the Steering Committee of the International Trans Fund (ITF), a board member of the Association for Women’s Rights in Development (AWID) and a signatory to the Yogyakarta Principles plus 10. Julia holds a PhD in mathematics.
compile statistics about them, their causes and effects, and to identify the attitudes, beliefs, customs and practices that provoke them, to provide training to all professionals involved in addressing them—including law enforcement officers—and to provide support and remedies for victims. In the same spirit, Principle 33 on the Right to freedom from criminalisation and sanction, calls States to repeal all the forms in which people around the world are criminalised and sanctioned, as well as subjected to discriminatory laws, due to our SO, GI, GE and SC.

New communicational developments required to expand protections to include the right to the enjoyment of human rights in relation to information and communication technologies (Principle 36), which calls States to ensure all persons’ right to “receive and impart information and ideas of all kinds”, while protecting privacy and security of digital communications, and holding all sectors accountable for hate speech, harassment and technology related violence.

Principle 34 on the Right to protection from poverty explicitly affirms that “poverty is incompatible with respect for the equal rights and dignity of all persons”, calling States not only to reduce and eliminate poverty but also promote socioeconomic inclusion and to ensure access to remedies.

While the Right to freedom of peaceful assembly and association was already included in the YPs (principle 20), developments in the last decade to infringe on those rights called for a refinement of states obligations under that principle in order to ensure the right of marginalised and vulnerable communities to organise, receive and use funding, even if not officially registered. Further adding state obligations to the right to seek asylum (original YPs Principle 23), the YP+10 now holistically reflect provisions in regard to this right and expand on minimal procedural requirements in the treatment of asylum seekers enshrined in international human rights law.

One of the ground-breaking contributions of the original YPs was to demonstrate that the right to recognition before the law implies a State obligation to recognising the gender identity of a person as self-defined. Laws, policies and rulings developed in the last decade in diverse countries across the globe have upheld this obligation, for example by granting access to legal gender recognition without imposing requirements incompatible with human rights standards.

However, the right to legal recognition (Principle 31) goes further as it shall not hinge on “making reference to or requiring assignment or disclosure of sex, gender, sexual orientation, gender identity, gender expression or sex characteristics of a person”. Therefore, States are obliged to putting an end to “the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licenses”.

Acknowledging that it will take time for States to implement this obligation, the same Principle provides for a transitional obligation to “ensure access to a quick, transparent and accessible mechanism to change names, including to gender neutral ones” and “to make available a multiplicity of gender marker options”.

The entire Principle reaffirms self-determination as its key normative aspect in International Human Rights Law and explicitly rejects psycho-medical diagnosis and/or interventions, as well as minimum age, among other eligibility criteria. Additional State obligations related to YPs Principle 24 on the right to found a family add the mandate to “issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents”.

Bodily issues were not fully included and developed in the original YPs; therefore, the elaboration of the YP+10 is required to address those issues.

Principle 32 on Bodily and Mental Integrity articulates different State obligations referred to the place of our sexed and sexual bodies in the human rights framework. It includes protection “from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics”, prohibits “the use of anal and genital examinations” for legal, administrative or prosecutorial reasons, and calls States to provide counselling and support to victims. This Principle as well calls upon States to ensure that “the concept of the best interest of the child is not manipulated to justify practices that conflict with the child’s right to bodily integrity”.

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Principle 34 on the Right to sanitation comes to address a sad and pervasive reality: those challenges faced by many people when trying to access public sanitation facilities, including school bathrooms, and to make explicit State obligations in this regard.
The YP+10 also added new State obligations related to YPs Principle 17 on the Right to the Highest Attainable Standard of Health to include issue such as the prevention of sexual and reproductive violence, (such as rape, forced marriage and forced pregnancy), as well as access to gender affirming healthcare, and to safe, affordable and effective contraceptives and abortion services. This same Principle calls States to ensure non-discriminatory access to donation of blood, gametes, embryos, organs, cells or other tissues, and ensuring privacy of HIV statuses.

A key normative aspect of this Principle from the call for universal access to healthcare care. Additional State obligations related to YPs Principle 20 on the Right to found a family includes access to methods to preserve fertility, and non-discriminatory access to surrogacy where legal.

Acknowledging key developments on intersex issues and human rights, additional State obligations related to Principle 10 on the right to freedom from torture and cruel, inhuman or degrading treatment or punishment establishes that “the forced, coercive and otherwise involuntary modification of a person’s sex characteristics may amount to torture”.

States are also called to prohibit practices such as forced normalising surgeries, involuntary sterilisation and reparative therapies, among others.

Principle 37, on the Right to Truth, seeks to ensure that both individuals and societies have access to the truth about their past, including past human rights violations based on SO, GI, GE and SO. This Principle is particularly relevant to ensure intersex people’s right to know the truth about medically unnecessary and non-consensual medical procedures to “normalise” their bodies in infancy and childhood, and to access their own medical record, as they are often kept from them even in adulthood.

Finally, the last principle (38) addresses the Right to Practice, Protect, Preserve and Revive Cultural Diversity which states have an obligation to protect and ensure.

**Conclusion**

The 38 principles of the YPs and the YPs+10 provide an authoritative, expert exposition of international human rights law as it currently applies on the grounds of sexual orientation, gender identity, gender expression and sex characteristic. Their legal and normative weight directly comes from the body of international human rights law, and States should abide to the principles as they should abide to the universal declaration of human rights.
June 2016 represented a landmark in the protection of sexual orientation and gender identity (SOGI) rights in the international arena. It was in this month that the United Nations (UN) Human Rights Council (HRC) appointed an Independent Expert (IE) on "protection against violence and discrimination based on sexual orientation and gender identity." Despite the several attempts to block such advancement through the proposition of "hostile amendments", Resolution 32/2 passed by a close vote of 23 to 18 (and 6 abstentions), establishing a three-year mandate for the IE. The IE is part of the UN special procedures (SP) mechanism. In order to be able to properly fulfil their objective, the SP mandate-holders employ a range of tools, such as communications, country visits and annual reports.

The IE mandate-holders have so far submitted four reports since the mandate was established, two each to the HRC and the General Assembly (GA) in 2017 and 2018. In his first report, Vítit Muntahaborn set out "underpinnings" for the mandate. The second report, the first to the UN General Assembly, addressed the first two underpinnings: decriminalisation and anti-discrimination. Regarding criminalisation, the IE took a broad approach, covering laws that criminalised not just same-sex relations but also laws that impact on gender identity and expression (such as so-called...
"cross-dressing" and vagrancy laws), and the intersections between SO and GI. The report identified regressive and progressive moves in decriminalisation worldwide.\footnote{E.g. a law of violence against women in Colombia encompassing lesbian and bisexual women.} The report also recommended that States should cooperate more with national human rights institutions (NHRIs) to interlink international norms with national settings, and outlined input from the NHRIs of Australia, Malaysia, New Zealand and Cyprus to the IE on criminalisation in their countries. On anti-discrimination measures, whether positive or absent, the report provided input from stakeholders to the mandate in 2017, including where intersectionality enabled protection of SOGI under other laws.\footnote{Meaning the refusal that violence and discrimination based on SOGI even exists.}

In the third report, the new IE, Victor Madrigal-Borloz, iterated his intention to continue the analytical framework developed by Professor Muntabhorn.\footnote{Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/32/2 of the HRC, which requests the mandate-holder to address the multiple, intersecting and aggravated forms of violence and discrimination on the basis of SOGI. He also highlighted the importance of an intersectional approach, while remaining aware of all conditions that create the "substantively distinct life experience of an individual". This approach was then evident in the discussion of hate crimes and the root causes of violence and discrimination; the report emphasised that broader power structures, deeply entrenched gender inequalities and rigid sexual and gender norms should be considered in the analysis. The report also discussed HIV status and the impact of "negation" against "acknowledgement" on data collection and therefore access to justice.}

In the fourth and most recent report, presented in 2018 to the GA, the IE explored the next two underpinnings.\footnote{The report then traverses the global landscape of legal recognition of gender identity, emphasising States’ obligations to do so without prejudice to other rights,\footnote{such as “the rights to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression” (para. 21).}} The fact that this is the first UN report dedicated to gender identity is not insignificant, and it was welcomed by trans communities. The report welcomes the new category for (adult and adolescent) trans identities in a new chapter created in the revision of the International Classification of Diseases (ICD-11).

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The report summarises that this legal vacuum could create a climate that tacitly permits, encourages and rewards with impunity, violence and discrimination leading to a situation of "de facto criminalisation".\footnote{Protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/38/43, 11 May 2018. He framed them as (1) the process of abandoning the classification of certain forms of gender as a pathology ("depathologisation") and (2) the full scope of the State duty to respect and promote respect of gender recognition as a component of identity.}

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In two areas, the report presents a forward-thinking interpretation of human rights. First, in data management, where the mandate-holder questions the necessity of the pervasive exhibition of gender markers in official and non-official documentation and asserts that “States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose”, in many respects echoing Principle 31 of the Yogyakarta Principles Plus 10. The second is the recommendation that States enact hate crimes legislation that establishes transphobia as an aggravating circumstance for criminal convictions, which situates developments in trans rights and their impact on criminal legal thought.

communications

Individual complaints or communications are, arguably, the most useful tool available to SP and are usually followed by a reply from the corresponded State. Research conducted in January 2019 indicates that the IE has sent 31 communications so far, including 29 joint letters together with other mandate-holders. They were addressed to countries from Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean and Western Europe and Others, covering all the UN regional groups. This regional spread shows that the IE was careful in adopting a balanced and cross-regional approach. In addition, one other communication, addressed to “other actors”, was sent to the United Nations High Commissioner for Refugees (UNHCR), regarding the situation of LGBT refugees in Kenya. The only countries that received more than one communication from the IE were Honduras (4), Russia Federation (3), Republic of Korea (2) and the United States of America (2).

The regional spread of communications shows that the IE was careful in adopting a balanced and cross-regional approach.

It is alarming, however, that only 16 of those communications obtained replies from the concerned entities. On the other hand, it must be highlighted that, amidst the States with more than one complaint, the United States was the only one that did not respond.

Although the number of replies may be a good indicator of the engagement and concern of each country regarding SOGI violations, the content of these answers must also be analysed. In that sense, an examination of the available replies can be divided into four different categories.

The first are replies which showed real concern regarding the protection of SOGI rights, including responses from different actors that, at the same time, provided the requested information and took


24 Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, 12 July 2018, para. 78(c). Only just becoming a concept in criminal law in a small number of jurisdictions, e.g. Argentina in the sentencing of the murderer of Amancay Diana Sacayán which included the adoption of the term “travesticide”, and in Colombia where the murder of a trans woman was recognised as femicide. See, for example: “Colombia impone la primera condena por feminicidio por crimen de una mujer ‘trans’”, CNN Espanol, 18 December 2018; “Killer of Argentine transgender activist sentenced to life in prison in historic case”, Daily Kos, 19 June 2018.

25 After receiving an individual complaint or sensitive information regarding a current or potential human rights violation, the IE may issue a communication to the relevant government. In this document, that can take form of either a letter of allegation or an urgent appeal, the mandate-holder asks for clarification and/or a call to action to stop the violation.


27 The data was collected from the “Communication Report and Search” website of the Office of the High Commissioner for Human Rights.

28 The countries were: Armenia, Azerbaijan, Brazil, Canada, Chile, Egypt, El Salvador, Guatemala, Haiti, Honduras, Indonesia, Kazakhstan, Kenya, Malaysia, Peru, Republic of Korea, Russian Federation, Romania, Singapore, Tunisia, Turkey, United Republic of Tanzania and United States of America.

29 “United Nations Regional Groups of Member States” UN Website.

30 Among them, only Azerbaijan, Brazil, Chile, El Salvador, Indonesia, Kazakhstan, Republic of Korea, Romania, Singapore, Turkey and the UNHCR answered all the delivered communications.

31 Although the system indicates that Kazakhstan have indeed replied to the received communication, the content is not available yet, because it is waiting to be translated.
concrete measures to solve the situation that lead to the violation.\textsuperscript{32}

The second group includes countries that showed moderate concern towards the perpetrated violations, giving responses that acknowledged that some abuse had been committed and indicated some concrete measures. Nonetheless, the same States emphasised some reservations with respect to issues on SOGI.\textsuperscript{33}

The third category comprises less engaged feedbacks, incorporating responses that completely denied any violations. Those were the replies from Azerbaijan, Turkey, Romania, Singapore, and the first replies from both Brazil and Republic of Korea. Although these countries did reply, they neither recognised the existence of a violation nor showed willingness to improve the protection of rights based on SOGI.

Finally, the last group is composed of only one State, the Russian Federation, with two replies that can only be described as completely hostile, as well as its continued position of not recognising the legitimacy of the mandate. Russia repeatedly refused to answer communications in which the IE is either author or co-author.\textsuperscript{34}

It should be noted that the adoption of this behaviour may take activists to push for the communication to be sent without the IE when Russia is the concerned State, even if it regards sexual orientation and/or gender identity. For instance, a communication to Russia in May 2018 was addressed by three Special Rapporteurs and a Working Group, not including the IE, even though it concerned gender identity rights.\textsuperscript{35}

Moreover, interactions between IE and other mandate-holders may help drawing an analysis of the most recent human rights violations suffered by persons based on SOGI. The examination of the communications reveals that the most frequent complaints were issued alongside the mandates regarding freedom of expression\textsuperscript{36} and human rights defenders,\textsuperscript{37} with 17 joint communications each.\textsuperscript{38}

The most frequent complaints were issued alongside the mandates regarding freedom of expression and human rights defenders.

Lastly, an analysis of the topics of the communications issued by the IE shows a wide range of themes: education (1); criminalisation (1); hate speech (1); access to information (1); murder (6); physical violence (10); prohibition of public gathering (1); general discriminatory law (5); and other forms of discrimination (5).

It is apparent how diversified are the threats suffered by persons on the basis of SOGI. Consequently, a variety of actions is also required in order to properly protect those persons.

\textbf{Country visits}

Another important part of any SP work is country visits. They do so to assess the institutional, legal, judicial and administrative framework, and investigate the de facto human rights situation under their respective mandates.

Mandate-holders can meet with different branches of government, NHRI, UN agencies, NGOs, civil society representatives, victims and others. Since the creation of the mandate, three country visits have taken place: Argentina, Georgia and Mozambique. These countries have a range of SOGI

\textsuperscript{32} This first group contemplates six different answers, those being: the second one from El Salvador (since the first one merely indicates that there will be a response); both from Honduras; the one from Chile; the one from the UNHCR; and the second reply from Brazil regarding the Marielle Franco case.

\textsuperscript{33} Such category would cover the reply from Indonesia, as well as the second reply from the Republic of Korea.

\textsuperscript{34} Russia’s replies to both communications UA/RUS/5/2017 and UA/RUS/7/2017 contained the following statement: “The Russian Federation does not intend to respond to individual or joint submissions from the special procedures of the Human Rights Council when the author or co-author is the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. We wish to recall that, at the Council’s thirty-second session, Russia formally stated that it would not recognise the mandate of or cooperate with this Special Procedures mechanism”.

\textsuperscript{35} See: Communication AL/RUS/9/2018.

\textsuperscript{36} The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

\textsuperscript{37} The Special Rapporteur on the situation of human rights defenders.

\textsuperscript{38} From a historical perspective, according to a data collection conducted by ISHR and ILGA, those two mandates were also the most engaged ones in SOGI issues even before the appointment of the IE on SOGI. See: "LGBTI rights | Factsheets on UN Special Procedures" ISHR Website.
rights, as well as strong and engaged civil society, providing a rich field for analysis.

Argentina was one of the States which co-sponsored Resolution 32/2, and also was a world first in creating a gender identity law. On the other hand, Mozambique is both an Islamic and African country — both blocs that opposed the Resolution in 2016 — that only decriminalised same sex relations in 2015.

It is essential that the IE’s mandate is renewed in order to maintain the advancement of SOGI rights protection worldwide.

Yet, the function of the IE in his country visits remains the same, which is to assess the country situation, as all three country visits have shown.40

For example, in Argentina the IE pointed out the issues with implementation of the transgender labour quota at the provincial level, as well as the realities of structural violence that still exists, even against prominent trans activists.41

On the other hand, in Mozambique, the IE noted that flagrant violence against LGBT people was not being reported and recommended that the government should take an awareness-raising role.42

In Georgia, the IE met with a number of civil society organisations, with one reporting that the country visit had attracted positive government’s attention to “sensitive issues” (i.e. LGBTI).43

Conclusion

This study illustrates the importance of the IE’s mandate and its work conducted thus far.

It is also a timely reminder of what has been achieved, and how much more work needs be done, not the least through providing nuanced analyses of various aspects of SOGI lives and realities, and how these nuances can be translated into suggestions for the progression of international human rights law in this area.

Therefore, it is essential that the IE’s mandate is renewed in order to maintain the advancement of SOGI rights protection worldwide.

42 “End of mission - Visit to Mozambique” OHCHR Website.
43 Statement from the Women’s Initiatives Support Group: “His devoted meeting with us and our beneficiaries was highly appreciated, discussing ongoing challenges towards the LGBTI community like intimate partner violence, domestic violence and hate crimes. Our expectations about his visit have been met, as we had the opportunity to emphasise priorities and challenges, share expert knowledge and attract the government’s attention to sensitive issues.”
The Third Cycle of the UPR: Organisations Push for More and Better Recommendations on SOGIESC Issues

By Diana Carolina Prado Mosquera

More than eleven years ago the Universal Periodic Review (UPR) was created. This has become an innovative mechanism for States, and in practical terms one of the mechanisms that has been most accepted by governments, either because of its constructive nature, or because, as its name suggests, it is a study done between peers. States study other States.

It is universal as it not only applies to the 193 Member States of the United Nations (UN), but also, it analyses any situation on human rights, including issues of sexual orientation, gender identity and expression and sex characteristics (SOGIESC).

It is periodic as it is a mechanism that for each State happens every five years, with regularity and it does not matter the situation that the State is going through. The study must be presented, and it is irrelevant if the previous government had accepted previous recommendations, the current government is obligated to report the level of implementation of those recommendations.

Since its creation, the UPR has evolved in a positive manner. During the first session, the first country which received a recommendation on sexual orientation and gender identity issues was Ecuador. In that moment Egypt opposed this recommendation and the dispute ended when Ecuador said that the proposed recommendation by Slovenia was going to be accepted. Today, such disputes are no longer observed in the working group sessions, on the contrary, the recommendations on SOGIESC issues are more frequent, and are always present in every session. By the end of 2018, the mechanism counts 2,013 recommendations on SOGIESC issues.

At the end of the second cycle in 2016, the UPR had only one recommendation and a specific advanced question on the topic of intersex persons. However, the third cycle has seen an increase in these recommendations and today there are 13 that deal with this issue, and the tendency shows that the number will continue to increase in the next working group sessions. In a similar way, the same has happened with the recommendations on gender identity: in 2018 the mechanism counted 49 recommendations on the issue.

By the end of 2018, the UPR counts 2,013 recommendations on SOGIESC issues.

This third cycle has seen the first recommendation on the prohibition of sterilisation as a requisite for the legal recognition of gender, and also the first recommendation in the issue of prohibition of forced anal examinations as proof of homosexuality. Both recommendations have been the result of the efforts of civil society organisations that every day see more the utility of this mechanism and give more relevance to these processes both at a national and international level.

A lot has been said of the efficacy of the UPR in countries, and distinct comparisons are made against the other existing UN mechanisms such as Treaty Bodies and Special Procedures which issue recommendations that are more technical and concrete. However, the UPR is seen by countries as...
one of the more effective mechanisms that exerts international pressure on concrete issues, and in turn deals with issues that are more relevant to the LGBTI populations in different countries.

When the UPR is utilised by civil society organisations as a complementary tool, it can bring positive benefits. By means of amending laws or generating changes in countries regarding awareness issues and even creating a new channel of communication between civil society organisations that work with LGBTI issues and the government.49

The UPR is seen by countries as one of the most effective mechanisms that exerts international pressure on concrete issues.

Furthermore, during the third cycle, different countries received their first recommendations in SOGIESC issues, among them are Argentina, Burkina Faso, France, Luxembourg, Morocco, Pakistan, and Serbia. Countries such as Bolivia, Ecuador, the Philippines, Georgia and India formulated their own recommendations, increasing the number of countries that contribute to these issues during interactive dialogues of the UPR working group session.

The third cycle is shaping as an implementation cycle, as during the working group sessions States should report on the level of implementation of the recommendations received during the second cycle. It is precisely here where the mechanism meets its match as midterm reports are voluntary, and to date, of the 193 states examined, only 39 have presented a midterm report for the second cycle. The level of implementation and the way to follow up continues being a challenge.

Working group sessions present new advances. For example, in the case of Luxembourg, during the second cycle (2013), it received a recommendation from the Netherlands, where it was asked to adopt a law on same-sex marriage,50 and the State, in its third UPR, reported that in 2014 such law was approved.

At the same time, it shows advances in other countries like Ghana, where in 2013 it created a system for cases of discrimination, which received complaints online, via SMS messages or in person. Then they are investigated with the intention of resolving them. This system was created for persons who had been victims of discrimination due to their sexual orientation or gender identity among others.51 And it responds to two recommendations that were accepted by Ghana in its second cycle and the advances were reported during the review of the third cycle.

Some countries have showed advances in the implementation of recommendations. Meanwhile, in others the reaction in the face of questions of sexual orientation and gender identity has resulted in the failure to comply with recommendations that were issued and accepted in the second cycle. For example, even though in the second cycle, Cameroon accepted the recommendation to investigate police violence motivated by sexual orientation, real or perceived,52 there have been 137 documented arrests in the last 5 years. Further still, a law recently sanctioned the criminalisation of certain forms of expression between persons of the same sex.53

Whilst States have their own challenges, civil society organisations continue to strive to follow-up on recommendations. Therefore, the end of the second cycle and the beginning of the third has seen the creation of different follow-up mechanisms on the part of civil society, the organising of periodic meetings with governments, the combined work with national offices of the UN
to advance the implementation of the recommendations, etc. 54

The third cycle is shaping up as a cycle in which the recommendations on SOGIESC issues will continue to increase.

At the same time, 2018 ended with a pilot project that ILGA together with other two international non-governmental organisations held in Jamaica. 55 This project was firstly focused on the implementation and follow-up of recommendations by the UN and included recommendations from the UPR and the Human Rights Committee.

The project concluded with a national consultation that included women’s organisations, organisations that work with SOGIESC issues and organisations on health issues. For 2019, ILGA hopes to continue with this project in other countries, contributing to the following-up process of recommendations.

The third cycle is shaping up as a cycle in which the recommendations on SOGIESC issues will continue to increase, as well as advanced questions proposed on these issues.

The language will be very specific and the continued presence of recommendations and forward-thinking questions in the topic of SOGIESC will oblige states under review to decide on issues, which in some cases will be the first time that civil society hears its governments decide on issues in this regard.

The third cycle will continue giving value to reports sent by organisations that work on these issues and also observe techniques, each time more elaborate. Without a doubt, one hopes that the third cycle contributes to generate a positive impact on the legislative processes, for example through laws and public policies.

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54 In an effort to compile these practices, in 2019 ILGA will prepare a report on best practices for implementation and follow-up on recommendations of the UPR, which will seek to compile information from different civil society organisations, with the objective that other organisations may replicate these best practices and adapt them to their own context.

Strategic litigation represents one of the main advocacy methods used by LGBTI human rights defenders across the globe. However, United Nations Treaty Bodies' individual communications, an important opportunity for international strategic litigation, has seemingly been overlooked by advocates.

United Nations Treaty Bodies’ mechanisms of individual communications provide defenders from different countries, in different regions, a chance to obtain justice after the exhaustion of domestic remedies. Using this mechanism, defenders can benefit from positive developments achieved in the field by colleagues from other countries and can contribute to the global process of SOGIESC human rights’ evolution.

Applying to Treaty Bodies with individual cases allows advocates to overcome impediments they faced on the national level and to obtain more in-depth analysis of the problem, as well as concrete and comprehensive recommendations for national authorities. Treaty Bodies usually review cases quicker than regional human rights courts. Treaty Bodies’ individual communications mechanism also provides opportunities for a case to be analysed by international human rights experts, specialising in distinct fields, such as gender, racial discrimination or disability.

However, out of more than 1,500 cases reviewed by Treaty Bodies, only 25 addressed issues of sexual orientation and/or gender identity. This statistic clearly shows that the individual complaints mechanism under Treaty Bodies has not been widely used by LGBTI advocates.

Additionally, there is no comprehensive database of Treaty Bodies’ jurisprudence and there is no other available collection of up-to-date decisions made by the Committees. This makes it more difficult for advocates and researchers to access information about SOGIESC developments under Treaty Bodies’ individual complaints mechanism.

Out of more than 1,500 cases reviewed by UN Treaty Bodies, only 25 addressed issues of SOGI.

For this reason, ILGA decided to organise a specific research and to produce a toolkit for LGBTI defenders. The toolkit will be published in 2019 and will provide information and instruments to aid defenders with the consideration, planning and implementation of strategic litigation on SOGIESC issues before Treaty Bodies; thus, bringing positive change to their communities. The present article is based on the above-mentioned research.

General overview

Overall, the Committees have published 25 views and decisions addressing sexual orientation or gender identity since 1982. More than a half of them (14 cases) were made during 2013–2018. All the views and decisions were produced by two

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56 Senior Officer, Women and UN Advocacy, ILGA World.

57 The terms “complaint,” “communication” and “petition” are used interchangeably here.

58 Currently, there are eight Treaty Bodies that can receive individual complaints: Human Rights Committee, Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Rights of Persons with Disabilities (CRPD) and Committee on Enforced Disappearances (CED).

59 The estimate according to the “Statistical Survey on individual complaints” at the Committees’ webpages. Available here.
Committees: HRCtee (19 cases) and the Committee against Torture (six cases).

In 18 cases, the Committees concluded that State parties violated the rights enshrined in the relevant treaties, in one case the claims were considered inadmissible, and in the rest of the cases (six views) violations were not found.

The cases reviewed by the Committees can be divided into six categories, according to the issues they address (see figure 1).

Cases reviewed by the Committees so far were brought against 12 countries, with Australia and Sweden having the highest number of complaints (five complaints against each of them) (see figure 2).

**Topics**

**Criminalisation of same-sex relations**

*Toonen v. Australia* (Human Rights Committee, 1994), the first Treaty Bodies’ case on sexual orientation where a violation was disclosed, was the truly ground-breaking decision influencing multiple national and regional developments around the globe. In this decision, the Human Rights Committee declared that adult consensual sexual activity in private is protected under the concept of “privacy”, and that references to “sex” in ICCPR articles 2 and 26 cover sexual orientation.

**Asylum seekers**

LGBT asylum seekers’ situation has been addressed by Treaty Bodies’ jurisprudence with regard to only one aspect, namely, the non-refoulement rule. This rule prohibits States from returning individuals to countries where they face a risk of torture and other forms of ill-treatment.

The very fact of criminalisation of same-sex activities (or, presumably, GIESC) in a country, does not mean that any LGB(TI) individual’s deportation to this country would per se constitute a violation of their rights.

However, it is difficult to identify particular factors related to LGBTI persons’ risk in their country of origin that would necessarily lead a Committee to recognise the violation. Instead, each case is analysed individually, and many factors are taken into account.

Such factors included the criminalisation of same-sex relations, religious beliefs of the author and/or their political or social activities, the author’s previous experience of violence based on their sexual orientation, and sources of information confirming that the current situation in the country is that LGBTI people face enormous level of violence, harassment and intimidation, and police or other officials do not protect victims/survivors.

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**Figure 1: Issues addressed by UN Treaty Bodies in their jurisprudence.**

![Figure 1](image.png)

**60** There was a case *Dean v. Australia* (HRCtee, 2009) that we do not consider under the criminalisation section as it concerned sexual relations with minors, and therefore there is a crucial difference between this case and cases related to criminalisation of consensual same-sex relations. While the author in Dean case claimed that he was discriminated against because of his sexual orientation, as he has been treated more harshly than “non-homosexuals” in respect of sentencing, the Committee found this part of his claims inadmissible.
Violence, hate speech and hate crimes

The two cases on violence in the context of sexual orientation reviewed by Treaty Bodies so far addressed the topic indirectly. In both cases, namely Ernazarov v. Kyrgyzstan (Human Rights Committee, 2015) and D.C. and D.E. v. Georgia (CAT, 2017), the issue raised by the authors was of particularly cruel treatment towards male detainees suspected of having committed sexual acts with other men. Surprisingly, no cases on hate crimes and hate speech against LGBTI persons have been reviewed by Treaty Bodies so far. Some cases against Russia pending before CEDAW and the Human Rights Committee could potentially fill in this gap.

Freedom of expression, assembly and association

Six SOGIESC cases on freedom of expression and freedom of assembly have been reviewed by Treaty Bodies, all by the Human Rights Committee. In all but one case, the Committee found a violation. One case (Hertzberg et al. v. Finland, 1982) was concerned with censoring radio and TV programmes on sexual orientation, two other cases (2012 case of Fedotova and 2018 case of Nepomnyaschiy, both against Russia) were on administrative sanctions for “propaganda of homosexuality,” and three cases (Alekseev v. Russian Federation, 2013; Praded v. Belarus, 2014; and Androsenko v. Belarus, 2016) concerned freedom of assembly.

LGBTI families

Four cases on LGBTI families have been reviewed by Treaty Bodies so far. All four cases involved same-sex couples only; an additional case, G. v. Australia, involved the divorce requirement for legal gender recognition, and will be referred to in the next section. All the cases were reviewed by the Human Rights Committee.

Of the four cases on same-sex relations, two were about marriage (Joslin et al. v. New Zealand, 2002 and C. v. Australia, 2017), and two concerned the petitioners’ benefits and rights after the death of their same-sex partner (Young v. Australia, 2003 and X. v. Colombia, 2007).

Only in the first case, Joslin et al. v. New Zealand, did the Committee find no violation. In the three later cases, the Committee decided that State parties violated the authors’ rights enshrined in the ICCPR.

Legal gender recognition

Until recently, Committees did not have any jurisprudence on cases brought by trans persons. However, in March 2017, the Human Rights Committee found a violation in G. v. Australia, the case brought by a trans woman who underwent hormonal treatment and gender reassignment surgery, and obtained a new passport, but was not able to get her gender marker changed on her birth certificate.
Conclusions and identified gaps

For the past three decades, Treaty Bodies have accumulated a portfolio of jurisprudence on LGBT cases. However, gaps and opportunities still remain.

Firstly, so far, only the Human Rights Committee and CAT have reviewed cases on SOGI issues. Advocates are encouraged to consider other Committees, such as CEDAW, CERD, CESCGR, CRC or CRPD, as they could explore new interpretations of issues, or tackle issues covered by their particular mandates.

Only the Human Rights Committee and the Committee against Torture have reviewed cases on SOGI issues.

Secondly, defenders could think about bringing cases on issues that fall within the six existing areas, but could also touch on new areas or aspects not analysed by the Committees so far.

For criminalisation, it could be on the criminalisation of same-sex female relations, relations between adolescents, the criminalisation of certain forms of gender expression, the criminalisation of same-sex relations in particular conditions, such as in the military, or certain degrading practices used by authorities when investigating cases on same-sex relations. Defenders could also bring cases challenging specific consequences of criminalisation for economic, social and cultural rights, or implications related to disability or race, ethnicity, indigenous or migrant status.

For LGBTI asylum seekers’ cases, advocates can bring complaints on behalf of intersex and trans persons, LBQ women or LGBTI persons with children, as well as cases related to mistreatment and inadequate conditions in asylum centres.

On violence, new cases could be brought on hate crimes and hate speech and lack of effective investigation into such incidents; on violence and bullying in educational settings; on specific forms and consequences of violence experienced by LBQ women and trans and intersex persons; on the so-called “conversion therapies”; on violence in detention; and, on intersex genital mutilation and other coercive medical treatment.

Regarding freedom of expression, assembly and association, advocates are encouraged to consider cases on freedom of association, including restrictions on registration or operation of LGBTI organisations and problems related to funding; on impediments for dissemination of information on SOGIESC, including website blocking, media censorship, access to information for adolescents or on HIV; on impediments to LGBTI demonstrations created by private actors, such as anti-LGBTI groups, and an ineffective response to it by authorities; and, on gender expression as part of freedom of expression.

On LGBTI families, further cases could be brought regarding the lack of access to institutions, such as marriage, for same-sex couples or particular rights and benefits they are denied because of it; access to assisted reproductive technologies, filiation and adoption, as well as parental rights; and, families of intersex children, when it comes to information provided to them and consent for medical treatment.

Regarding legal gender recognition, the G. v. Australia case seems to open new opportunities for individual complaints related to legal gender recognition procedures. This includes, where they are not adopted in a country at all, or where they are abusive. Cases revealing particular consequences or intersectional aspects of the LGR procedures’ shortcomings could be reviewed by the Human Rights Committee, but also by other Treaty Bodies.

While no cases on discrimination on grounds of SOGIESC in employment, education, health care, housing and other areas have been reviewed by Treaty Bodies so far, this area could be developed in future petitions.

Thirdly, most of the LGBT cases reviewed by Treaty Bodies, were brought from a limited number of countries; this situation reveals a significant regional imbalance. Of the 25 views and decisions adopted by the Committees since 1982, 16 cases came from countries in Europe and Central Asia, 6 cases from Oceania (Australia and New Zealand), one case from LAC region (Colombia), and another from North America (Canada). No cases against Asian (except for Central Asia, namely, Kyrgyzstan) or African countries have been reviewed by Treaty Bodies so far. This situation could be partly explained by objective factors, such as the number of ratifications in different regions or access to regional mechanisms. At the same time, defenders coming from underrepresented regions or sub-regions are encouraged to consider strategic litigation before Treaty Bodies and to inform partners about their needs and possible support required for such work.
Annex: Treaty Bodies’ Jurisprudence on SOGIESC

<table>
<thead>
<tr>
<th>BODY</th>
<th>CASE TITLE</th>
<th>COM. NUMBER</th>
<th>DATE</th>
<th>SUBJECT MATTER</th>
<th>RESULT</th>
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<tbody>
<tr>
<td>CAT</td>
<td>K.S.Y. v. Netherlands</td>
<td>190/2001</td>
<td>15 May 2003</td>
<td>Deportation of a gay man to Iran</td>
<td>No violation</td>
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<tr>
<td>HRCtee</td>
<td>X. v. Sweden</td>
<td>1833/2008</td>
<td>1 Nov 2011</td>
<td>Deportation of a bisexual man to Afghanistan</td>
<td>Violation</td>
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<tr>
<td>HRCtee</td>
<td>M.I. v. Sweden</td>
<td>2149/2012</td>
<td>25 Jul 2013</td>
<td>Deportation of a lesbian woman to Bangladesh</td>
<td>Violation</td>
</tr>
<tr>
<td>CAT</td>
<td>J.K. v. Canada</td>
<td>562/2013</td>
<td>23 Nov 2015</td>
<td>Deportation of a gay man and LGBT activist to Uganda</td>
<td>Violation</td>
</tr>
<tr>
<td>HRCtee</td>
<td>M.K.H. v. Denmark</td>
<td>2462/2014</td>
<td>12 Jul 2016</td>
<td>Deportation of a gay man to Bangladesh</td>
<td>Violation</td>
</tr>
<tr>
<td>HRCtee</td>
<td>M.Z.B.M. v. Denmark</td>
<td>2593/2015</td>
<td>20 Mar 2017</td>
<td>Deportation of a trans woman to Malaysia</td>
<td>No violation</td>
</tr>
<tr>
<td>CAT</td>
<td>E.A. v. Sweden</td>
<td>690/2015</td>
<td>11 Aug 2017</td>
<td>Deportation of a gay man to Lebanon</td>
<td>No violation</td>
</tr>
<tr>
<td>HRCtee</td>
<td>Z.B. v. Hungary</td>
<td>2768/2016</td>
<td>19 Jul 2018</td>
<td>Deportation of a woman, who allegedly suffered from violence based on her sister’s sexual orientation in Cameroon, to Serbia, where she had been raped and captured</td>
<td>Inadmissible</td>
</tr>
<tr>
<td>HRCtee</td>
<td>Ernazarov v. Kyrgyzstan</td>
<td>2054/2011</td>
<td>25 Mar 2015</td>
<td>Death of a person convicted of “forced sodomy” in a police station as a result of inter-prisoner violence against gay men and sex-offenders</td>
<td>Violation</td>
</tr>
<tr>
<td>CAT</td>
<td>D.C. and D.E. v. Georgia</td>
<td>573/2013</td>
<td>12 May 2017</td>
<td>Vulnerability of a detained person subjected to torture, including attempted rape, by police</td>
<td>Violation</td>
</tr>
</tbody>
</table>

61 So far Treaty Bodies have reviewed cases related to LGBT persons only. Cases are grouped in the table by topics and in chronological order within each topic.
<table>
<thead>
<tr>
<th>Country</th>
<th>Case</th>
<th>Year</th>
<th>Date</th>
<th>Description</th>
<th>Conclusion</th>
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<tbody>
<tr>
<td>Russia</td>
<td>Fedotova v. Russian Federation</td>
<td>1932/2010</td>
<td>31 Oct 2012</td>
<td>Administrative fine for &quot;gay propaganda among minors&quot; for displaying LGBT posters</td>
<td>Violation</td>
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<tr>
<td>Russia</td>
<td>Alekseev v. Russian Federation</td>
<td>1873/2009</td>
<td>25 Oct 2013</td>
<td>Refusal to authorise a picket against execution of gay people in Iran</td>
<td>Violation</td>
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<td>Belarus</td>
<td>Prade v. Belarus</td>
<td>2092/2011</td>
<td>10 Oct 2014</td>
<td>Arrest and imposition of a fine for holding of a peaceful assembly against killings of gay people in Iran without prior authorisation</td>
<td>Violation</td>
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<td>Russia</td>
<td>Nepomnyaschiy v. Russian Federation</td>
<td>2318/2013</td>
<td>17 Jul 2018</td>
<td>Administrative fine for &quot;gay propaganda among minors&quot; for displaying LGBT posters</td>
<td>Violation</td>
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**FAMILY RIGHTS**

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<tr>
<th>Country</th>
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<th>Description</th>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Zealand</td>
<td>Joslin et al. v. New Zealand</td>
<td>902/1999</td>
<td>17 Jul 2002</td>
<td>No access to marriage for two lesbian couples</td>
<td>No violation</td>
</tr>
<tr>
<td>Australia</td>
<td>Young v. Australia</td>
<td>941/2000</td>
<td>6 Aug 2003</td>
<td>Refusal to grant a pension to a same-sex partner of a deceased man</td>
<td>Violation</td>
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<tr>
<td>Colombia</td>
<td>X. v. Colombia</td>
<td>1361/2005</td>
<td>30 Mar 2007</td>
<td>Refusal to grant a pension to a same-sex partner of a deceased man</td>
<td>Violation</td>
</tr>
<tr>
<td>Australia</td>
<td>C. v. Australia</td>
<td>2216/2012</td>
<td>28 Mar 2017</td>
<td>Denial of access to divorce proceedings for a lesbian couple married abroad</td>
<td>Violation</td>
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</table>

**LEGAL GENDER RECOGNITION**

<table>
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<tr>
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<th>Year</th>
<th>Date</th>
<th>Description</th>
<th>Conclusion</th>
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<tr>
<td>Australia</td>
<td>G. v. Australia</td>
<td>2172/2012</td>
<td>17 Mar 2017</td>
<td>Divorce requirement for legal gender recognition</td>
<td>Violation</td>
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</table>
Progress Towards Ending Discrimination Based on SOGI in the World of Work

By Gurchaten Sandhu

Standard setting

Celebrating its centenary in 2019, the International Labour Organisation (ILO) is one of the oldest United Nations’ specialised agencies. Mandated to promote social justice and decent work for all, the ILO’s founding mission is that social justice is essential to universal and lasting peace.

Through its unique tripartite structure, the ILO brings together governments, employers and workers to define international labour standards, and to develop policies and programme for decent work for all.

To date there are two ILO recommendations that explicitly include references to sexual orientation: the Private Employment Agencies Recommendation, 1997 (No. 188) and the HIV and AIDS Recommendation, 2010 (No. 200).

The ILO supervisory system

The ILO’s has a unique supervisory system to ensure that member states implement the conventions they have ratified. Through this system, the ILO monitors the application of the conventions by Member States and identifies areas for improvement.

Member States submit reports on application in law and practice of the conventions, which are examined by two ILO Bodies: the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the International Labour Conference’s Tripartite Committee on the Application of Conventions and Recommendations.

Composition of 20 eminent jurists for three year terms, the CEACR makes two kinds of comments when examining the reports from States: observations and direct requests.

In the 2017 session, the CEACR made direct requests specifically on the grounds of sexual orientation and/or gender identity to Australia.

Two ILO recommendations explicitly include references to sexual orientation.

International labour standards in the form of conventions and recommendations are drawn up by governments, employers and workers that are adopted at the ILO’s Annual International Labour Conference. Conventions are legally binding international treaties that Member States may ratify, whilst recommendations serve as guidelines for Member States for integration into national legislation and policy frameworks.

62 The views expressed herein are those of the author(s) and do not necessarily reflect the views of the International Labour Organisation.

63 Gurchaten Sandhu works as a Programme Support Officer at the United Nation’s International Labour Organisation (ILO) working for the promotion of equality and non-discrimination in the Fundamental Principles and Rights at Work Branch. He also finds the time to volunteer for UN GLOBE, the staff group representing LGBTI staff in the UN and its peacekeeping operations. As its Vice-President, he works to ensure the voice and rights of LGBTI staff are represented in UN policies and procedures. He has raised the group’s visibility, has trained colleagues at the highest level of the UN agencies, organised and built a community of UN LGBTI staff, as well as a network with local and national LGBTI organisations in Switzerland. Gurchaten has also helped to reform the staff regulations on personal status in the ILO and more recently helped to introduce gender inclusive/neural toilets on every floor of the ILO building, making it the first UN agency in Geneva to do so. He serves as a steering committee member of the International Family Equality Day NGO, advising on non-discrimination based on family status in the world of work, and finally, last year, he was listed in the Financial Times Top 30 OUTstanding Role Model in the Public Sector.

64 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Australia.
invited to “come out” as LGBTI allies by wearing rainbow coloured lanyards/badge holder showing their commitment to making the ILO an inclusive workplace for all. Owing to the IDAHOTB theme of “alliances for solidarity” the LGBTIallies@ILO initiative was repeated in 2018, along with a panel discussion on the theme of “LGBTI Voices: our experiences in the workplace & beyond”. In addition, a three-step guidance piece on how to fight discrimination in the workplace and become an LGBTI ally was launched.

Working with LGBTI people, the ILO piloted a specific project to promote decent and productive work. Sixteen trans women participated in the 2nd edition of the kitchen assistant course organised in April 2018 by the project “Employability of Trans People – Kitchen & Voice”.

The “Kitchen & Voice” project educated the first group at the end of 2017 and managed to bring about 70 per cent of participants into jobs offered by a network of partner companies. “Kitchen & Voice” is part of a National Employability Project for the LGBTI population and is expected to expand its geographic scope to other Brazilian states, including Bahia, Rio de Janeiro, Goiás and Pará.

As a follow up to the “Promoting rights, diversity and equality in the world of work (PRIDE)” Project, the ILO is developing a gender-sensitive comprehensive toolbox for the promotion of inclusion of LGBTI people in the world of work. The Toolbox will promote the use of social dialogue and collective bargaining in addressing LGBTI+ concerns; adopt a differentiated approach to addressing the needs of LGBTI+ persons; cover a broad scope from fair recruitment to termination of work; focus on legal and policy issues at both the national and enterprise levels; include modules on HIV to be used in countries where there is a significant link between LGBTI and HIV; and promote non-violence, access to justice and social inclusion of LGBTI+ in the world of work. It will present an easy-to-use reference with step-by-step and practical guidance on how to develop inclusive working environments for use by Governments, i.e. Ministries of Labour, Employers’ organisations, Workers’ organisations as well as business and public sector institutions.

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65 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Brazil.
66 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Haiti.
67 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Jamaica.
68 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Italy.
69 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Jamaica.
70 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Netherlands.
71 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Papua New Guinea.
72 Direct Request (CEACR) - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Vanuatu.
73 Statements by the ILO Director-General Guy Ryder on the occasion of the International Day against Homophobia and Transphobia can be accessed here: 2013; 2014; 2015; 2016; 2017; 2018.
74 “Three steps to fight discrimination in the workplace and become an LGBTI ally”, Work in Progress (ILO-Blog), 17 May 2018.
75 “ILO helps open doors to the labour market for LGBTI people in Brazil”, ILO Website, 16 August 2018.
76 In 2012, with the support of the Government of Norway, the ILO initiated the “Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE)” project. The project conducts research on discrimination against Lesbian, Gay, Bisexual and Transgender (LGBT) workers across the world and highlights good practices that promote meaningful inclusion. The first phase of the project, which is now complete, focused on Argentina, Hungary and Thailand, and work is on-going in Costa Rica, France, India, Indonesia, Montenegro and South Africa. See: ILO (International Labour Office Gender, Equality and Diversity Branch), ORGULLO (PRIDE) en el trabajo: Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina (2015); —, PRIDE at work A study on discrimination at work on the basis of sexual orientation and gender identity in Thailand (2015).
UNESCO and the 2030 Agenda for Education Inclusive of Young LGBTI People

By the UNESCO Team.

Supporting effective education sector responses to violence and bullying based on SOGIE

School violence and bullying is an obstacle to quality education. Evidence shows that LGBTI learners are particularly vulnerable to school violence and bullying, as well as those learners who are perceived as gender-non conforming. Preventing and addressing homophobic and transphobic violence in educational institutions is essential to ensure that education is more inclusive of LGBTI and gender non-conforming learners.

UNESCO is supporting its Member States to combat school violence and bullying based on sexual orientation and gender identity or expression, in line with its mandate on ensuring the right to quality education for all in learning environments that are safe, non-violent and inclusive (SDG4 – Target 2.a).

UNESCO uses a culturally sensitive approach that is adapted to a range of socio-cultural contexts and legal environments.

UNESCO’s work aims at improving the evidence base, documenting and sharing best practice for action, raising awareness and build coalitions, and supporting interventions at country level to prevent and address homophobic and transphobic violence.

UNESCO started to work in this area in 2011 by convening the first-ever UN international consultation to address homophobic bullying in educational institutions.

In 2016, it organised the first international ministerial meeting on education sector responses to homophobic and transphobic violence to catalyse responses by its Member States. A group of countries affirmed a Call for Action by Ministers to express their political commitment to ensuring inclusive and equitable education for all learners in an environment free from discrimination and violence, including discrimination and violence based on sexual orientation and gender identity/expression. This Call for Action has been supported by 56 countries.

56 countries affirmed a Call for Action to ensuring inclusive and equitable education for all, free from discrimination and violence based on SOGIE.

During the meeting, UNESCO also launched the first global report providing an up-to-date analysis of the scope and impact of homophobic and transphobic violence in schools worldwide, as well as examples of...
UNESCO has supported concrete follow-up to the ministerial meeting and Call for Action in Ministers in various regions and selected countries.

In Asia-Pacific, in 2017, the regional UNESCO Office organised a consultation with representatives from nine countries from the region to highlight gaps and good practices at country-level and identify strategic opportunities for multi-stakeholder advocacy and action to address school-related SOGIE-based violence.

As a follow-up to the consultation, UNESCO has partnered with Education International (EI), which is the world’s largest teachers’ union, to build capacity of their teachers on the rights of LGBTI people and the role of the education sector to address discrimination on the basis of SOGIE in Asia Pacific. As part of this partnership, EI has also conducted a survey on the perception of the rights of LGBTI people among teachers who are members of unions from across the region.

In Thailand, a teacher training and curriculum development workshop was organised with the goal of providing national education authorities with a deeper understanding of SOGIE and the impact of bullying and discrimination based on SOGIE, and of identifying entry-points and strategies for the Thai context. A School Climate Assessment tool was piloted in North Thailand to assess aspects that are essential for a whole school approach to creating a safe and inclusive learning environment for LGBTI students.

In Europe, with support of UNESCO, the International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO) organised a follow-up meeting to the Call for Action for European countries. Participating countries reviewed progress in the implementation of their commitments and planned for further actions.

In Latin America, UNESCO worked with Cenesex (Centro Nacional de Educación Sexual) in Cuba to generate data through two studies: a situation analysis on the response of the education sector to homophobic and transphobic bullying, and a study conducted amongst young LGBT adults about their experiences of violence when they were in school.

Promoting education and health that are fully inclusive of LGBTI learners

Beyond its activities to prevent and address homophobic and transphobic violence in educational institutions, UNESCO is working to ensure that education and health are fully inclusive of LGBTI learners.

In 2018, UNESCO published the International Technical Guidance on Sexuality Education.

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In 2017, at the invitation of UNDP and the World Bank, UNESCO chaired the expert working group on education for the development of an international LGBTI Inclusion Index.

Furthermore, in 2018, UNESCO published the International technical guidance on sexuality education.

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80 Council of Europe, Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe (2018).
The guidance is developed to assist education, health and other relevant authorities in the development and implementation of school-based and out-of-school comprehensive sexuality education programmes and materials. The needs of LGBTI students are extensively referenced. Last but not least, in 2018, UNESCO also supported a global web-based consultation conducted by the youth organisation MAG Jeunes LGBT on how to make the 2030 Sustainable Development Agenda for education and health more inclusive of young LGBTI people. The inputs of more than 20,000 LGBTI youth were presented during the second conference of the Equal Rights Coalition (ERC) in Canada, giving a voice to young LGBTI people who are often underrepresented in forums where the rights of LGBTI people are discussed.

More UNESCO SOGIESC Resources

- La violencia homofóbica y transfóbica en el ámbito escolar en Latinoamérica: hacia centros educativos inclusivos y seguros, UNESCO, 2015. In Spanish only.
- El bullying homofóbico y transfóbico en centros educativos: taller de sensibilización para su prevención (Guía de facilitación), UNESCO, 2015. In Spanish only.
- Bullying targeting secondary school students who are or are perceived to be transgender or same sex attracted: Types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand, UNESCO Bangkok, 2014.
- Good Policy and Practice Series, Booklet 8: Education Sector Responses to Homophobic Bullying, UNESCO, 2012. Also available in Chinese, French, Italian, Korean, Polish, Portuguese, Russian, Spanish.
- International Day against Homophobia and Transphobia Lesson Plan, UNESCO, IDAHOT, 2012. Also available in French, German. Locally adapted for Thailand in "Lesson Plans for teaching about sexual and gender diversity".


Advisory Opinion No. 24: A Milestone in the Quest for Equality in the Americas

By Lucía Belén Araque

The Inter-American Court of Human Rights (IACtHR or “the Court”) is one of the two bodies in charge of protecting human rights within the system built around the Organisation of American States (OAS). The Court interprets and applies — among other legal instruments — the American Convention on Human Rights (ACHR, “The Convention”), the main human rights treaty of the system. It does this basically in two ways. The first — and most prominent — is by hearing and ruling on specific cases concerning alleged violations of its provisions perpetrated by States that ratified or acceded to the treaty. The Court can also express its views on concrete legal matters brought to its attention by organs and Member States of the OAS. These views — formally referred to as “advisory opinions” — have proved to be a valuable tool for further advancing human rights in the region.

In November 2017, the IACtHR issued a remarkably bold and far-reaching advisory opinion on sexual and gender diversity. Not only did the Court recognise that LGBT persons have historically been victims of stigmatisation and violence, but also set clear standards with respect to the enjoyment of their human rights in a regional context of emerging anti-rights groups and governments.

Unlike what the European Court of Human Rights (ECHR) argued in cases like Schalk and Kopf v. Austria, the IACtHR categorically stated that the lack of consensus among American States over alleged controversial topics such as those involving sexual and gender minorities cannot be considered a valid argument for denying or restricting their human rights and perpetuating and reproducing structural and historical discrimination against them, leaving no local margin of appreciation in this regard. The fact that the Court distanced itself from nuanced approaches proves its potential as a driving force of change in the Americas while, at the same time, poses a challenge in terms of effectiveness of its decisions.

The Court’s reliance on the progress made by OAS Member States (notably Argentina, Colombia, Mexico and Uruguay) in issues of sexual and gender diversity — and the work carried out by human rights advocates that underlies it — is undoubtedly one of the main features of this advisory opinion, together with the opportunity it offers LGBT activists to assess priorities.

Despite being a massive win for trans identities, media coverage of the opinion — and to some extent the work of academics — appear to have intensively focused on the sections of the decision on same-sex marriage, reflecting once again the uneven attention that trans-related topics receive in comparison to LGB ones, a phenomenon that has historically been a source of tension within the LGBT movement.

83 Lucía Belén Araque is an Argentinean lawyer specialised in Public International Law with a focus on International Human Rights Law (University of Buenos Aires, 2018). Exchange student at The University of Texas at Austin School of Law (full-ride merit-based scholarship granted by UBA Law School, Fall 2017). LLM in International Human Rights Law Candidate, researcher and Assistant Lecturer at UBA Law School.

Costa Rica’s questions

Observing that the protection of the human rights of LGBT persons varies significantly among OAS Member States, Costa Rica submitted a request to the IACtHR for clarification of the content and scope of the prohibition of discrimination on grounds of sexual orientation and gender identity under the ACHR.\[^{85}\] The Court was specifically asked to address whether States have an obligation to allow for name changes of individuals in accordance with gender identity and to recognise all patrimonial rights stemming from same-sex relationships.\[^{86}\]

On equality and non-discrimination

The IACtHR described the principle of equality and non-discrimination as the basis of national and international human rights systems, strongly linking it to human dignity.\[^{87}\]

Recalling its well-established case law, the Court stressed that States must refrain from carrying out any action that discriminates (directly or indirectly) against a person or group of people and that they must guarantee the full realisation of human rights without discrimination.\[^{88}\] This also includes protecting people from third party practices that create, maintain or favour discriminatory situations.\[^{89}\] Interestingly, the Court stressed that sexual orientation, gender identity and gender expression (SOGIE) are protected categories under this principle\[^{90}\] and even referred to the notion of intersectionality (i.e., a theory on how overlapping dimensions of oppression operate on different identities), although it did not go into too much detail in this regard.\[^{91}\]

On SOGIE and personality

The IACtHR delivered a robust construction of SOGIE as essential aspects of the “right to identity”.\[^{92}\] Noting that no particular mention of such human right is made in the ACHR, the Court explained that the protection of attributes and characteristics that allow the individualisation of a person within society derives from the protection that the Convention affords to the principles and rights that make up its core; personal autonomy, equality and non-discrimination, name, private and family life and freedom of expression.

In other words, the development of personality and aspirations, the determination and expression of individuality and the building and definition of social relationships belong within the domain of the choices that an individual makes in accordance with self-perception and personal convictions and that States must therefore respect and safeguard.

The Court stressed that sexual orientation, gender identity and gender expression are protected categories under the principle of equality and non-discrimination.

The Court also identified the nature of the right to an identity —of which SOGIE is a fundamental component— as instrumental to the full realisation of other human rights that depend on its recognition.\[^{93}\]

On legal recognition of gender identity

The IACtHR explored its connection with the right to “legal recognition as a person before the law”.\[^{94}\] Put this way, this right may sound odd to those who are not familiar with the I/A system or with civil (continental) law. Basically, it determines the existence of the individual as a human being with distinct needs, interests and opinions and the possibility of accessing and exercising rights. The Court also referred to the right to a name, a defining attribute of personality without which the

\[^{85}\] Ibid., para. 2.

\[^{86}\] Ibid., paras. 1, 3.

\[^{87}\] Ibid., para. 61.

\[^{88}\] Ibid., para. 63.

\[^{89}\] Ibid., para. 65.

\[^{90}\] Ibid., para. 78.

\[^{91}\] Ibid., para. 41.

\[^{92}\] Ibid., paras. 85–101.

\[^{93}\] Ibid., paras. 98, 99.

\[^{94}\] Ibid., paras. 102-104.
In this regard, the Court affirmed that the ACHR establishes the right to have one’s name changed and one’s image and sex or gender markers rectified to match self-perceived gender identity in public records and identification documents.

Furthermore, the Court declared that States are free to choose which type of procedure aimed at realising such right to implement —judiciary or administrative (though it recommended the latter)—, provided it meets certain minimum standards.

Firstly, it must be of a “declaratory nature”. Under no circumstances can it be turned into a form of external validation of the applicant’s gender identity. Secondly, it must be based solely on the free and informed consent of the applicant, without involving unreasonable or pathologising requirements such as medical, psychological or other certifications (of good conduct, “not married” marital status, criminal records, etc.), forced hormonal therapy, gender reassignment surgery, sterilisation or any sort of body modification. And last but not least, it must be confidential (documents cannot reflect the changes and/or rectifications either), prompt and, insofar as possible, centralised and cost-free.

Most notably, the Court added that these regulations apply likewise to procedures involving children. The right to legal recognition of gender identity in these cases must be protected taking into account the principles of best interests of the child, progressive autonomy, participation and equality and non-discrimination.

On protection of same-sex couples

The IACtHR expressed that the conventional protection of family and private and family life applies also to relations between persons of the same sex with respect to all kinds of issues.

The Court outlined the different legislative, judicial and administrative measures that had been taken in the region to ensure equal rights for same-sex couples and, based on the principle of equality and non-discrimination, determined that no argument could justify not extending such institutions to same-sex couples.

Particularly, it stated that establishing two types of formal unions with different names —but that grant the same rights and produce the same effects— is inadmissible under the ACHR, as it means creating a stigmatising distinction based on sexual orientation.

Moving towards effective implementation

Advisory Opinion No. 24 constitutes a landmark in the advancement of human rights of LGBT persons in the Americas. The IACtHR’s approach to sexual and gender diversity —undoubtedly the most progressive one ever adopted by a human rights regional court— called a halt to the discussion aimed at excluding SOGIE legal safeguards from the ACHR.

The question within the I/A System then is no longer whether legal recognition of gender identity and protection of same-sex relationships are actually required, but rather how these rights are going to be fulfilled in practice.

The effective implementation of these rights in the precise way that they were construed by the Court is still uncertain considering the high risk of political backlash in a region that shows growing anti-rights tendencies. Nevertheless, several States—responding to pressure from LGBT activists—have already started to act on the Advisory Opinion, raising hope that effective implementation will ultimately follow the Court’s guidelines.

95 Ibid., para. 106.
96 Ibid., para. 115.
97 Ibid., paras. 117, 159.
98 Ibid., para. 158.
99 Ibid., paras. 127-133.
100 Ibid., paras. 145-148.
101 Ibid., paras. 134-140.
102 Ibid., paras. 124, 125, 141-144.
103 Ibid., para. 154.
104 Ibid., paras. 149-156.
105 Ibid., paras. 191, 198.
106 Ibid., paras. 200-228.
107 Ibid., para. 224.
The Protection of the Rights of LGBTI People by the Inter-American Commission on Human Rights
Luiza Drummond Veado.108

The Inter-American Commission on Human Rights (IACHR) is one of the main bodies of the Organisation of American States (OAS) that promotes and protects human rights in the 35 States of the region and, together with the Inter-American Court of Human Rights (I/A Court), forms the Inter-American System.

Since 2011, the Commission has a Thematic Unit on the rights of LGBTI persons, which later became one of its Rapporteurships. Through this Rapporteurship, the IACHR monitors the situation of this population in the Americas, working with States and civil society, as well as other regional and international actors. It also processes individual petitions and cases related to SOGIESC.

Public hearings

In 2018, the IACHR heard diverse concerns from civil society organisations and received information from the States in several thematic hearings. In particular, the Commission received information on gender and sexual diversity policies in Paraguay,109 the human rights situation of trans people in Argentina,110 the situation of LGBT people deprived of liberty in the Americas,111 violations of economic, social, cultural and environmental rights of LGBTI people in the region,112 the political crisis in Venezuela and its effects on the LGBTI community113 and equal marriage in the Americas,114 as well as various intersectional issues that affect the lives of LGBTI people in the continent.

Through the Rapporteurship on the rights of LGBTI persons, the IACHR monitors the situation of this population in the Americas.

System of petitions and cases

In 2018, the Commission published reports on individual cases on issues of sexual orientation and gender identity.

The IACHR took the case of Azul Rojas Marín against Peru before the Inter-American Court of Human Rights.115 This is the first case of violence against LGBTI persons before that court and refers to the illegal, arbitrary and discriminatory arrest of Azul Rojas Marín, who then identified as a gay man (she currently identifies as a trans woman). Azul suffered serious acts of physical and psychological violence perpetrated by state agents, including various forms of sexual violence and rape. The IACHR found that the acts of violence against the victim were carried out with special cruelty because the state agents had identified Azul Rojas Marín as a gay man. The Commission also found that the facts of the case constitute violence based

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108 Luiza Drummond Veado, LLM from the University of Essex, is a human rights lawyer and consultant on issues of sexual orientation, gender identity and sexual characteristics.
111 “Personas LGBTI privadas de libertad”, IACHR YouTube Channel, 8 May 2018.
112 “DESCA de personas LGBTI en América”, IACHR YouTube Channel, 2 October 2018.
113 “Venezuela: Personas mayores y LGBTI”, IACHR YouTube Channel, 4 October 2018.
114 “Regional: Matrimonio Igualitario”, IACHR YouTube Channel, 5 December 2018.
on prejudice and considered that the constitutive elements of torture are also present. In addition, throughout the investigation, the victim was humiliated, and her credibility questioned by judicial authorities, from the initial report until the final decision. Thus, the IACHR considered that the State of Peru violated the State obligations to respect and fulfil the rights of a victim who denounces sexual violence, with the aggravating prejudice against LGBT people. This is a great opportunity for the Inter-American Court to issue a paradigmatic decision with clear standards on the protection of LGBTI persons against violence.

Additionally, the IACHR published the admissibility report in the case of Gareth Henry, Simone Carline Edwards and families on acts of discrimination and violence in Jamaica based on the sexual orientation of the victims. Such acts of violence forced both alleged victims to leave the country and apply for asylum abroad. The alleged victims place great emphasis on the existence of sodomy laws in Jamaica, alleging that it legitimises structural discrimination against LGBT people.

Precautionary measures

In 2018, the IACHR issued two precautionary measures in favour of human rights defenders of LGBTI persons in Brazil.

The first was awarded to Mônica Tereza Azeredo Benício, partner of Marielle Franco, a well-known defender of afro-bisexual human rights murdered in Rio de Janeiro. The Commission understood that the alleged threats, harassment and persecution, among other acts of intimidation, could be related to the complaints that the beneficiary has been filing in recent months in relation to the murder of her partner, as well as her willingness to assume her legacy and continue her important work.

The second precautionary measure granted in 2018 was granted to Jean Willys de Matos Santos, the first openly gay Brazilian legislator and to his family, in relation to possible threats against his life and personal integrity. According to available information, the threats are directly related to his work as a human rights defender and as a gay man. It is important to underline that Jean Willys subsequently left Brazil due to the threats suffered and did not take up his seat in the congress, even after the issuance of the precautionary measure granted by the Inter-American Commission.

Other lines of work

In addition to all these decisions, the IACHR conducted a public consultation related to the protection of economic, social and cultural rights (ESCR) of trans people in the Americas and collected numerous responses through a public questionnaire. It also issued several press releases highlighting the advances and setbacks in the region on the rights of LGBTI people and held a joint event with the United Nations High Commissioner and the African Commission on Human and Peoples’ Rights. Finally, the IACHR also launched a campaign composed of six videos about serious human rights violations against LGBTI people that continue to exist in the Americas and the Caribbean.

Over the past decade, the Inter-American Commission has made broad strides and has developed an innovative and coherent case law for the comprehensive protection of LGBTI people at the regional level. In addition, these developments grow through cases and reports published by the IACHR. At the same time, Member States make progress by enacting new laws, issuing judicial decisions and implementing public policies on issues of sexual orientation, gender identity and expression, and sexual characteristics.

The protection of the human rights of LGBTI persons is a complex, dynamic and multifaceted process. Certainly, there are still many barriers and shadows down the road. Violence and discrimination still govern the daily lives of many LGBTI people in the hemisphere. However, victories and advances continue to be achieved. The Americas have proven to be a region that—not without difficulties—has developed numerous laws, policies and programs that are among the most advanced on the planet to recognise, protect and empower LGBTI people. Those victories are only possible thanks to the work of LGBTI activists, defenders and agents of the State that join the struggle, so that we can all be free and equal in rights and dignity.

117 IACHR, Precautionary Measure No. 767-18, Mónica Tereza Azeredo Benício, Brazil, 1 August 2018.
118 IACHR, Precautionary Measure No. 1262-18, Jean Willys de Matos Santos and family, Brazil, 20 November 2018.
119 “Questionnaire for the Report on trans persons and economic, social and cultural rights”, IACHR Website.
120 “Press Releases”, IACHR Website.
121 “Campaña de videos en Youtube/Agosto 2018”, IACHR Website.
The Organisation of American States (OAS) is the intergovernmental organisation that unites the 35 independent States of the Western Hemisphere. In the last decade, it has become a forum that has seen great advances in equality issues. However, these advances have not gone without great resistance and challenges.

The General Assembly of 2017

In June 2017, the OAS celebrated its 47th General Assembly (GA) in Cancun, Mexico. The level of anti-LGBT incidents, attacks and hate speech was lower than in previous years thanks to the efforts of the OAS to minimise conflicts through changes in the methodology of civil society participation.

Of 394 civil society organisations registered—among them were the organisations integral to the LGBTTTI Coalition of Latin America and the Caribbean that work in the OAS—around 100 organisations were in opposition.

In this context, the anti-trans bus "Citizen-Go" arrived in Cancun with the intention of parking in front of the OAS GA building. However, by order of the Mexican government, the bus had to park some kilometres from the access, and it passed practically unnoticed.

At the same time, the National Council for Preventing Discrimination (CONAPRED), installed a space for receiving complaints in the GA area.

In the last decade, the OAS has become a forum that has seen great advances in equality issues.

Of 24 registered coalitions to speak at the event, 10 included anti-rights speeches that dealt with, among other issues, abortion, anti-LGBT incidents and the defence of "natural" marriage between a man and a woman.

The biggest efforts for the anti-rights organisations supported by the Paraguayan and Jamaican delegations was to eliminate the entire section on the rights of LGBT people proposed by the "Core LGBTI Group" in the resolution on human rights in the region. Through a long and complicated discussion, it was finally agreed to preserve the language of the resolution from the previous year, with the ant-rights groups failing to achieve their principle objective.

122 Marcelo Ernesto Ferreyra is an architect by profession and feminist activist defender of Sexual Rights and Reproductive Rights since 1987, first integrating the Comunidad Homosexual Argentina and later Gays DC (organisation with which he was one of the promoters of the First Pride March in Buenos Aires Aires), and later in Latin America and the Caribbean, being in that context a Founder member at the Coalition of LGBTTTI Organisations with work at the OAS. He has collaborated in several international organisations such as Interpride, of which he was vice president and director for the Latin America and the Caribbean area. During 2006 - 2010 he was the Coordinator of the Program for Latin America and the Caribbean in the International Commission on Human Rights for Gays and Lesbians (IGLHRC) and from 2010 to 2012 he was Coordinator Member of the Collegiate Coordination of the Campaign for an Inter-American Convention on Human Rights. Sexual and Reproductive Rights. Currently a member of the Synergia Initiative for Human Rights, he is also a member of the Sex and Revolution Advisory Collective, Feminist and Gender-Generic Policy Memories Program of CeDInCI / UNSAM; and officiates as an advisor to the Mama Cash women’s fund.

123 "47º Periodo Ordinario de Sesiones de la Asamblea General de la OEA – 2017", OAS Website.

124 The Coalition of Lesbians, Gays, Bisexuals, Transgenders, Transsexuals, Travestis, Intersex (LGBTTTI) of Latin America and the Caribbean that advocates before the OAS is a regional network composed of 53 organisations from 26 countries in the region. Since its foundation in 2006, its strategic objective has been visibility, promotion and mobilisation to guarantee the overall and systematic commitment of the OAS and its regional system for the protection of human rights to protect and promote LGBTI human rights in the American hemisphere.

125 The "Core Group" was founded on June 15, 2016 in Santo Domingo under the "Joint Declaration of the founding members of the LGBTI Support Group", and was signed by Argentina, Brazil, Canada, Colombia, United States, Chile, Mexico and Uruguay. The resolutions on “Human Rights, Sexual Orientation and Gender Identity” were approved annually since the 38th General Assembly
The Summit of the Americas of 2018

In April 2018, the eighth Summit of the Americas took place in Lima, Peru. The opposition groups also participated in the Civil Society space of the event, but its level of influence diminished in comparison with the previous Summit.

The organisations formed the LGBTTTTI coalition which participated as one of the 28 civil society coalitions that were admitted in the Summit to read their own document before the Governmental Representatives of the Highest Level.

During the presentation of the work methodology, the General Secretary of the OAS included a reminder that there will be a zero tolerance of harassment against participants and organisers of the event and adopted the appropriate measures to defend the principles of pluralism and respect, including appropriate accreditation and bathrooms for trans participants. Although these measures caused protests from opposition groups on social networks, they were respected during the whole event.

As an event without precedent in the history of the Summit of the Americas, the Secretary of the Summit took the opportunity for a person from civil society to be a spokesperson for a “dialogue between social actors and representatives of the highest levels of government”, presenting a document summarising the key points for the intervention of the 28 coalitions of civil society. The one-page document clearly showed contradictions as two of the coalitions were composed of opposition groups.

The General Assembly 2018

In June 2018, the OAS celebrated its 48th General Assembly in Washington D.C. Of the total 307 civil society organisations approximately 90 were opposition organisations, a few more than the organisation for sexual, reproductive and LGBTTTB rights.

A novelty was the attendance en masse of churches—Catholics and Evangelicals—with a pre-eminence of the latter. This is the first time that in the civil society space of the OAS, some coalitions identified openly as religious. This signalled that also, for the first time, there was a progressive religious coalition, the “Coalition for the Religions, Beliefs and Spirituality in Dialogue with Civil Society”.

Of the 31 registered coalitions, 9 included an opposition discourse (less than the previous year). The issues included, among others, abortion, “gender ideology”, opposition to the rights of LGBTI people and the defence of “natural” marriage between a man and a woman.

Also, they were looking to delegitimise the Inter-American Commission on Women (ICM), the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR), denouncing them as “overreaching” in their functions to include recommendations and jurisprudence on sexual orientation and gender identity.

This time, the efforts of the opposition—under the leaderships of Paraguay—focused on the sections regarding the rights of LGBTI people in the resolution on human rights. 128

The situation of international treaties that expressly include sexual orientation and gender identity and/or expression

The Inter-American System is the first system of human rights in the world with two binding instruments that protect sexual orientation and gender identity and/or expression. These are the Inter-American Convention Against All Forms of Discrimination and Intolerance (A-69) approved in 2013 and the Inter-American Convention on the Protection of Human Rights of Older Persons (A-70) approved in 2015. Both enter into force 30 days after the document is ratified by only two countries.

The Convention (A-70) entered into force on the 11th of January 2017; but is still missing 4 countries’ signatures and ratification in order to activate the supervisory mechanism. On the 11th of May 2018, Uruguay became the first country to ratify Convention (A-69). It is still missing one of the other 10 countries that have already signed, to ratify the convention so it can come into force.
The efforts of the opposition focused on the sections regarding the rights of LGBTI people in the resolution.

Although instead of opposing the text completely as they had in the previous year, they opposed the advances proposed on two issues. Firstly, the language on “sexual characteristics” which includes intersex persons, and secondly, to eliminate reference to Consultative Opinion 24/17.

This was pure spectacle on its part, as the Consultative Opinion didn’t need support from States by being a judicial document. Both paragraphs were eliminated.

In the frame of this General Assembly, the Inter-American Commission on Women (CIM) convened a meeting with international and regional bodies and civil society organisations that are dedicated to working for the advancement of gender equality and the empowerment of women and girls.

For this, the CIM created, by request from the Titled Delegates, the “Inter-American Guidelines on gender equality for the good for humanity”, with the object to emphasise the concrete benefits of gender equality for women and men in the social, political, and economic spheres, as a way to identify positive messages from responses before the anti-human rights movements and speeches and anti-gender equality. Hillary Anderson, Gender Specialist for the ICM, expressed her worry for the threat that these movements represented in the region.

The next GA of the OAS will be held in June 2019 in Medellin, Colombia.

SOGIESC in the Council of Europe

By Sarah Burton

The Council of Europe promotes and defends human rights, democracy and the rule of law across its 47 Member States, which are home to 830 million people. Chiefly famous as the home of the European Convention on Human Rights and the European Court of Human Rights, it conducts much of its work through intergovernmental cooperation, via its Committee of Ministers and intergovernmental steering committees, and through the human rights monitoring bodies set up under many of its more than 200 conventions.

In addition to the European Court of Human Rights, key bodies as far as SOGIESC-related matters are concerned include the Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe and its General Rapporteur on the rights of LGBTI people, the European Commission against Racism and Intolerance (ECRI) and the intergovernmental sector’s SOGI Unit. In 2017, the Committee for the Prevention of Torture (CPT) was also active in this field.

Overall context

The Council of Europe’s work from March 2017 to December 2018 reflected conflicting trends that can be observed across its member states as regards SOGIESC-related issues – from increasing recognition at one end of the spectrum, to the most egregious human rights violations, including torture and extrajudicial killings, at the other.

These developments have occurred against a background of vocal opposition emanating from some religious and ultra-conservative groups to notions of gender and so-called “gender ideology”.

Developments have occurred against a background of vocal opposition emanating from some religious and ultra-conservative groups to notions of gender and so-called “gender ideology”.

The reticence displayed in some member states towards ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) led the Council of Europe to publish in 2018 a leaflet specifically aimed at countering misrepresentations of the Istanbul Convention, including its definition of “gender” and how it relates to issues of sexual orientation and gender identity.

Persecution on the basis of actual or perceived sexual orientation or gender identity

Chechen Republic (Russian Federation)

First reported by Russian newspaper Novaya Gazeta in early April 2017, the alleged large-scale abduction, detention and torture—and, in some cases, killing—of LGBTI people in Chechnya led to...
both rapid and longer-term responses from the Council of Europe.

On 5 April 2017, the Assembly’s General Rapporteur on the rights of LGBTI people and its rapporteur on Human rights in the North Caucasus issued a joint statement expressing alarm at the reports and calling for an immediate, effective investigation.\(^{136}\)

The same day, the Commissioner for Human Rights sent a letter to the Head of the Russian Federal Investigative Committee, requesting information about steps taken to investigate both the alleged crimes and the statements made by Chechen public figures that may have constituted incitement to hatred, as well as to protect victims.\(^{137}\)

Adopting a resolution on human rights in the North Caucasus soon afterwards, on 25 April 2017, the Parliamentary Assembly expressed grave concern over the reports, condemned the “denial, trivialisation and condoning” by the Chechen authorities of the attacks, and “urge[d] the Russian Federation to carry out an immediate and transparent investigation” in order to bring those responsible to justice and ensure the safety of the LGBTI community, human rights defenders and journalists reporting on such violations.\(^{138}\)

From 28 November to 4 December 2017, the Committee for the Prevention of Torture (CPT) conducted a visit to the Chechen Republic, during which it looked, inter alia, into the investigation of certain specific complaints/reports of unlawful detention and ill-treatment by law enforcement officials in the Chechen Republic.\(^{139}\) Its report, adopted in March 2018,\(^{140}\) has not yet been made public\(^{141}\).

On 27 June 2018, the Assembly adopted Resolution 2230 (2018)\(^{142}\) and Recommendation 2138 (2018)\(^{143}\) on Persecution of LGBTI people in the Chechen Republic (Russian Federation), on the basis of a detailed report prepared by the General Rapporteur on the rights of LGBTI people, Piet De Bruyn (Belgium, NI).\(^{144}\)

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**Persecution on the basis of actual or perceived sexual orientation or gender identity led to a series of responses from the Council of Europe.**

The Assembly noted that a “campaign of persecution [had] unfolded against the backdrop of serious, systematic and widespread discrimination and harassment against LGBTI people in the Chechen Republic”, and that its effects continued.

Emphasising that the Russian Federation has responsibilities as a Council of Europe member state, it called on the authorities, *inter alia*, to conduct an impartial and effective investigation into the facts, or to allow an independent international investigation; to protect victims, their families and witnesses, as well as human rights defenders; and to authorise the publication of the CPT’s report.

It further called on other Council of Europe member states to grant protection to victims, witnesses and their families; to support NGOs and human rights defenders providing assistance to victims and witnesses; and, should the Russian Federation fail to conduct an investigation within a

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\(^{136}\) *Attacks against LGBT people in Chechnya: claims must be investigated and victims protected*, Council of Europe Parliamentary Assembly Website, 5 April 2017.


\(^{140}\) CPT, “CPT holds its March 2018 plenary meeting”, Council of Europe Website, 12 March 2018.

\(^{141}\) Under Article 11 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the report relating to a visit remains confidential until the authorities of the state concerned request its publication.


reasonable time, to consider conducting a Council of Europe investigation into these events.145

Azerbaijan

Reports of the arrest, detention, physical ill-treatment of LGBT persons, and other serious violations of their human rights, including forced medical examinations, in Baku in autumn 2017 also prompted a series of rapid responses. The Commissioner wrote to the Minister of Internal Affairs of Azerbaijan, calling for a thorough investigation into these allegations and underscoring that arrests based wholly or in part on sexual orientation or gender identity constitute discrimination and run counter to the ECHR. However, “the Minister’s response only heightened my concerns,” the Commissioner subsequently reported.146 Adopting a resolution on the functioning of democratic institutions in Azerbaijan on 11 October 2017, the Assembly also expressed concern about the reports and called for independent, effective investigations to be conducted into the actions of the police.147

Hate Crime

As the European Commission against Racism and Intolerance (ECRI) noted in its 2017 annual report, homophobic and transphobic hatred is still present in Europe, and its presence on the Internet and in social media has helped fuel a rise in hostility towards LGBTI people.148 In June 2017, the SOGI Unit published a manual designed to help train police to provide a professional response in cases of hate crimes based on real or perceived sexual orientation or gender identity.149

In a Human Rights Comment published in August 2017, the Commissioner emphasised that effective laws and justice systems are essential but not enough and called on member states to work proactively to bring about broader changes in societal attitudes to LGBTI persons.150

 Freedoms of association, assembly and expression

In June 2017, the European Court of Human Rights issued its judgment in the case of Bayev and Others v. Russia, finding violations of Article 10 ECHR (freedom of expression) and of Article 14 ECHR (prohibition of discrimination) in conjunction with Article 10 concerning the applicants’ conviction and fining for administrative offences, following their demonstrations against so-called “gay propaganda laws.”151

The Committee of Ministers is currently examining the measures taken by the Russian Federation to execute this judgment together with those taken to execute the Court’s much earlier 2010 judgment in the case of Alekseyev v. Russia.152 Meanwhile, a new judgment finding similar violations was delivered in November 2018,153 and a number of cases concerning the registration of associations, the organisation of public events and the impact of the Russian Foreign Agents Act, linked to sexual orientation and/or gender identity, are currently pending before the Court.154

In statements issued on 26 June and 20 November 2017 respectively, the Commissioner for Human Rights regretted the decision of the governor of Istanbul to ban the 2017 Pride and that of the governor of Ankara to ban all LGBTI activities in the city.155 On 14 December 2017, the Assembly’s General Rapporteur on the rights of LGBTI people

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146 Commissioner for Human Rights, Annual Activity Report 2017, CommDH (2018) 1, Chapter 2.6: Human Rights of LGBTI People, 19 January 2018. Note: Both the letter and the Minister’s response were published on 16 October 2017 and can be found here.


151 European Court of Human Rights, Bayev and Others v. Russia, applications nos. 67667/09, 44092/12 and 56717/12, judgment of 20 June 2017.

152 European Court of Human Rights, Alekseyev v. Russia, application no. 4916/07, judgment of 21 October 2010.

153 European Court of Human Rights, Alekseyev and Others v. Russia, application no. 14988/09, judgment of 27 November 2018 (not yet final at the time of writing).

154 For an up-to-date (not necessarily exhaustive) list, see Press Unit, European Court of Human Rights, Factsheet – Sexual orientation issues.

155 “Commissioner Mužnieks criticises ban of Istanbul Pride”, Strasbourg, 26 June 2017. For the statement of 20 November 2017, see the Commissioner’s Facebook page.
expressed similar concerns and called on the Turkish authorities to ensure that human rights were respected throughout the country.\(^{156}\) Dozens of members of the Assembly signed written declarations denouncing the ban on the Istanbul Pride and calling for an end to the Ankara ban.\(^{157}\)

The Committee of Ministers pursued its examination of the execution of several judgments delivered between 2012 and 2016 and finding violations by Georgia, Moldova and Turkey of the freedoms of expression, association and/or assembly, and/or of the right to an effective remedy, and/or of the prohibition of discrimination, in relation to the organisation of Pride marches or other demonstrations or publications in favour of equal rights regardless of sexual orientation or gender identity.\(^{158}\)

**Rights of intersex people**

Prompted in part by the previous work of the Commissioner in this field,\(^{159}\) in October 2017 the Assembly adopted Resolution 2191 (2017) on Promoting the human rights of and eliminating discrimination against intersex people.

It called on states to ban unnecessary sex “normalising” surgeries, sterilisation and other treatments practised on intersex children without their informed consent, and for the deferral of treatments until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent.

It also urged states, inter alia, to put in place simple and accessible legal gender recognition procedures, in line with those already called for in its Resolution 2048 (2015) on Discrimination against transgender people in Europe; to ensure, wherever gender classifications were in use by public authorities, that a range of options were available for all people, including those intersex people who do not identify as either male or female; to ensure that the law did not perpetuate barriers to equality for intersex people; to provide adequate psychosocial support mechanisms for intersex people and their families, and to work with civil society organisations to break the silence around the situation of intersex people.\(^{160}\)

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In 2017, the Assembly adopted Resolution 2191 on promoting the human rights of and eliminating discrimination against intersex people.

**Private and family life**

The Court continued building on its already considerable case-law with respect to rainbow families in 2017 and 2018, notably through its judgment in the case of *Orlandi and Others v. Italy* (legal recognition of couples married abroad).\(^{161}\) An application concerning access to medically-assisted procreation for same-sex couples was however declared inadmissible due to non-exhaustion of domestic remedies.\(^{162}\)

During the reporting period, the SOGI Unit launched two publications relevant to LGBT families: one on values-based campaigning\(^{163}\) and the second on trends in Europe regarding the rights and responsibilities of same-sex families.\(^{164}\)

In a Human Rights Comment published in February 2017, the Commissioner emphasised that access to registered same-sex partnerships is a question of

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\(^{156}\) “Stifling LGBTI organisations’ free expression is harmful and a breach of fundamental rights”, Strasbourg, 14 December 2017.

\(^{157}\) Written declaration no. 636, “Turkish violations against the Istanbul Pride”, 20 October 2017, Doc. 14374, and Written declaration no. 650, “Turkey must restore the right to freedom of expression and assembly to LGBTI persons”, 9 May 2018, Doc. 14488. Written declarations by Assembly members only commit those who sign them.


\(^{161}\) European Court of Human Rights, *Orlandi and Others v. Italy*, applications nos. 26431/12; 26742/12; 44057/12 and 60088/12, judgment of 14 December 2017.


equality, and observed that “genuine commitment to full equality would at least require states to seriously consider opening up civil marriage to same-sex couples”. The Assembly had already made important recommendations regarding the rights of transgender and intersex people in the field of private and family life in its Resolution 2191 (2017) and Resolution 2148 (2015), referred to above.

In 2018, it took up for the first time specifically questions concerning sexual orientation and equality in private and family life. In October 2018, it adopted Resolution 2239 (2018) on “Private and family life: achieving equality regardless of sexual orientation”. It called on states that were not already doing so to implement the standards already set out in the Court’s case-law, in particular by ensuring that a specific legal framework provided for the recognition and protection of same-sex couples, and that they had the same rights as regards succession to a tenancy and health insurance cover.

It further called on states to refrain from adopting changes to their constitutions that would prevent the recognition of same-sex marriage or of other forms of LGBT families, and to ensure access without discrimination to rights concerning residence, citizenship, family reunification, medical care, property, inheritance, parental authority, adoption, recognition of children and medically assisted procreation. It emphasised that intolerance that may exist in society towards people’s sexual orientation or gender identity could never be used as a justification for perpetuating discriminatory treatment and urged states to work vigorously to combat the prejudice that enables such discrimination to persist, and to promote acceptance of and respect for LGBT families.

**Asylum**

Throughout the reporting period, the Court continued to receive applications from individuals at risk of expulsion from a Council of Europe Member State, concerning a risk of ill-treatment in breach of Article 3 ECHR should they be returned to their country of origin, due to their sexual orientation or gender identity. Some applications were struck out because the applicant was no longer at risk of expulsion; others were declared inadmissible, due notably to the non-exhaustion of domestic remedies; others were still pending at the time of writing.

In October 2018, the Commissioner published a Human Rights Comment entitled “Open minds are needed to improve the protection of LGBTI asylum seekers in Europe”. The comment noted that persons claiming asylum because they are at risk of persecution based on their sexual orientation and gender identity are particularly at risk of the rolling back of protection, and set out key steps that member states should take to ensure adequate protection is granted to persons who seek international protection because they face persecution on the grounds of their sexual orientation or gender identity.

**Review of the implementation of recommendation CM/Rec(2010)5**

In March 2018, the Steering Committee for Human Rights (CDDH) launched a new review process of the implementation of recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Both governments and NGOs were invited to contribute to this review process. The CDDH is due to adopt its report on the review in June 2019.

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167 See European Court of Human Rights, I.K. v. Switzerland (no. 21417/17); A.T. v. Sweden (no. 78701/14); E.S. v. Spain (no. 13273/16); Nurmatov v. Russia (no. 56368/17); O.S. v. Switzerland (no. 43987/16); A.R.B. v. The Netherlands (no. 8108/18).


A Brief Overview of the Latest Decisions by the Court of Justice of the European Union on SOGI issues

By Constantin Cojocariu

During the period covered by the present report, the Court of Justice of the European Union (CJUE) ruled in favour of LGBT applicants in three cases.

The first case, F. v. Bevándorlási es Állampolgársági Hivatal, concerned the type of evidence that may be required as proof of the applicants’ sexual orientation during asylum proceedings. Should that option be precluded, the CJEU was also asked whether national authorities were prevented from examining by expert methods the truthfulness of such international protection claims.

From the outset, the Court stated that the applicants’ claims constituted only the starting point in asylum assessments and that a well-founded fear of persecution could also be linked to the characteristic in question being attributed to the applicant by the perpetrator, making any assessment of the credibility of his sexual orientation superfluous.

The CJEU ruled that it was permissible to use expert reports for the assessment of the relevant facts and circumstances, including for example country of origin information (COI), in a manner consistent with the applicant’s fundamental rights. At the same time, the asylum authorities had to make a determination on a case-by-case basis, instead of deferring to experts. The Court also noted that, since the type of expert reports used in national proceedings focused on an essential element of the applicant’s identity, they constituted a “severe interference with his right to respect for private life”. In doing so, the Court specifically mentioned the Yogyakarta Principles as supportive authority. Besides being scientifically questionable and inconclusive, such tests were
unnecessary, with Member States having to ensure that the personnel interviewing applicants for international protection were adequately trained to assess all necessary circumstances, including with respect to sexual orientation. Furthermore, where the applicants’ statements on their sexual orientation were consistent and plausible, additional confirmation was not needed. Consequently, EU law precluded the use of such expert reports.

**Forced divorce as a requirement for legal gender recognition (LGR)**

The question referred by the British Supreme Court in the case *MB v Secretary of State for Work and Pensions*, decided on 26 June 2018, involved a trans woman who transitioned after getting married and who was denied access to a state retirement pension from the statutory pensionable age available to women. This was due to her refusing to get a divorce, a necessary pre-condition to legal gender recognition in the United Kingdom at the time. Without being able to legally change her gender markers, she did not qualify as a “woman” for the purposes of accessing a retirement pension from the age of 60. The Supreme Court asked if the legislation preventing married trans people from accessing a State retirement pension based on their gender identity constituted discrimination based on sex prohibited under EU legislation.

The CJEU narrowly circumscribed the scope of the case before it, emphasising that it was concerned solely with the eligibility conditions for a State retirement pension, a subject matter that was covered by EU law, as opposed to legal gender recognition more broadly, which remained within the purview of Member States. Although Member States were competent in matters of civil status, they had to comply with EU law in exercising that competence.

The CJEU noted that the situation of a person who changed gender after marrying was comparable to the situation of a person who had retained their birth gender and is married. The British Government argued that the distinction served the purpose of avoiding the existence of a same-sex marriage in the event the trans spouse was allowed to change their gender markers without getting a divorce.

However, since that justification was not available under applicable EU legislation, there was discrimination based on sex.

**The term “spouse” under EU law**

The Coman case, decided on 5 June 2018, involved a same-sex couple formed of Adrian Coman—a Romanian (i.e. EU citizen)—and Robert Clabourn Hamilton, an American citizen, who got married while living in Belgium and who sought to obtain permission to reside in Romania. The Romanian authorities informed them that Hamilton was not entitled to reside in Romania for longer than three months on grounds of family reunion, since national law did not recognise same-sex marriage. The case ended up before the Constitutional Court, which referred several questions to the CJEU regarding Mr. Hamilton’s right to reside in Romania under EU law and the extent to which the notion of “spouse” employed under EU law encompassed the partner in a same-sex marriage.

The CJEU noted that the applicants created a family life in Belgium, which they had a right to continue upon their return to Romania. In these circumstances, EU law required the Romanian authorities to grant Mr. Hamilton a derived residence right, based on his status as a family member of a EU national. The Court further remarked that the term “spouse” in the applicable provision was gender-neutral and referred to “a person joined to another person by the bonds of marriage.” Although the definition of marriage remained a State prerogative, in exercising that competence Member States had to comply with EU law, including with respect to the freedom of movement.

Under established principle, a restriction to the freedom of movement could be justified if it was based on objective public-interest considerations, interpreted narrowly, if it was proportionate to a legitimate objective pursued by national law and if it was consistent with fundamental rights. The Governments involved in the procedure before the CJEU invoked the fundamental nature of marriage defined as “a union between a man and a woman”. The Court dismissed that argument, reasoning that recognising a same-sex marriage conducted in another Member State for the sole purpose of residence rights did not undermine the institution of marriage or challenge national definitions of marriage. Furthermore, the impugned measure impinged on the right to respect for private and family life, which, under the jurisprudence of the European Court of Human Rights, also covered same-sex couples.

The CJEU therefore held that, in the particular circumstances of the case, a third country national same-sex spouse of an EU citizen had a right to reside in the Member State of which that citizen was a national.
European Law Developments on SOGIE

Complementing rulings of the European Court of Human Rights, the European Committee on Social Rights, and the European Court of Justice.

By Arpi Avetisyan

Rise of populism and nationalism, vocal anti-gender movements are increasingly more noticeable across Europe. This inevitably affects SOGIE communities and human rights activists working in this area. Judging from the extensive flow of cases on SOGIE issues to regional courts, it is evident that litigation plays ever bigger role in upholding human rights and holding states accountable.

This essay looks into the legal developments in the area of SOGIE rights at the European level, focusing on the complementing rulings of the European Court of Human Rights (ECtHR), the European Committee on Social Rights (ECSR) and the European Court of Justice (CJEU).

Despite some setbacks, the 2017-2018 have witnessed important legal developments at the European level, especially in the areas of recognition of same-sex couples and freedom of movement, freedom of expression, prohibition of sterilisation of trans people, asylum, and non-refoulement.

Many of the cases touch upon morality issues and the notion of “traditional family” weaves though and combines with other areas of SOGIE rights being brought to the Courts’ attention.

**Family rights**

Within context of the right to freedom of movement, the landmark judgment of *Coman and Others* brought a big celebration for confirming equality for same-sex spouses exercising their freedom of movement across the EU. In this case, Adrian Coman, a Romanian citizen, had married his husband (a US citizen) in Belgium while residing there. Although EU law provides protection against discrimination based on sexual orientation (SO), and freedom of movement is one of the essential pillars of the EU, Romania did not recognise...

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176 The European Court of Human Rights is a Council of Europe body, which rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights.

177 The European Committee of Social Rights monitors compliance with the Charter under two complementary mechanisms: through collective complaints lodged by the social partners and other non-governmental organisations (Collective Complaints Procedure), and through national reports drawn up by Contracting Parties (Reporting System).

178 The Court of Justice of the European Union is the judicial institution of the European Union and of the European Atomic Energy Community (Euratom). Its primary task is to examine the legality of EU measures and ensure the uniform interpretation and application of EU law.

179 This is not a comprehensive survey, but provides highlights on developments that have had or will have a significant impact in further developments in respective areas.

180 CJEU, Case C-673/16, Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others, 5 June 2018.

181 Article 21 of the EU Charter on the Fundamental Rights.

their marriage and authorities denied a residence permit to the American spouse based on the Citizens Directive.

This judgment is of great significance in many ways. The CJEU confirmed that “spouse” is “a person joined to another person by the bonds of marriage”, and clarified that the term “is gender-neutral and may therefore cover the same-sex spouse of the Union citizen concerned”. This was a huge shift in Court’s approach from an earlier one, where it had defined marriage as “generally accepted by the Member States”, to mean “a union between two persons of the opposite sex”.

However, as an EU body, the CJEU lacks competence to rule on marriage laws of member states. Therefore, this ruling is confined to recognition for the purposes of freedom of movement only. This was also to address the concerns raised by a few Member States around public policy or “national identity” if they allowed same-sex couples to use the Citizen’s Directive. In this regard, the CJEU made it clear that as “such recognition does not require that a Member State […] provide, in its national law, for the institution of marriage between persons of the same sex”. Having said that, the Coman case is a huge way forward as it cleared up the legal uncertainty that many LGBT families have been facing for years and it may be considered a first step in recognition of same-sex couples beyond residence rights, especially in those States that have no legal framework in place.

In considerations on the family life of same-sex couples, in the Coman CJEU took on ECtHR’s approach. Among others, it looked at Orlandi and others v Italy, where ECHR confirmed that States ought to provide some form of legal recognition to marriages of same-sex couples contracted abroad. While refusing to consider the claims under Article 12 on the right to marriage and referring to the notion of “margin of appreciation”, the ECtHR relied on its earlier judgment of Oliari and Others where it had established the need of legal recognition and protection of relationships of same-sex couples. Importantly, both CJEU Advocate General in Coman, and the ECtHR in Orlandi indicated the shift in interpretation of the concept “spouse” and marriage, rapid developments in recognition of same-sex unions in Europe, with majority legislation in favour of such recognitions.

“Propaganda laws” and freedom of expression

In summer 2017 the ECtHR’s delivered a strong worded judgment in Bayev and Others v Russia concerning Russia’s infamous “gay propaganda laws”. This case concerned three activists who argued that application of the laws for using slogans such as “Homosexuality is natural and normal”, “Children have a right to know”, “Great people are also sometimes gay” among others, during protests held outside schools or children’s libraries in Russia was in violation of their right to freedom of expression. The applicants were found guilty by domestic courts of an administrative offence (“public activities aimed at the promotion of homosexuality among minors”).

This judgment was a leap forward from a similar decision by UN HRC in Fedotova in 2012. The
The ECtHR found that these laws were not only in violation of applicants’ right to freedom of expression, but also had reinforced stigma and prejudice, and encouraged homophobia, which was incompatible with the values of a democratic society and the European Convention.

Interestingly, while considering how far interference in the right to freedom of expression could be justified based on the protection of morals (as argued by the Russian government), the ECtHR acknowledged the commitment to family values by LGBTI community members and in so doing reinforced the notion that the right to “family life” equally applies to them. It referred to the steady flow of cases coming to its attention on various aspects of family life (access to marriage, parenthood and adoption), in effect rejecting the Government’s argument that exercising freedom of expression on this question could devalue or otherwise adversely affect the existence of “traditional families” or compromise their future.198

Importantly, the ECtHR reiterated that “it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority”.199

Lastly, in relation to the argument of the protection of the rights of others, the risk of minors being “converted” to homosexuality, the Court found that the Government had been unable to provide any explanation of the mechanism by which a minor could be enticed into “[a] homosexual lifestyle”, let alone science-based evidence that one’s sexual orientation or identity was susceptible to change under external influence. In addition to significant jurisprudential development, this judgment is also important means in pre-empting similar initiatives of introducing propaganda laws occurring regularly in various European countries.200

Sterilisation and bodily integrity

The ECtHR had already ruled in a number of cases concerning rights of trans people seeking legal gender recognition (LGR), but it was not until the case of the A.P., Garçon and Nicot v. France that the Court established that the sterilisation requirement as part of LGR violates human rights.201 The applicants in this case complained that they needed to prove infertility and genital surgery, as well as undergoing excessive and lengthy discriminatory examinations in order to satisfy the condition. The ECtHR held that requiring that individuals undergo sterilisation against their will for the purpose of achieving LGR puts those individuals in a situation of an insoluble dilemma: that of choosing full exercise of the right to private life (for LGR) at the expense of their right to physical integrity, also guaranteed by the same right.202

This line of reasoning resonated in the decision of Transgender Europe and ILGA-Europe v. the Czech Republic,203 by the European Committee on Social Rights (ECSR).204 So far this is the first discrimination case relating to GI decided under this procedure. The ECSR found that the legal requirement for transgender persons in the Czech Republic to undergo medical sterilisation in order to have their gender identity recognised seriously impacts a person’s health, physical and psychological integrity, and dignity, therefore is in violation of the right to health under the Charter. The Committee reiterated that gender recognition in itself is a right recognised under international human rights law.

198 Bayev and Others, para 67.
199 Ibid, para 70.
200 See e.g. ILGA-Europe, Annual Review 2018, 26 (Moldova), 72 (Hungary).
201 A.P., Garçon and Nicot v France (Appl nos. 79885/12, 52471/13 and 52596/13), ECtHR, 6 April 2017.
202 Although not systematically, but ECHR cases are also directly applied in domestic courts, e.g. in the case of two trans persons in Lithuania.
203 Transgender Europe and ILGA-Europe v Czech Republic, Complaint No. 117/2015, ECSR, made public 1 October 2018.
204 This case was brought under the Collective Complaints Procedure.
This case will serve as a basis for reinforced advocacy efforts before this Council of Europe body, and will allow the Committee to find violations of the right to health under its national reporting system against the many other Council of Europe Member States which still require sterilisation as part of the LGR process.

Regrettably, these rulings did not go far enough to address ending forced medical examinations ordered by the national courts or a mental health diagnosis as a violation of the European Convention or the Charter. Another drawback is the reluctance by these two bodies to consider discriminatory aspect of sterilisation requirement. It is much hoped however, that in light of World Health Organisation’s recent removal of trans identities from the mental health disorders chapter, both European and national courts will adopt the same approach.

**Asylum and non-refoulment**

In the area of asylum and migration, there has been different dynamics between various European Courts. To date, CJEU has ruled in three judgments, the latest being F. v Bevándorlásí és Állampolgársági Hivatal. The latter concerned subjecting “F” — a Nigerian man claiming international protection in Hungary due to persecution based on his sexual orientation — to psychological tests in order to “determine his homosexuality”. The CJEU established that the use of psychological tests to determine the sexual orientation of an asylum seeker “amounts to a disproportionate interference” in their private life. While the CJEU upheld that national governments can use experts’ reports as part of an asylum seekers’ credibility assessment, they cannot do so in a way that violates the fundamental rights guaranteed by the Charter of Fundamental Rights of the EU and they cannot base a decision solely on the conclusions of such a report or be considered bound by it. What is remarkable, is that in addition to applicable EU law in this case CJEU relied on the Yogyakarta Principles, in particular “that no person may be forced to undergo any form of psychological test on account of his sexual orientation or gender identity”. This is especially significant in the context of CJEU’s repeatedly claimed role of adjudicator of EU law, and not being a human rights court. In comparison, the ECtHR has not yet decided in any non-refoulment related cases based on applicants’ SOGIE. These cases have either been declared inadmissible or struck out as a result of friendly settlement. Such cases are regularly submitted to ECtHR’s scrutiny, and hopefully this Court will also provide further guidance with a positive judgment in this area.

The cases discussed above are a huge milestone in development of SOGIE issues, and important foundation to continue building on further. The notion of majority versus minority comes up in most of them, especially concerning SO. Although these developments cannot be taken for granted especially in light of several strong dissenting opinions voiced in these judgments, it is encouraging to see litigation as a means for protections of LGBTI people, followed with positive rulings from European Courts.

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205 For further details, see “Reporting system of the European Social Charter”.

206 “World Health Organisation moves to end classifying trans identities as mental illness”, TGEU; WHO, International Classification of Diseases.

207 CJEU, Joint cases C-199/12 to C-201/12, Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel, 7 November 2013 (concerning concealment of one’s SO); Joint Cases C-148/13 to C-150/13, A, B, C v Staatssecretaris van Veiligheid en Justitie, 2 December 2014 (on credibility assessments).


209 Ibid., para 60.


211 F v Bevándorlásí és Állampolgársági Hivatal, para. 62.

212 It is noteworthy, that in a recent case, S.A.C. v UK, currently communicated to the UK Government for response, for the first time ECtHR has asked about concealment of one’s SO upon returning to their home country where they are at risk of persecution.
GLOBAL PERSPECTIVES

STATE-SPONSORED HOMOPHOBIA 2019
The perspectives, views and opinions expressed in this section are those of the authors and do not necessarily reflect ILGA World's official position.
GLOBAL PERSPECTIVES

AFRICA

STATE-SPONSORED HOMOPHOBIA 2019
The situation of LGBTQI+ people in North Africa is characterized by a context in which 4 countries still criminalize sexual acts between adults of the same sex: Mauritania, Morocco, Algeria and Tunisia. Additionally, Egypt does not formally have norms that explicitly criminalize this type of acts, but in practice they are criminalized under other legal provisions (de facto criminalization). This criminalization carries penalties ranging from imprisonment and the fine to death, in Mauritania.

In addition, the regional context is marked by a repression that goes beyond limiting the sexual and emotional life of LGBTQI+ people. The laws restrict the right to freedom of assembly and association in all the countries of the region, except in Tunisia, where civil society has managed to found and officially register several LGBTQI+ organizations. Similarly, freedom of expression is often severely limited, notwithstanding initiatives that seek to empower local communities, often running the risk of being persecuted.

Therefore, despite a difficult context, queer groups are emerging under their own dynamics - groups whose objective is to improve the lives of those who are affected.

In contexts where repressive laws continue to oppress LGBTQI+ people and create barriers to the formation of human rights organisations, local activists in the region opt to organize around informal groups/collectives. Under that scheme, they carry out their work to the extent they can. Although for the moment it is mostly discrete activities, they are progressively achieving a certain level of visibility.

**Arts and festivals committed to diversity**

When words, slogans and harangues are no longer enough to achieve mobilization, art committed to diversity stands out as an effective alternative voice. The objective is to raise awareness about the human rights of LGBTQI+ people and democracy, through an interactive dynamic: that of cinema, music, and theater that reflect the difficult lives of LGBTQI+ people in Northern Africa. Among these initiatives are the Chof-tohonna festival and the Tunisian International Festival of Feminist Art LBT Chouf Minorities Association, which had its 4th edition in 2018.

**Social networks**

In addition, the sotto voce dynamic has not prevented activists from participating in training activities and further developing their capacities at the national, regional or international level. The expansion of social networks also provides greater visibility to groups and organizations and helps to maintain a sense of closeness within the

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1 Nao Bouzid is a gay African feminist and an LGBTQ+ activist from Morocco. He is the co-founder and the Executive Director of Equality Morocco, an LGBTQ+ organization in Morocco. Nao has over 10 years of experience working with local and international LGBTQ+ and Human Rights NGOs. During these years of activism, he got involved in different national and international campaigns calling for the decriminalization of same-sex consensual relationships and in social awareness campaigns about LGBTQ+ issues in Morocco.

2 The human rights situation in each of these countries and the main events between 2017 and 2018 are developed in the entries for each country in the “Criminalization” section of this report.

3 For more information on de facto criminalization and the situation of persecution in Egypt, see the entry for that country in the “Criminalisation” section of this report.

4 For more information on these types of restrictions, see the section on legal barriers to registration and operation of SOR NGOs in the “Global Overview’ section of this report.

5 For more information on restrictions on freedom of expression, see the corresponding section in the “Global Overview” section of this report.

6 “International Feminist Art Festival of Tunis”, Facebook Webpage.
community, through the interaction and publication of activities on social networks.

These communication channels have been used to carry out awareness and promotion campaigns, such as the viral campaign #HomophobiaIsACrime and #StopArt489 of the MALI group (Alternative Movement for Individual Freedoms), which is launched annually on the occasion of the IDAHOT (Day International against homo, lesbo, bi and transphobia), or the #TenTen virtual campaign that celebrates the national day of LGBTQI+ people in Algeria. Initiated by three activists, this day is celebrated each year on October 10 since 2007. Activists and allies light candles and share photos of these candles with that hashtag as an act of solidarity in social networks.

Web magazines and radio broadcasts

On the other hand, in order to better frame and develop theoretical content, some groups in the region publish quarterly (or every semester) articles in attractive journals, with content on sexual diversity issues. Other groups manage to broadcast on web radios on issues related to the rights of LGBTQI+ people, sometimes with the presence of experts and offering the possibility of asking questions live through Facebook.

Dynamics of regional coalitions

The dynamics of networks, meetings, exchanges and regional trainings have allowed the emergence of several initiatives. Among them is Transat, a platform of trans activists, non-binaries and gender dissidents from North Africa and the Middle East, which capitalizes on a queer regional solidarity as a form of virtual resistance.7

Regional and international incidence

Several groups in the region are part of a strategic vision to reform the laws that affect LGBTQI+ people and are working on the issue through two main strategies. The first is to prepare reports to monitor violations of the rights of LGBTQI+ people. The second aims to occupy advocacy spaces, to encourage and channel pressure from the international community on national governments, including the Human Rights Council, Universal Periodic Review and the African System of Human and People’s Rights. In effect, the region knows of a real dynamic that overcomes the many existent restrictions. The best example is how the Egyptian queer community survived the repression of 2017, the effects of which are still palpable.

Activist groups carry out their activities despite very limited resources: only 0.001% of global LGBTQI+ funding goes to North Africa,8 while the region needs much more help to implement the changes desired by the community.

A Brief Overview of East Africa

By Eric Guitari.9

In East Africa, the continued criminalization of private consensual sexual acts between adults of the same sex, as well as the outlawing of diverse gender expressions are indicators of States’ interest to entrench discrimination and violence based on real or perceived sexual orientation and gender identity/expression.

Although Rwanda does not criminalize same sex relations, social stigma against LGBTQI persons is prevalent, including family exclusion and discrimination on the basis of sexual orientation and gender identity is rife in the employment sector.

None of the East Africa countries have anti-discrimination statutes and hate crimes laws to protect persons from bias or discrimination on grounds of their sexual orientation and gender identity. The legal social status of LGBTQI persons and communities in East and central Africa is nothing but vague, hostile and criminal.

According to reports by social movements and activists, violence and discrimination remain the most concerning legal social issues facing LGBTQI person and communities in the East Africa region.

For example, Tanzania has banned provision of condoms and lubricants to LGBTQI health clinics and has since 2018, upscaled the use of forced anal examination against suspected LGBTQI persons including cramping down on organizations that support their rights.10

7 “Transat”, Website.
9 Eric Guitari is a PhD Candidate (SJD) at Harvard Law School and the former Executive Director of the National Gay and Lesbian Human Rights Commission-Kenya (NGLHRC).
10 For more information, see the entry on Tanzania in the “Criminalisation” section of this report.
In Burundi, a protracted election violence led by an incumbent state that refuses to obey presidential constitutional term limits continues to subject LGBTIQ persons to structural violence on account of their political opinions and sexual orientations.\(^{11}\)

In Uganda, reports of an imminent parliamentary bill to further criminalize same sex relations continue to heighten anguish and insecurities within LGBTIQ community members. Political and religious elites in Uganda continue to perpetuate paternalistic public discourses that cast same sex orientation and trans identities as existential threats to the future of the nation. Anxieties over reproduction and fear of recruitment of children into homosexuality are the common social trojans used against LGBTIQ persons in public discourse.

In Kenya, NGLHRC’s Because Womxn has reported increased vulnerabilities and discrimination against LBQ women on account of multiple biases of gender and sexual orientation. This has resulted in marginalization, violence and exclusion of LBQ women not only by the general society but also within the LGBTIQ community. These intersections and multiplicity of discrimination grounds become more relevant and subtler in asylum cases for LGBTIQ persons who face rights violations and protection challenges during asylum processing.

Geo-conflicts in Somalia, DR Congo, Sudan and South Sudan have continued to drive out LGBTIQ refugees towards Kenya, Tanzania and Uganda. The asylum flights pose a legal paradox where countries that criminalize same sex relations continue to abide by their international obligations to protect LGBTIQ refugees and asylum seekers within their borders but at the same time continue to prosecute and persecute their LGBTIQ citizens.

Activists and groups have been documenting and fighting discriminations based on sexual orientation including ongoing litigation challenging criminalization of same sex relations in Kenya, denial of registration of SMUG in Uganda, refusal of registration of NGLHRC in Kenya and the recently (2018) successful challenge against forced anal examination in Kenya.

It can thus be said that criminalizing East States have no demonstrable legislative and political interests to reduce violence and suffering on LGBTIQ persons. LGBTIQ persons within these countries need therefore embrace their civic duty to stay vigilant on their rights and engage in public education towards equality and social justice.

The Situation of the LGBT Community in West Africa

By Ababacar Sadikh Ndoye\(^{12}\) and Emma Onekekou.\(^{13}\)

The context of West Africa is peculiar as a "false calm" exists when speaking of the rights of LGBTI persons. This silence is deceptive as it could suggest that the situation of lesbians, gays, trans and intersex persons is positive. However, nothing could be further from the truth. One of the problems in West Africa is that there is no political will to support and respect the rights of LGBT persons. There is a certain level of political will when it comes to health issues and HIV/AIDS, related to the taking care of men who have sex with men (MSM). However, it is exclusively focused on this group to the detriment of women who have sex with women and trans persons.

The socio-legal diversity in the region

The region is characterised by its socio-cultural and legislative diversity, which makes LGBT communities face distinct legal differences. These go from the explicit criminalisation (in countries such as Gambia, Guinea, Liberia, Mauritania, Nigeria, Senegal, Sierra Leon, and Togo) to countries with a certain level of antidiscrimination protection (such as Cape Verde).\(^{14}\) In a more ambiguous situation are some countries that do not explicitly criminalise same-sex sexual acts. However, in practice there have been recorded cases of detention and prosecution for such acts (such as Ivory Coast).

Religion has a big influence in judicial rulings of some West African countries, such as Mauritania, Niger, Senegal and Northern Nigeria, where Islam has a strong presence in both the social notions of sexuality and its application in the law. In effect, Islamic Sharia law is one more source of law amongst others, in which same-sex sexual acts are

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\(^{11}\) For more information, see the entry on Burundi in the "Criminalisation" section of this report.

\(^{12}\) Ababacar Ndoye is a blogger (@Tous_pour_1) and human rights activist in Senegal.

\(^{13}\) Emma Onekekou is a blogger (@EmmalInfos) and human rights activist in Ivory Coast and Burkina Faso.

\(^{14}\) Since 2008, article 45(2) of the New Labour Code of Cape Verde prohibits an employer soliciting information of the "sex life" of their employees. Article 406(3) imposes sanctions on employers who fire employees on the basis of their sexual orientation.
criminalised, in some cases the death penalty applies.\textsuperscript{15}

Generally speaking, it can be said that the HIV/AIDS epidemic has opened some space for LGBT activism. The focus of the issue regarding men who have sex with men (MSM) has shaped the emergence of the LGBT community and given certain access to funding. Therefore, the rights of LGBT people in the region are mostly addressed through the issues of public health. This approach has however, brought some consequences for lesbians, bisexual women and trans persons whose own issues remain marginalised.

Even so, in recent years, a broader approach for LGBTI organisations has progressively emerged. For example, in the Ivory Coast a federation of LGBTI organisations called Couple Akwaba was created, which brought together 15 of the 23 organisations in the country.\textsuperscript{16} This organisation faces multiple challenges, such as obtaining information on time and from reliable sources in the face of violations of LGBT persons’ rights in the country and the resources to document them, give psychological support to victims of attack and/or arbitrary detention due to the sexual orientation or the gender identity, or even to provide support for temporary relocation in grave situations.\textsuperscript{17}

In the Ivory Coast, despite the fact that no law exists which criminalises consensual same-sex sexual relations, at the end of 2016 a judge in the city of Sassandra used article 360 of the Penal Code to condemn 2 men to 18 month imprisonment.\textsuperscript{18} They were caught by the uncle of one of the men, and after having been reported, they admitted before the judge to having been in a loving relationship.\textsuperscript{19}

In Burkina Faso, in the period between March 2017 and December 2018, there were 10 LGBTI persons detained in Ouagadougou (the capital city) and 38 more in the municipality of Bobo-Dioulasso (the second biggest city in the country and predominantly Islamic).\textsuperscript{20} Despite this, the Burkinabe penal code does not actually prohibit consensual same-sex sexual acts. In October 2017, two gay men reported to the authorities that their phones had been stolen. On being summoned by the authorities after the criminal had been apprehended and phones recovered, the claimants were detained as the phones had contained same-sex pornographic content. The two men were eventually freed thanks to the intervention of a community leader in Ouagadougou and having paid a fine of 40,000 francs.

In countries where same-sex sexual relations are criminalised, there are few cases where the persons arrested have been found “in flagrant delicto”. In the majority of cases, the arrests and prosecutions take place based on third party accusations (sometimes anonymous) that report people for having had allegedly performed same-sex sexual acts. Such was the case where a group of 2 men and 2 women were detained on 15 September 2018 in the city of Dakar, Senegal. The authorities of Godppeul arrested them as they were reported for committing “unnatural acts” and having gone against the moral order.\textsuperscript{21}

Violence and social prejudice

Same-sex sexual acts continues to be a taboo subject in almost all West African countries, particularly in countries such as Ivory Coast, Burkina Faso, Senegal and Benin, where the existence of LGBTI people is often completely denied. Public opinion and the media usually consider sexual orientation as a “choice” that reflects a “sexual perversion” or even motivated by “economic incentive”.\textsuperscript{22} The growth in widespread general homophobia has justified multiple forms of violence against LGBTI people: from arbitrary detention by the police, school exclusion, denial of medical attention, expulsion from the home, arbitrary dismissal from employment to lynching.

\textsuperscript{15} Countries where there is a possibility of imposing the death penalty for consensual same-sex sexual relations are: Mauritania and Nigeria (in the provinces where Islamic sharia law applies).

\textsuperscript{16} “La Coupole Akwaba”, Facebook Page.

\textsuperscript{17} Ababacar Sadik Ndoye, Rapport de terrain: Documentaison des cas de violence sur les LGBTQI du Mali, 4, 2018.

\textsuperscript{18} Penal Code (Ivory Coast), article 360: “Whoever commits acts which constitute an affront to public modesty will be sentenced to imprisonment of between three months and two years, and with a fine of between 50,000 and 500,000 francs. If the affront to public modesty is considered an indecent act or against nature with a person of the same sex, the sentence will be imprisonment of between six months and two years, and a fine of 50,000 to 300,000 francs”.

\textsuperscript{19} See the following: “Justice : première condamnation pour pratique homosexuelle en Côte d’Ivoire”, Abidján Net, 14 November 2016; “Pour la première fois, la Cote d’Ivoire condamne deux hommes pour homosexualité”, 18 November 2016; “Côte d’Ivoire : des homosexuels condamnés à 18 mois de prison”, Afrique sur 7, 16 November 2016; “Ivory Coast officials refuse to explain why two gay men were jailed”, The Guardian, 26 January 2017.

\textsuperscript{20} This information was obtained by the Courage and Plural Vision Organisation (individual interview).


\textsuperscript{22} “Poverty responsible for rise in homosexuality”, Graphic Online, 3 November 2018.
and murder. In many cases the attacks are recorded on phones and go viral being shared on social media. On 15 January 2019, two young men were discovered in the district of Wolofobougou-Bolibana, Bamako, Mali, kissing in the street. Neighbours and some police officers dressed as civilians attacked and beat them in a type of lynching. In some areas of Ghana, homophobic gangs lynch LGBT persons, later terrorising their partners and families. LGBT people live in an increasingly hostile environment, suffering increasingly violent attacks and arbitrary detention. This happens with the acquiescence of the States of the region who give no response to these violations. Even in Benin where consensual same-sex sexual relations are not criminalised, LGBT persons are forced to live in hiding.

New forms of organised violence and the media

The growth of homophobia has found new ways of operating by harassing, exposing and humiliating LGBT persons through false social network profiles. In 2017, the movement “Fight against homosexuality in Mali” (LCHM) was created, made up of numerous Malian residents, although its main leaders live abroad (chiefly in France, Italy, Canada and the United States). In Mali social networks, the news group of the movement is achieving high levels of participation in what they call “hunting homosexuals.”

In all of West Africa, we are seeing a stronger media focus on sexual orientation issues, with the media tending to publish incendiary articles and reports on the issue. It is common to read extremely pejorative content regarding same-sex sexual acts, denigrating references of LGBT people, equating it with paedophilia and prostitution, as well as negative descriptions of human rights defenders.

In the face of such levels of aggressions, many LGBT people in West Africa have no other choice but to leave their countries in search of asylum. In general, the majority of victims of arbitrary attacks and detention due to their sexual orientation or gender identity go to neighbouring countries or Europe and other western countries.

Access to economic support

On the economic front, LGBTI organisations in West Africa are responsible for the plurality of self-employed activity which generates income. This highlights the vulnerability of LGBTI people in this regard. In fact, gender identity expression can be a barrier to employment. This problem is still more worrying in the case of trans people, who in most countries are unable to change their gender marker on their identity cards, diplomas and other necessary documents. Some trans people have been forced to completely abandon their sources of income, and on occasion are arrested for the crime of “identity theft”, as was the case of Lyly.

26 See, for example: “In Sierra Leone, human rights defenders stay silent on LGBTQ+ discrimination”, Politico SL, 16 January 2018.
28 “Gays in Mali are hunted and humiliated online”, The Observers, 18 September 2017.
31 For more information on the legislation in the modification of personal documentation in Africa, see: Zhan Chiam et al., Trans Legal Mapping Report 2017: Recognition Before the law (Geneva: ILGA, November 2017).
An Overview of Some Central African countries

By Julie Makuala Di Baku and Jean Paul Enama

In the last two years, issues related to sexual orientation and gender identity have not seen much progress in Central Africa. These issues continue to be perceived as taboo and “contrary to African values”. In addition, many people still believe that these are issues “imported from Europe”. It is only necessary to walk the streets of several of these countries to understand how difficult it is to be seen as a couple with a person of the same sex. In the region, while in some countries there are explicit laws that criminalize same-sex sexual acts, in others there is a legal vacuum on the matter.

Although Cameroon revised its criminal code in 2016, the provisions that penalize same-sex relationships were unfortunately kept intact. In the international arena, Cameroon has rejected all recommendations on issues of sexual orientation and gender identity. Even so, there is some political will to eradicate HIV from key population groups and the National Health Plan 2018-2022 identifies men who have sex with men (MSM) and trans women as a vulnerable population.

In the Central African Republic, although same-sex sexual relations between consenting adults are not explicitly criminalized, article 85 of the criminal code criminalizes “acts against nature committed in public”, defining them as “attacks on public morals” and imposing harsher penalties compared to other attacks on morals. Alternatives Centrafrique, a local LGBT organization, has documented cases of arbitrary arrests based on (false) allegations of same-sex sexual intercourse. In this line, in its 3rd cycle of the UPR, the Central African Republic received two recommendations (prohibit discrimination based on sexual orientation and gender identity and improve the situation of sexual minorities). The National HIV Plan 2016-2020 identifies MSM as key populations, so the actions of the Global Fund project focus on them.

While there is no law in Gabon criminalizing consensual same-sex relations between consenting adults, the human rights situation of LGBT people remains extremely worrying, with arrests for “moral attacks” based only on the form of dressing “translating sexual orientation”. Gabon had its first recommendation on SOGIEC in the third cycle of the UPR in 2017, which focused on access to medical care for LGBT people. In fact, the National Health Plan does not recognize gay and bisexual men as a key population.

Before 2017, the legal situation was not particularly clear in Chad: Article 272 of the Criminal Code condemned those who committed “acts against nature” with persons under 21 years of age. A bill to criminalize same-sex relations with up to 20 years in prison was debated in Parliament in 2016 but failed to pass. However, the revision of the Criminal Code that entered into force in 2017 incorporated the criminalization of “same-sex sexual relations”, making Chad the latest State to criminalize same-sex consensual relationships and, therefore, a worrying example of legal regression in the region. Furthermore, the National Health and HIV Plan does not identify key populations and there is no record on any LGBT organization operating in the country.

Of particular gravity is the situation in the Democratic Republic of the Congo, where LGBT people continue to be victims of human rights violations and face increasing discrimination and

33 Julie Makuala Di Baku graduated in radiology from the Higher Institute of Medical Techniques of Kinshasa. She has training in conflict management and human rights from the International Mission for Justice and Human Rights in the DRC. At age 29, she started her activism in an LGBTI association as a logistics officer. She later founded Oasis, a Congolese association for LBT women. She is currently the Executive Director of Oasis, which provides medical, legal and psychosocial support and support to LGBT women who are victims of violence based on sexual orientation, gender identity and expression.

34 Jean Paul Enama is the Executive Director of Humanity First Cameroon.

35 This article has simply changed its nomenclature (from 347bis to 347-1) and has maintained its text.

36 For more details on the participation of Cameroon in the framework of the Universal Periodic Review, see the entry on Cameroon in the “Criminalization” section of this report.

37 For more information, see: Alternatives Centrafrique, Rapport sur la situation des minorités sexuelles et de genre en Centrafrique (2018).

38 El Estado contestará esta pregunta durante la 40a sesión del Consejo de Derechos Humanos.

39 “Gabon: malgré sa légalité, l’homosexualité reste très mal tolérée dans le pays”, RFI Afrique, 17 de mayo de 2017;

40 “Un jeune homosexuel gabonais arrêté pour attentat à la pudeur à Moanda”, Info 241. 18 de noviembre de 2018.

41 See: Report of the Working Group on the Universal Periodic Review: Gabon, A/HRC/37/6, 29 December 2017, para. 118-118: Strengthen public policies aimed at addressing the high number of people living with HIV/AIDS and not receiving treatment, particularly women, in order to reduce the rates of HIV transmission from mothers to children during childbirth; as well as for lesbian, gay, bisexual, transgender and intersex people, guaranteeing medical care without discrimination based on sexual orientation and gender identity (Mexico).

42 Penal Code of Chad (enacted by Law No. 001/PR/2017, 8 May 2017, article 354.)
HIV/AIDS. Article 3 and 4 of this law prohibit Congo has a law to protect people living with mentioned that the Democratic Republic of the among others. It should be enacted anti-discrimination legislation that expressly includes sexual orientation and gender identity.46

In this regard, the Human Rights Committee expressed its concern and recommended that the State ensure that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, as well as enact anti-discrimination legislation that expressly includes sexual orientation and gender identity.46

Among the few positive aspects, it should be mentioned that the Democratic Republic of the Congo has a law to protect people living with HIV/AIDS.47 Articles 3 and 4 of this law prohibit acts of stigmatization and discrimination against any person living with the virus.

In addition, article 2 contains a definition of “vulnerable groups”, which includes sex workers and “homosexuals”. This law is today the only legal text in force that can be used to offer protection to LGBT people, although mainly with respect to men who have sex with men. Unfortunately, this means that lesbians and trans people must use the label of one of the groups identified as “vulnerable groups” to have access to care.

There are numerous documented instances of arbitrary arrests and blackmail perpetrated by the police in which this provision is used to persecute and repress public displays of affection, non-normative gender expressions, among others.45

In this regard, the Human Rights Committee expressed its concern and recommended that the State ensure that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, as well as enact anti-discrimination legislation that expressly includes sexual orientation and gender identity.46

The author wishes to remain anonymous.

43 Over the past five years, several members of Parliament have made efforts to explicitly criminalize same-sex relationships. See: Canada: Immigration and Refugee Board of Canada, Democratic Republic of Congo: Situation of sexual minorities, including legislation and treatment by society and the authorities: state protection and support services (2014).

44 Penal Code of the DRC, article 176: “A person who engages in activities against public decency will be liable to a term of imprisonment of eight days to three years and/or fined twenty-five to one thousand zaires”.


47 Loi n° 08/011 du 14 juillet 2008 portant protection des droits des personnes vivant avec le VIH/SIDA et des personnes affectées.


49 Michael Morris, “LGBT community still faces high levels of violence - report” News24, 4 December 2017.
The high rates of violence perpetrated against LGBTI people continue to be a major focus of activism from human rights groups in the country. In May 2017, dozens of human rights defenders lobbied the authorities to take immediate action on the bias murders of five LGBT persons that had been denied justice for years. Soon after, activists took to the streets of several South African cities to protest ongoing deadly attacks against members of the LGBTI community.

Civil society organizations in South Africa have been developing innovative approaches to combating discrimination and hate crimes. A nationwide initiative addressing violence against LGBTI communities has launched a website to help victims anonymously report hate crimes in South Africa. A 2016 survey of LGBT people found that 88% of respondents did not report hate crimes or discrimination, as they often fear having to come out to friends and family, or facing victimization from the authorities or community.

In September 2018, an umbrella organization for LGBT+ employee network groups launched an index to measure how companies in South Africa are faring when it comes to the inclusion of sexual and gender minorities in the workplace. Of the 17 companies—representing six different sectors and employing over 30,000 people—that participated in the analysis, very few had provisions protecting employees from discrimination on the grounds of gender identity and expression.

The UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity paid a visit to Mozambique at the end of 2018 to assess how the government was upholding the rights of its LGBT citizens. In his assessment, he commented that the absence of systematic, large-scale rights violations against the LGBT community made Mozambique an “inspiring example” in the region, but that the government urgently needed to end its policy of marginalization and “guarantee the full social inclusion of lesbian, gay, bisexual and transgender people.”

Several countries in the sub-region participated in the first international ministerial meeting on education sector responses to homophobic and transphobic violence organised by UNESCO.

Protection from discrimination

In March of 2018, in a huge step towards addressing the country’s persistent problems with homophobic and transphobic violence, South Africa’s cabinet approved a bill criminalizing hate crimes and hate speech and submitted it to Parliament. Aside from providing justice to victims of bias crimes, the bill would greatly improve data collection on the incidence of and nature of hate crimes in the country. However, critics feared the broad language used in the bill may pose a threat to free speech, and pushed back by arguing that the bill “makes a ‘common’ insult punishable by three years in prison.” In December 2018, the South Africa Parliament invited public input on the bill from stakeholders and interested persons, and announced it would hold public hearings on the bill.

That same month, the South African National Assembly passed a bill to remove a provision from the Civil Union Act that allowed civil servants to refuse to marry same-sex couples on the basis of their “conscience, religion, or belief.” The prior year, the Minister of Home Affairs revealed that only 111 of its 412 branches had officers willing to marry same-sex couples, and that 37% of its officers were exempt from providing the services. Nonetheless, the Minister refused to back an amendment repealing the provision.

Education

Several countries in the sub-region participated in the first international ministerial meeting on education sector responses to homophobic and transphobic violence organised by UNESCO.

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51 Roberto Igual, “Burnt body feared to be that of young lesbian woman” Mambò Online. 5 April 2017; Lou-Anne Daniels, “We remember Lerato Moloi” IOL. 20 August 2018; Roberto Igual, “Free State gay man killed and dumped in hole: Stephen Nketsi” Mambò Online. 19 May 2017; Love Not Hate, “Pretoria LGBTI Hate Crimes Protest” Facebook (web page), accessed 1 March 2019.
53 “Parliament calls for public input on bill preventing and combating hate crimes and speech” South African Government. 7 December 2018.
54 Jan Gerber, “Home Affairs officials can’t refuse to solemnise same-sex marriages after Bill is adopted” News24. 6 December 2018.
56 “New LGBTI hate crime reporting platform launched” OUT. 13 March 2018.
58 For more information on the visit and the role of the UN IE SOGI, see the article written by Rafael Carrano Lelis and Zhan Chiam in the International Human Rights Law of this report.
Mauritius, South Africa and Mozambique, joined the countries signing the Call for Action sponsored by UNESCO to express their political commitment to ensuring inclusive and equitable education for all learners in an environment free from discrimination and violence, including discrimination and violence based on sexual orientation and gender identity/expression.61

In March 2017, the Limpopo Department of Education in South Africa was ordered to pay compensation to a student who had suffered discrimination for her gender identity from her school principal.62 The same week she won her case, 38 girls at a school in Mdantsane, South Africa were forced them to disclose their sexual orientation in front of parents, guardians and teachers, after the principal had seen two of them kissing.63 Though the education department of the province investigated the issue, they took no disciplinary action against the principal who outed the students.64

**Intersex issues**

In early 2017, activists from South Africa and Kenya gathered to Pretoria to take part in a consultative meeting on the Model Law on the rights of intersex persons in Africa, which the Centre for Human Rights was drafting for eventual tabling at the African Commission on Human and Peoples’ Rights. The Draft Model Law sought to “prevent unfair discrimination and to protect and promote of the rights of intersex persons in African countries.”65

At the end of the year, intersex and human rights activists hosted a National Engagement on the Promotion and Protection of the Human Rights of Intersex Persons with the Department of Justice and Constitutional Development, the first large-scale engagement with the government of South Africa. They discussed a number of issues of importance to the intersex community, including infant genital mutilation and healthcare procedures, and strengthening legal mechanisms to protect from discrimination.66

**Issues on gender identity**

South Africa has similarly seen progress in legal gender recognition and accommodations for trans individuals. After a lawsuit from three trans people and their spouses, the Western Cape High Court ruled that a law barring married individuals from changing their gender without first divorcing was unconstitutional.67

More recently, a trans woman in South Africa, currently serving a 15-year sentence in a prison for men, sued the Correctional Services Department to seek recognition for her right to gender expression while in custody. The case has the potential to change the way transgender individuals are treated in the criminal justice system.68

In December 2017, a trans plaintiff in Botswana won the right to change his gender from female to male on identity documents.69

**Immigration and asylum**

Given the high number of criminalizing states in the sub-region, and in Sub-Saharan Africa more generally, nearby countries like South Africa where consensual same-sex acts are legal become a destination for LGBT asylum-seekers. Despite having laws guaranteeing refugee status to LGBT persons fleeing persecution, many gay, lesbian, and trans refugees are turned away at the border.70

Queer human rights activists lobbied the government to address the situation, as many LGBT refugees being discriminated against were remaining in country undocumented. In September 2018, the Department of Home Affairs agreed to have its officials undergo sensitisation training.71

A Mozambican LGBT organization attended the 32nd Assembly of the African Union in February 2019 to draw attention to the fact they have been receiving requests for support from...
LGBT refugees fleeing other African nations, and to partner with UNHCR to establish a, "structured response to the needs of these people." They also pledged to do more for LGBT refugees in the Nampula camp in Mozambique, including offering psychological support, counselling, and healthcare.  

**HIV & health**

A national HIV plan to address the specific needs of the LGBTI community, the first of its kind, was launched during the 8th South African AIDS Conference in Durban. The plan aims to reduce HIV rates by 63 percent, tuberculosis by 30 percent, and boost STI detection by 70 percent over five years. The plan also acknowledged the effects of societal stigma and discrimination on LGBTI people seeking healthcare, and called for services designed for their needs.

As part of its commitment made under the HIV plan, South Africa’s Human Sciences Research Council announced the country’s first national survey on HIV in transgender women in January 2018. The study aimed to fill a gap in data on HIV prevalence among transgender women and their specific vulnerabilities in order to be able to better serve their community. Just two months later, the South African government began distributing PrEP to sex workers for free in hopes of reducing the spread of HIV.

In neighbouring Mozambique, health NGOs announced in February 2018 they received grants from The Global Fund for programming aimed at reducing new HIV infections and HIV-related deaths by 40 percent and tuberculosis deaths by 50 percent by 2020.

**Activism in the sub-region**

Given its size, regional power status, and active civil society, South Africa tends to dominate the discussion of LGBTI issues in Southern Africa. Yet, over the past two years, grassroots activism in neighbouring countries is increasing domestic and international visibility of their LGBT people.

At the end of 2016, representatives of LGBTI organizations from Madagascar, Mauritius, Seychelles, and Réunion gathered in Antananarivo, Madagascar for the 15th symposium on HIV, where they formed the Indian Ocean region’s first LGBTI network. A few months later, a Malagasy LGBTI group belonging to the network hosted an awareness-raising event during the World Day Against Homophobia. The group aimed to highlight the discrimination and stigmatization faced by LGBTI people in everyday life in Madagascar, and to put a human face to their community.

Human rights organisations in Namibia organized a five-day advocacy event in July 2017 to “celebrate the rich tapestry of Namibian LGBTI lives, while addressing social and policy discriminatory laws, policies and practices.” The event, called ‘We Are One,’ ended with activists marching for better anti-discrimination laws during the country’s first pride parade.

**Conclusion**

Though regional surveys of public sentiment towards LGBTI people often report dismal numbers, we see an interesting, seemingly contradictory, trend happening in South Africa: though the majority of South Africans (72%) believe that same-sex sexual activity is “morally wrong”, a majority (51%) feel that gay South Africans deserve the same rights as all other citizens. Similarly, a 2016 survey found Namibia and Mozambique to be two of the most tolerant countries in Africa.

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73 *SA launches first national HIV plan for LGBTI people* ENCA. 16 June 2017.
74 *First South African study looking at HIV prevalence in transgender women contributes to global 90-90-90 target* Human Sciences Research Council. 10 January 2018.
75 Pre-Exposure Prophylaxis (PrEP) is a daily pill that reduces HIV infection risk in HIV-negative individuals by 92 - 99%.
76 Lungani Zungu, *PrEP pill to save sex workers from HIV/Aids* IOL. 1 April 2018.
78 *La première coalition des associations LGBT de l’océan Indien est née* IMZAPress. 6 October 2016.
80 *Authenticity in Diversity* 99FM. 26 July 2017.
which as a whole is also trending towards tolerance among the young and well-educated. \(^{84}\)

It’s also worth noting that legislative advancements made in the sub-region over the past years have retained their strength and have not been weakened by religious exemptions; the South African government even closed a loophole that allowed civil servants to decline to perform same-sex weddings. Though there remain a significant number of criminalizing countries in the sub-region, progress made in South Africa, Mozambique and Namibia offer hope as to the future of LGBTI people in neighbouring countries.

Recent SOGi Developments in Angola and an Overview on Other African Lusophone Countries

By Rui Garrido.\(^{85}\)

**Angola**

On 23 January 2019 Angola joined the list of countries that decriminalised same-sex acts between consenting adults. The Penal Code of 1886, inherited from Portuguese colonialism, criminalised anyone who partook in the practice of “vices against the nature”.\(^{86}\) Same-sex sexual relations were illegal under that provision, and it was generally understood as criminalising same-sex sexual acts. Under article 71, for the offence of “vices against nature”, the first time that the crime was committed the sentence was the bond of “good conduct” or “freedom under surveillance”, and for those who re-offended, the sentence was surveilled freedom or internment.\(^{87}\) It is not known of any case targeting LGBTI people based on that provision.

The enactment of the new Penal Code was the end of a long journey that took more than a decade to conclude. Angola started the revision of its Penal legislation in 2004 through a presidential order that created the Commission for the Reform of Justice and Law. This commission mandated, among other things, the drafting of a new Penal Code for the country.\(^{88}\)

In recent years, the Angolan State has tried to be transparent, especially when it is under international scrutiny. In 2014, during the 2nd UPR cycle, in the national report, Angola argued that intimacy between consenting adults was protected under constitutional law, and the state was unaware of any case of discrimination based on sexual orientation.\(^{89}\)

In 2016, Angola submitted its national report to the African Commission on Human and Peoples’ Rights. The report stated that there are no laws criminalising same-sex relations between adults, and that the draft law which approves the new Penal Code prohibits discrimination based on sexual orientation.\(^{90}\) This reference was not made under article 2 (non-discrimination) of the African Charter on Human and Peoples’ Rights, but under article 3 (right to dignity) of the Protocol on Women’s Rights. Despite the reference to sexual orientation and the absence of criminal offence against LGBTI peoples, the Angolan authorities seem to misconceive, or not fully understand the issue of sexual orientation, as it is treated under the implementation measures of women’s protocol. Under the same “right to dignity”, LGBTI issue are grouped with prostitution and sexual violence against women, girls and children. This reinforces the Angolan authorities’ misunderstanding of the subject.

In June 2018, the Ministry of Justice and Human Rights granted the legal recognition to the association IRIS Angola, the first LGBTI association in the country.\(^{91}\)

Regarding the new Penal Code approved on 23 January 2019,\(^{92}\) it is a significant shift from criminalisation to protection. In fact, the new Penal Code introduced “sexual orientation” as an aggravating circumstance in the provision establishing the general guidelines for the

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84 Michael Morris, “LGBT community still faces high levels of violence - report” News24, 4 December 2017.
85 Rui Garrido, Ph.D candidate in African Studies at ISCTE-IUL, Portugal.
86 Penal Code of 1886, article 71(4).
87 Id., Article 71(1).
88 Presidential Order No. 124/12, 27 November 2004.
91 “Governo valida primeira associação LGBT do país”, Novo Jornal, 26 June 2018.
92 The bill that was approved can be read [here](https://www.legislation.gov.ao/bill/000112/2019/1111).
determination of penalties. Additionally, article 172(1) establishes the crime of threatening to perpetrate a crime against someone, which could affect their “sexual self-determination”. Notably, article 241 criminalises acts of discrimination based on sexual orientation with regard to the provision of goods and services, employment and obstructing economic activities. Articles 215, 216 and 217 raise the penalties for acts of insult, defamation and disrespect of the deceased (respectively) when they are committed because of the victim’s sexual orientation. Furthermore, incitement to discriminate based on sexual orientation is criminalised under article 382. Last but not least, article 284 explicitly includes prosecution based on sexual orientation in the provision on crimes against humanity. The expression “sexual orientation” appears 12 times in the Code. However, no reference is made to “gender identity”, “gender expression”, or “sex characteristics”, so there is certainly much space for further advocacy and progress.

The Penal Code was approved by a vast majority of MPs in Parliament —115 votes in favour, 7 abstentions and only 1 vote against— and was described by the leader of the People’s Movement for the Liberation of Angola as “genuinely Angolan”.94

Cape Verde

Cape Verde is considered one of the most consolidated African democracies and a country with high levels of social acceptance of homosexuality. The legal framework is not repressive towards sexual orientation, and the reform of the Penal Code in 2003 removed the criminalisation of the “vices against nature”, but no protection was granted to sexual orientation. However, in 2008, Cape Verde enacted protections against discrimination based on sexual orientation in employment under the New Labour Code.96

Furthermore, the 2015 amendment of the Penal Code stated that “the current circumstances demand an adequate response for some kinds of murder, in particular those motivated by hate of the sexual orientation or gender of a person”.98 The amendment of article 123 establishes a penalty of 15 to 30 years imprisonment for murder committed on the basis of the victim’s sexual orientation or gender identity. Cape Verde is the only African Lusophone country that criminalises hate crimes based both on sexual orientation and gender identity.

Guinea Bissau

Guinea Bissau was the first country to reform its Penal Code after independence from Portugal. In 1993, the Law-decree No. 4/93 (Penal Code) decriminalised same-sex activity but granted no protection to sexual orientation or gender identity. Social attitudes in the country are not tolerant, with the exception of the capital city Bissau, in which the LGBTI community have some space to be open. In a recent interview, a local NGO director stated that there are some cases of violence targeting people based on their sexual orientation or gender identity and that Guinea-Bissau lacks legal protections for LGBTI people.

Mozambique

Even though the legal framework of the country is not hostile to sexual orientation or gender identity, there is still much that could be improved. In 2007, the Labour Law introduced prohibition of discrimination based on sexual orientation as a fundamental principle to the Right to Work. In 2015, a new Penal Code entered into force, removing the criminalisation of the “vices against nature”, but no protection was granted to sexual orientation or gender identity.

The Mozambican State failed in the legal registration of the NGO LAMBDA Mozambique, a process started by LAMBDA in 2008. In 2017, the Constitutional Council of Mozambique declared article 1 of Law no 8/91 unconstitutional,

93  See: Article 71(1)(c): “(...) The following are the only aggravating circumstances: when the perpetrator commits the crime (...) because of discrimination based on (...) sexual orientation (...).”
95  Good neighbours? Africans express high levels of tolerance, but not for all, Afrobarometer, article 12, (2016).
96  Decreto-Legislativo No. 5/2007 (Código Laboral Cabo-Verdiano), 16 October 2007, articles 45(2) and 406(3).
97  Legislative-Decree No. 4/2015, 11 November 2015.
98  Id. p. 2177.
99  Id. p. 2179.
102 Law No. 23/2007 (Labour Law), article 4(1), 1 August 2007.
103 For more information on the process led by LAMBDA see: “Registe Lambda Igualdade”, Lambda Website.
which allows the registration of associations in the country in accordance with the principles of “moral order”. The Constitutional Council found that the reference to “moral order” is in contravention with article 53(3) of the Mozambican Constitution of 2004, which only forbids the registration of military associations or those that promote violence, racism or xenophobia. This decision gave new strength to the aspirations of LAMBDA to become legally registered as an NGO.

São Tomé e Príncipe

São Tomé and Príncipe removed criminalisation of the “vices against nature” in 2012, when the new Penal Code entered into force. Article 130 (qualified murder) of the Penal Code defines sexual orientation as an aggravating circumstance of this type of crime, giving sexual orientation the same protection as racial, political or religious hate. Furthermore, sexual orientation was introduced in the law on domestic and familial violence, and was adopted 4 years before the Penal Code. Article 2 of Law No. 11/2008 states that every woman, man and child has their fundamental rights inherent to their personhood, regardless of their sexual orientation, among other factors. The same law recognises domestic violence as a human rights violation. There are no records of any association working with LGBT human rights in the country.

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104 Acórdão No. 07/CC/2017, atinente a declaração de inconstitucionalidade do artigo 1 da Lei nº 8/91, de 18 de Julho – Lei que regula o direito à livre associação, requerido pelo Provedor de Justiça.
106 Law No. 6/2012 (Approving Penal Code).
108 Id., Article 6.
GLOBAL PERSPECTIVES

LATIN AMERICA
AND THE CARIBBEAN

STATE-SPONSORED HOMOPHOBIA 2019

ilga
world
Latin America and the Caribbean, Before the Challenge of a New Time

Coordinated by Luz Elena Aranda Arroyo, Darío Arias and Pedro Paradiso Sottile.

Introduction

By Luz Elena Aranda Arroyo, Darío Arias and Pedro Paradiso Sottile.

The Latin American and Caribbean region finds itself in a historic moment of transition and political dispute, where the alliances between anti-rights religious fundamentalist sectors and the ultra-conservative political forces are advancing in a dangerous way.1 This puts in tension and risks the gains achieved by movements through the social, political and cultural struggle, after a stage that we can call a decade of achievements for the LGBT population and women.

The period of 2017-2018, as can be seen in the six essays of each of the sub-regions, began a tumultuous, unstable period with struggle and tensions. The elections of conservative right-wing governments,2 the rise to power of neo-fascist projects,3 strategic alliances of the Catholic, Evangelical and neo-Pentecostal churches and its growing influence in the public debate,4 increase in social exclusion and poverty in the region from the implementation of neoliberal economic policies,5 the growth in violence due to prejudice of sexual orientation and gender identity and expression,6 migration and the rise in the murders of human rights defenders, makes a panorama of regional complexity and alertness.7

This picture however, meets resistance and struggle from powerful LGBTI and feminist movements that still continue being capable of counteracting this conservative onslaught and lead important advances.8 These movements are probably the most hopeful social political force in this moment of history and the only ones that are...
prepared for the challenges of this new era. ILGALAC is committed to continue working and facilitating between organisations in order to promote the strength of equality and freedom throughout Latin America and the Caribbean.

### Advances in equality, setbacks to overcome: the LGBTI+ agenda in the Southern Cone

By Alba Rueda

The living conditions of LGBTI+ people in the Southern Cone are affected through public policies, legislation and social organisations. Between 2017 and 2018 organisations worked for specific policies for the travesty/trans populations – to raise awareness to their extreme vulnerability, avoidable deaths and the lack of public policies that guarantee their basic rights – and recognised the legislative absence and protections for intersex persons.

The situations are very different in the four countries of the ILGALAC sub-region, being more favourable for the LGBTI+ population in the Eastern Republic of Uruguay, the action of the Broad Front government has incorporated a sustainable LGBTI+ agenda throughout its administration. In fact, the most significant advance so far has been the approval of the Comprehensive Trans Law in 2018, the law that offers the highest level of protection of the rights of trans persons in South America. Under the paradigm of human rights, the law promotes the adoption of affirmative action measure in favour of trans persons, establishes minimum quotas for jobs in the public sector, for professional training, scholarships and student support. Furthermore, the law provides comprehensive healthcare, a reparative regime for victims of violence during the dictatorship and the requirement to register gender identity in the official statistical information system.

In Chile, the organisations achieved the legal recognition of gender identity, despite conservative proclamations from President Sebastian Piñera. The law authorises a change in name and registered sex by administrative means and without the requirement of body modification. However, some organisations denounce that, as a consequence of the pressure of anti-rights groups, the law discriminates against children and married people.

The actions of the conservative and neoliberal governments have obstructed legislative advances for LGBTI+ in countries such as Argentina, where there had been no improvements at the national level of protection of the rights of trans persons in South America.

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12 Jorge Galindo, “¿Latinoamérica feminista? Estrategias y retos del movimiento que busca la igualdad de género en la región”, El País, 23 de octubre de 2018.
13 Trans activist, member of Mujeres Trans Argentina, researcher in sexual dissidence issues with the Department of Gender and Communications of the Centro Cultural de la Cooperación Flóreal Gorini. She studied Philosophy at the University of Buenos Aires (UBA). She works at the Observatory of Discrimination of the National Institute against Discrimination, Xenophobia and Racism (INADI).
15 Article 2 of the law declares “of general interest” the design, promotion and implementation of public policies and affirmative actions in the public and private sectors whose beneficiaries are transgender people.
16 Article 12 of the law establishes, for a period of fifteen years, that a series of public agencies of the three branches of the State must allocate 1% of the positions to be filled in the year by trans people who comply with the regulatory requirements to access such positions.
17 Article 13 of the law establishes a quota of no less than 1% (one percent) for trans people, in the various training and qualification programs implemented by the National Institute of Employment and Vocational Training (Instituto Nacional de Empleo y Formación Profesional). Article 17 of the law establishes that the agencies that grant scholarships and student support should provide for a 2% quota for transgender people and an 8% quota for the “Carlos Quijano” special Scholarship.
18 Article 21 establishes that every trans person has the right to comprehensive care to adapt their body to their gender identity, including surgical medical treatments. Also, it provides that for people under 18 years of age to access irreversible surgeries, in order to adapt their body to their gender identity, authorization or consent from legal representatives will be required.
19 Article 10 provides for the creation of a repARATION regime for trans persons born before 1975, who can prove that they were victims of institutional violence or that they deprived of their liberty by State agents or by those who, without being so, had been authorized, supported or acquiesced. Article 5 incorporates the “gender identity” variable in all official statistical information systems, including censuses, continuous household surveys, reports from the National Civil Service Office and all public measurements that contain the variable “sex”.
20 Law 21,120 approved in November 2018 recognizes and protects the right to gender identity to those residing in Chile, including migrant trans people who have their Chilean document (Article 7).
21 “Historia de la ley de identidad de género en Chile”. Organizando Trans Diversidades, 15 December 2018.
22 Legal guardians can litigate under the procedure established in articles 12 to 18 of the law. The law also provides for “Professional Support Programs” to advise and accompany transgender people under eighteen. If a person is married and changes their registration information under the Gender Identity law, they will be able to request the rectification of the marriage with final judgment of a family court.
level in 2017 or 2018. Although, organisations achieved labour quotas for travesti and trans in some localities, the government of the Province of Buenos Aires – a province with travesti and trans labour quota laws enforced – has decided to block the implementation of the norm, refusing to regulate it. At the same time, the neglect of the State denies access to basic healthcare for travesti and trans prisoners, which has led to the deaths of many of them. Anti-rights groups have grown and strongly influenced the rejection of the draft law of voluntary termination of pregnancy and questioned the rights of the LGBTI+ community, especially targeting transgender children and/or their families, especially from the movement located throughout Latin America “Don’t mess with my children”. Furthermore, the new social climate is blamed for an increase in violence against LGBTI+ people. Despite all of this, there have been some advances that marked a new horizon in the rights of LGBTI+ people, such as the recognition of non-binary names, the issuing of birth certificates without gender markers in the Province of Mendoza and the ruling of travesticide in the case of Diana Sacayan.

In Paraguay, the government of President Mario Abdo Benitez continued anti-rights policies of its predecessors. Furthermore, the Paraguayan parliament came out against abortion and equal marriage, the Ministry of Education banned all content related to the so-called “gender ideology” and its own education minister called for the “burning of books with gender ideology”. The country also became one of the main promoters of anti-rights groups and positions before the OAS. This data marks the gravity for LGBTI+ people, and it adds to the structural violence that is especially pronounced for trans people. There are no official statistics or public policies for the LGBTI+ population but there are high levels of violence and impunity.

The travesticide of Amancay Diana Sacayan

On 11 October 2015, Amancay Diana Sacayan (Trans Alternate Secretary of ILGA since 2014), was the victim of travesticide in her apartment in the city of Buenos Aires. This caused deep shock throughout the Argentinian LGBT movement and above all, the travesti and trans community in the country. Diana was a travesti advocate, activist and leader, born in the north of the country and raised since a child in the Buenos Aires urban area. She was part of the National Front which in 2012 achieved the passing of the Gender Identity Law and, years later, in the Province of Buenos Aires, supported the first labour quota laws for trans persons (today the law bears her name in her honour).

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23 The legislative agenda on the trans labour quota is a requirement advocated by all social organizations and many bills were introduced with a consensus of broad social and political sectors, but by decision of the government, they were not debated. The cities and towns where there are quotas in force are distributed in several provinces of the country: Buenos Aires, Chaco, Corrientes, La Pampa, Mendoza, Rio Negro, San Luisa, Santa Fe, Tierra del Fuego and Tucumán. See also: Agencia Presentes, “MAP: This is the trans job quota in Argentina,” 25 May 2018; “The trans labour quota enacted in Chubut”, El Patagónico, 17 May 2018; “The Trans Labour Quota Law enacted in FME”, La Unión Digital, 21 December 2018. See: Law 14,783, Province of Buenos Aires. At the time of the enactment of the law, the IACHR issued a press release welcoming the measure. In it, the Commission stated that “These types of measures seek to encourage trans persons’ access to public areas and to further the exercise of their economic and social rights. These measures contribute not only to reduce the levels of poverty faced by trans persons, but also to reduce homicides and police violence as a result of reducing the number of trans persons working in criminalized informal economies and bringing down stereotypes and prejudice related to gender identity”. IACHR, Press Release 122/15: “IACHR Congratulates Argentina for Passing Provincial Quota Job Law for Trans Persons,” 30 October 2015. See also: IACHR, Report on Poverty and Human Rights in the Americas, September 7, 2017, para. 451: Ombudsman of the Province of Buenos Aires, Right to work for transgender people and transvestites in the Province of Buenos Aires: Obstacles to the implementation of the labour quota law (“Derecho al trabajo de las personas trans y travestis en la Provincia de Buenos Aires: Obstáculos para la implementación de la ley de cupo laboral”) (2018).

24 Michelle Langrand, “‘83% of trans women in Argentina have suffered some kind of violence or discrimination’: UN expert”, Panorama, 18 June 2018.

25 “Campaña de grupos “antiderechos” contra una niña trans salteña”, Agencia Presentes, 29 November 2018.


28 “#Paraguay Cámara de Diputadxs se declaró ‘provida’: Viola la Constitución”, Agencia Presentes, 21 December 2018.


30 See the article by Marcelo Ferreyra, in the section on International Human Rights Law in the present report.

31 Law 14,783 (Province of Buenos Aires, Argentina); “Diana Sacayán: This law is a response to the discourse on prostitution as work”, March, September 24, 2015. The enactment of the travesti-trans labor quota in the Province of Buenos Aires was
On 18 June 2018, the Court for Oral Criminal Proceedings No. 4 of the city of Buenos Aires, issued a ruling without precedent regarding violence against trans people in Argentina. This ruling recognised the term "travesticide" to qualify the crime and sentenced the accused to life imprisonment for committing aggravated murder due to "hate towards the gender identity of the victim" and for "gender violence" (articles 80.4 and 80.11 of the Argentinian Penal Code). The progress of this judicial process was actively promoted by social organisations that formed the "Commission of Justice for Diana Sacayán". In 2018, the judicial decision was recognised with the "People’s Choice Gavel Award" organised by Women’s Link Worldwide in the category Gender and Justice Uncovered.

"Boys wear blue and girls wear pink": the LGBTI agenda in the face of an extreme right-wing offensive in Brazil

By Bruna Andrade Ireneu.

The timeframe of this article covers the impeachment of Dilma Rousseff, the increase in the protest movement #ForaTemer (#TemerOut) and the various plans to incarcerate ex-President Luiz Inacio Lula da Silva. During this period it is self-evident the dismantling of the policy of group conciliation carried out by the Worker’s Party (PT), which had achieved unifying in the same neo-developmentalist project, opposing groups such as evangelical leaders and sectors of the LGBT movement and feminists. After the impeachment, with the approval of the constitutional amendment that put a limit on public spending, the dismantling of social policies intensified and the situation will worsen still with the current government’s plan.

Yet, after 15 years of the launching of the program “Brazil without Homophobia” (the first government initiative for the benefit of the LGBTI population), Brazil continues to have a high rate of deaths due to homo/lesbo/transphobia. These murders claimed the lives of Dandara dos Santos, Luana Barbosa and Plinio Lima, among many others.

Homophobia, sexism and racism operate as a means to produce lethal violence and systematic violations of the human rights of LGBTI persons in Brazil. Furthermore, Brazil is still a high risk place for defenders of human rights, being the country with the most murders of activists in the Americas. The most notorious case was that of the activist and councillor, Marielle Franco. These kinds of examples intensified further during the 2018 election period, in that a candidate publicly hostile to LGBTI recognition and who had explicitly fascist stances in his discourse was elected.

celebrated by the Human Rights Committee and by the CEDAW Committee, which not only recognized its value, but also urged Argentina to replicate this measure in other provinces and municipalities of the country (see: Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, CCPR/C/ARG/CO/5, August 10, 2016, para. 3 and Committee for the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Argentina, CEDAW/C/ARG/CO/7, for 31). 25 November 2018.

Tribunal Oral en lo Criminal y Correccional No. 4 - Ciudad de Buenos Aires, Causa Nro. 62.162/2015, CCC 62182/2015/TO1, 6 July 2018.


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Re-elected in 2016, Rousseff suffered impeachment at the behest of the Judiciary, with the approval of some of the Legislature. The process stood out as being sexist and elitist in its design, notably evidenced in the arguments presented by those parliamentarians in the plenary session on the day of the impeachment vote in the Chamber of Federal Deputies, who spoke of the defence of the “traditional” family, “morals”, “good habits” and of economically liberal values, based on the criticism of social programs increased during the tenure of the Worker’s Party (PT).

Ex-president Luiz Inacio Lula da Silva was arrested on the 7th of April 2018 and was later accused of corruption. His sentencing is still an object of contention for having taken place in the appeal’s court and for the media attention given in comparison to other corruption cases that involve right-wing individuals. Recently, the judge who sentenced Lula, Sergio Moro, resigned his post to become the Minister of Justice and Public Security in the Bolsonaro administration.


"Dois anos após morte, PMs são indiciados por agressão a mulher em abordagem em Ribeirão Preto", G1 Globo, 19 April 2018.

"Cabeleireiro acompanhado do marido é morto a facadas na avenida Paulista" Revista Forum, 22 December 2018.

Marielle Franco was a black, bisexual woman from a slum and elected to the Rio de Janeiro council for the Socialism and Liberty Party (PSOL), who had reported rapes committed by members of the army during the military intervention in Rio. 10 months ago the police investigations stalled and have not advanced with respect to finding the masterminds behind the crime. Jean Willys, gay, militant and defender of human rights, as well as a federal parliamentarian for the PSOL, has constantly received death threats, as with other legislators linked with fighting for social movements.
In the same year that the Federal Supreme Court determined that it will not be necessary to acquire legal authorisation, medical/psychological reports, nor surgical procedures in order to change one’s name and sex before the civil registry, Jair Mesias Bolsonaro is elected. His campaign utilised the same strategies of Donald Trump, having made use of “fake news”, among which stand out was the alleged existence of a “Gay Kit” distributed by the PT government. At the same time, the election of Bolsonaro was not without resistance or collective organisation in the form of demonstrations and the movement #EleNao (#NoHIm), with more than 40% of the population voting against him in the polls. After the election, out of fear of same-sex marriage recognition being repealed, civil registry offices across the country saw a 25% increase in this type of marriage.

In his first days as president, Bolsonaro reiterated his hate for the LGBTI community (the same hatred he expressed when he said: “I would prefer to have a criminal for a child than a gay child”) by appointing to the charge of public policies for human rights, women and family, a pastor known for her support of “conversion therapy”. Damares Alves, with 2 weeks in government, announced to the media that for her “sex between women is an aberration” and that under her watch “girls will be treated as princesses and boys princes”. The minister reaffirmed her political stance that “girls wear pink and boys wear blue”, a phrase that triggered numerous protests on social media by artists, activists, researchers and politicians, questioning the state’s attempt to present biology as a determinate to gender expression. There is a very strong consternation in the country against the government’s first measures which are an attack on gender, ethno-racial relations and sexuality in the school curriculum and the intensification of the criminalisation process of the indigenous population.

The threat of neo-fascism is a global movement, which requires that collective strategies unite different progressive sectors in defence of democratic liberties and republicanism. LGBTI activism must strengthen its links with movements that fight for land rights, housing, racial feminist equality and work. Whilst conscious as to not be seduced by the conciliatory homo-nationalist discourse which comes from antidemocratic sectors or to fear the struggle itself. Resistance thrives in the streets and tomorrow is another day!

The Andean Region, a Territory in Alert Marked by its Political Uncertainty and the Advance of Anti-Rights Groups

By David Aruquipa Perez.

The policies of human rights protections for the LGBT population of the Andean Region have achieved significant advances in a legal sense. However, in practice exercising these rights are limited by the threats and pressures of neoconservative trends and the fragility of

43 “STF reafirma que pessoas trans podem o mudar nome no registro sem cirurgia”, UOL Notícias, 15 August, 2018. The decision of the Supreme Court is binding for all civil registry offices. At the same time, the National Justice Council (the administrative body for Brazilian Judicial Power) enacted a provision that regulates the administrative process of changing one’s name and gender in the country: Provimento No. 73, 28 June 2018. The ruling was highlighted by the Inter-American Commission on Human Rights. CIDH, Comunicado de Prensa No. 85/18: “CIDH welcomes the decision of the Brazilian Supreme Court to permit trans people to change their name through self-declaration”, 23 April 2018.

44 Fake news highlighted the distribution of books supposedly acquired by the Ministry of Education (MEC). Taking advantage of a controversial issue seeking to generate a discourse around “gender ideology” and to propose a bill titled “Schools without party”. This fake news was put in the minds of Brazilians, especially those who yearn for a military regime, the small economic elite, religious profiters and others attracted by the anti-corruption discourse.


46 “Casamento LGBT cresce 25% no país, diz associação; profissionais oferecem serviços gratuitos para celebrações”, G1 Sao Paulo, 7 November 2018.


50 David Aruquipa Pérez is an LGBTI activist and human rights defender, co-founder, former president and member of the Political Action Commission of Colectivo TLGB of Bolivia, Director of the Bolivian Campaign for the Right to Education (Campaña Boliviana por el Derecho a la Educación).

51 Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), Encuentro adelante con la diversidad. Relatoria. Incrementando la protección y respeto de los derechos humanos de los derechos LGBTI en la región andina (2018), 6-18.
States in a time of political instability. The anti-rights groups come bringing a strategy of delegitimising the activism and classifying it as alleged “gender ideology”, promoting the suppression of intrusive rights and the ending of comprehensive sex education and the promotion of coexistence in the public national curriculum.

The country of the sub-region of ILGALAC with the most advances is Colombia. Yet still, according to different LGBTI organisations, they are at risk with the election of the extreme right-wing government of President Ivan Duque, who has a track record of President Juan Manuel Santos. In his first months in office he appointed anti-rights civil servants and did not apply Decree 762/2018 established by President Juan Manuel Santos.

The Colombian situation has one of its principle elements, the Peace Accord, between the State and the FARC-EP with a focus on gender and the recognition of LGBTI victims of the armed conflict that currently is partially being fulfilled and facing difficulties and threats. At the same time, it has been a growth in the murders of the leaders involved in this process.

Another country that has made important advances is the Plurinational State of Bolivia. In effect, its political constitution contains recognition of the rights of diverse sexual orientation and gender identity populations and includes the LGBT population in the National Action Plan of Human Rights. In 2016, it approved the Gender Identity Law No. 807, which was a victory without precedent and bore the fruits of a long and sustained struggle for the transsexual/transgender population. Yet, five months after having adopted this norm, a group of national parliamentarians brought before the Plurinational Constitutional Court an action of unconstitutionality. On the 9th November 2017, by means of the Plurinational Constitutional Sentence 76/20179, the Constitutional Court declared the unconstitutionality in the phrase “change of sex data” and from that moment operated an unjustified regression in the exercise of the rights of trans persons, and the effects of this ruling has not been remedied until now.

Finally, one of the most important pending issues is the recognition of the families formed between same-sex persons.

In relation to the Bolivarian Republic of Venezuela the political, social and economic panorama
In Ecuador, after a period of advances,\textsuperscript{70} the change of government and the election of President Lenin Moreno in May 2017 caused alarm and uncertainty, in most part by it not continuing with the previous political process.\textsuperscript{71} In this context, two emblematic cases stand out: on the one hand,\textsuperscript{72} the ruling of the Constitutional Court No. 184/2018 which recognised the enrolment of a girl with two surnames from her two mothers,\textsuperscript{73} and on the other, the judicial ruling in which a trans girl was registered on the civil registry record with her gender identity.\textsuperscript{74}

Finally, in Peru there has been a resistance with the growth of fundamentalist religious groups and from the instability due to the resignation of President Pedro Pablo Kuczynski.\textsuperscript{75} There have been no advances in the recognition in the unions of same-sex couples or in terms of gender identity.\textsuperscript{76} The organisations of civil society demanded the compliance of the 2018-2021 National Plan of Human Rights (NPHR 2018-2021) and achieved the Inter-American Commission of Human Rights elevating Case 12.982,\textsuperscript{77} “Azul Rojas Marin and Other” before the Inter-American Court of Human Rights (ICHR) for the State to remedy the institutional violence which occurred in 2008.\textsuperscript{78}

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**Homophobia in Mesoamerica**

*By Gloria Careaga Perez.*\textsuperscript{79}

The Mesoamerican region includes Mexico and the majority of Central America: it covers Mexico, Guatemala, El Salvador, Belize, Honduras, Nicaragua and Costa Rica. Therefore, for this report it is important to refer to the region in this manner, which makes it possible to point out some aspects related to the colonisation of the region.

The condition of LGBT people in Mesoamerica has already eliminated any hint of legal signalling that explicitly criminalises their situation. Even if there have been few steps in the advancement in the protection of their rights –this has been done unevenly across the countries –the main challenge is centred on the problem of needing a cultural change that goes beyond its legal status, achieving

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\textsuperscript{66} Alejandro Fierro, “Venezuela entre legalidad y legitimidad”, Centro Estratégico Latinoamericano de Geopolítica (CELAG), 10 de enero de 2019.

\textsuperscript{67} Alfredo Serrano Mancilla, “Sabotaje económico a Venezuela” Página/12, 7 January 2018.

\textsuperscript{68} The Fundación Base Lésbica Venezuela, in an interview with the author, stated that the Presidential Council of Popular Power for Sexual Diversity (Decrees No. 2161/2015) in coordination with the Ministry of Popular Power for Women and Gender Equity and the Ministry of the Popular Power for the Communes favor the mainstreaming of different social policies so that they also reach LGBTI people.

\textsuperscript{69} “ANC abre debate sobre derechos civiles de la comunidad sexo género diversa en Venezuela”, Ciudad CCS, 18 October 2018: an act chaired by Mayor Erika Farias, ordinances were proclaimed for the creation of an office for LGBT Issues and the month of June was instituted as the Month of the Rebellion of Sexual Diversity. See: “Gaceta Municipal en pro de la Sexodiversidad”, Ciudad CCS, 1 June 2018.

\textsuperscript{70} Cristian Barrauzeta, “Experiencia gubernamental de Ecuador” en LGBTI, compendio regional de buenas prácticas gubernamentales de garantía y protección de derechos” editado por el Instituto de Políticas Públicas en Derechos Humanos de Mercosur (2017), 95-111.

\textsuperscript{71} “Claves de la disputa política en Ecuador”, Centro Estratégico Latinoamericano de Geopolítica (CELAG), 2 December 2017.

\textsuperscript{72} Consultations were held on the Ecuadorian context with Asociación Valientes de Corazón.

\textsuperscript{73} Corte Constitucional de Ecuador (Constitutional Court of Ecuador), Sentencia N° 184-18-SEP-CC, Registro Oficial Año II. N° 61, 11 September 2018.

\textsuperscript{74} “Una niña transgénero de nueve años consigue cambiar su cédula de identidad en Ecuador”, El País, 10 de diciembre de 2018.

\textsuperscript{75} The documentary film “Gender under attack” (original title: “Género bajo ataque”) of 2018 by director Jerónimo Centurión features a section entitled: “Peru, a threat that does not stop”.

\textsuperscript{76} Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX). Informe temático de personas LGBT en el Perú 2018. Perspectivas jurídicas y políticas (2018), 7-17. Consultations on the current political context were held with the following organisations: Promsex, No tengo miedo and Alma Chalaca.

\textsuperscript{77} Defensoría del Pueblo, A dos años del informe defensorial No. 175, Estado actual de las personas LGBTI (2018), 11.

\textsuperscript{78} Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX), Un caso de tortura sexual por orientación sexual (2018).

\textsuperscript{79} Gloria Careaga is a psychologist, professor at the Faculty of Psychology of the UNAM (Mexico), Coordinator of Fundación Arcoíris. She was Co-Secretary General of ILGA between 2008 and 2013.
integration and social recognition. Nevertheless, the economic, political and social conditions of the region do not indicate good expectations. The advance of conservative forces entrenched in the region since colonial times and the increased presence of evangelical churches from the United States represent a grave risk to the defence of human rights.

It is interesting that the two countries in the extremes of the region are where the greatest advances have been made in recent years. In Mexico, resulting from the democratisation process started in 1997 which opened up the possibility of electing officials from the country’s capital and the creation of the local Congress for Mexico City (from where authorities of the centre-left or left were based), the advances in the protection of LGBT people have had an important impact for all the country. From 2009 it legalised same-sex marriage, approved the Anti-discrimination Law that includes sexual orientation (2011) and the Identity Law (2015). Thanks to the active LGBT movement and the demand for the recognition of equal marriage, it has achieved this in 11 of the 32 states of the country, the most recent being Chiapas, Puebla and Baja California, which adopted it in 2017. Now Nueva Leon, Tamaulipas and Sinaloa are waiting for the approval of the resolution from the Supreme Court which mandated it in 2015, but has ordered its compliance before a writ of amparo in the last year.

The process of the approval of the Identity Law has gone through the same process, initially in Mexico City in 2008, and it approved a jurisdictional mechanism that allows a change in legal documentation. In 2015 it achieved simplifying the process to a simple administrative procedure. This advance motivated legal action that has gone to the Supreme Court, although it still has not ruled on a final decision. Nevertheless, the LGBT movement has achieved its approval in Coahuila and Michoacan (2018) and the process is pending in Jalisco.

In Costa Rica, equal marriage propelled by the LGBT movement has made big steps with the ruling of Consultative Opinion No. 24 by the Inter-American Court of Human Rights, which was solicited by the same State. This pronouncement, however, caused a big disturbance in the country, given that it coincided by some months with the start of the presidential electoral process, which was used by conservatives to stoke fears and spectres around its approval. Costa Rica is a state with official recognition of the Catholic Church. However, in recent years the growth of Evangelicals and Pentecostals has come to occupy space in the Legislative Assembly. It is not unusual that one of the presidential candidates of neo-Pentecostal origin has taken advantage of circumstances to raise his chances of success with speeches for “the protection of the family”, as happened in the first electoral round. His speeches were extremely discriminative and threatening, and began to gain popular support, but mostly among traditional religious Christian-Evangelicals, with support from their pastors and leaders. As well as being an elected parliamentarian in the previous period, he had the advantage of being a pastor with regular appearances in the media. It was necessary to agree on a coalition government between two parties in the second round in order to remove the possibility of a Christian government being elected.

This condition is a phenomenon that crosses the region. The presence of distinct Christian voices of this sort in the political space and the presence of conservative forces have inundated daily life of countries in the region with similar strategies. Taking advantage of failed governments that have impoverished large swathes of the population, the evangelical churches have offered support to...
marginalised sectors, tending to their basic needs and constructing a social fabric that pivots itself to the defence of the interests of their religion, whilst at the same time demonising alternative expressions, principally in gender and sexuality. However, its influence is not confined to the attention of these sectors, it is clear that its interest is directed to governance, and more and more they interfere in the electoral processes and lobby for their inclusion in the three branches of government of each country.

It is not unusual that Mexico, being one of the countries with the oldest tradition of state secularism, today has a distinctly evangelical party (PES) and its new president is publicly assumed as a Christian who has initiated a “moral renewal of the country” in his work program.90

The other countries of the region have gone through periods of profound violence, where the presence of Christian forces is not absent.91 The government of Nicaragua has established a strong alliance with the Catholic Church to indefinitely keep itself in power, and at the same time initiated a ferocious persecution against dissidents, among them women and LGBT populations.92 Honduras and El Salvador are being desolated by gangs which stem from maras, with the defence of a patriarchal model where sexual and gender dissent has no place.92

Guatemala, confronts a condition of mixed violence where police repression and delinquency appear to be united against the population, but where conservative forces propel an initiative on the protection of life and the family. This implies grave setbacks and limitation on the advancement of the rights of women and LGBT persons.93

In this geopolitical panorama, the struggle for human rights – in particular for LGBT people – appears uncertain. Even so, the work of organisations has not stopped, they seem to be stronger, despite many times facing great risks to their lives or the need to migrate for their protection. As it is, the LGBT people of these countries today represent an important challenge for Mexico and Costa Rica in regard to migrants and in response to their requests for asylum.94

### The Situation in the Spanish-Speaking and French-Speaking Caribbean

#### By Darío Arias,95 Manuel Vázquez Seijido97 and Francisco Rodríguez Cruz.95

The level of acceptancetowards sexual and gender diversity in the Dominican society95 is not reflected in the meagre legal progress achieved in the Dominican Republic.100 Although lobbying by religious and fundamentalist groups has prevented the enactment of inclusive laws,101 the explicit inclusion of the LGBTI population in the non-discrimination chapter of the National Human Rights Plan in December 2018 is one of the achievements resulting from the work of local organizations.102

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90 “Partido Encuentro Social (PES)”, Animal Político, 9 September 2014.
93 See, in general, IACHR, *Situation of human rights in Guatemala* (2017) and, in particular: paras. 121 a 124, 210, 30 a 385.
95 The authors would like to thank Sergi Tomás Rodríguez, Argentine activist, and Michaël Cousin, French activist, for their collaboration.
96 Darío Arias is ILGALAC Co-Secretary general. See full mini-bio above.
97 Manuel Vázquez Seijido is Deputy Director of CENESEX and member of the regional board of ILGALAC.
98 Francisco Rodríguez Cruz, journalist and gay activist of the Humanity for Cuban Diversity Network.
100 The authors are especially grateful to human rights activist and defender Deivis Ventura of the Dominican Republic for the information about the context and situation of the country.
In Cuba, the most significant achievement was the popular consultation and the referendum on a new Constitution that replaced the definition of marriage between men and women with a neutral wording, using the term “spouses”. The new constitutional text also includes the right of every person to found a family in various ways, overcomes old conceptions with regard to a couple’s “reproductive purposes” and explicitly proscribes discrimination based on sexual orientation and gender identity.

During the debate, different forces opposing these rights emerged, especially Protestant denominations and homophobic groups. Consequently, for the Constitution to translate into effective rights, a new Family Code will have to be enacted within two years and it will have to be submitted to popular consultation and referendum.

Finally, the situation in the Francophone Caribbean is of grave concern. In Haiti, violence against LGBTI people has been on the rise and several regressive bills have been introduced in the Senate, such as the prohibition of same-sex marriage or the ban against public demonstrations advocating for the rights of LGBTI people. Additionally, LGBTI people might be included among the categories of people who could be denied a “certificate of good reputation”, a document that is required in many job applications. However, effective activism prevented these initiatives to advance in the Legislature’s lower house.

A Slow, but Significant Journey – Recent Developments in the Caribbean Region

By Westmin R.A. James and Luciën D. Govaard.

The Caribbean region consists of sovereign nations and dependent territories (France, UK, USA and Holland); islands and continental areas in the Caribbean Sea and in Central and South America. According to recent estimates, home to over forty-four (444) million people. The Caribbean is rich in diversity; English, Spanish, French and Dutch are among its official languages and in addition to native indigenous populations, its people are primarily descendants of Africans, Asians and Europeans. Recent developments in Belize, Trinidad and Tobago, Guyana, Bermuda and Suriname are of particular interest when outlining SOGIE legal and social advances in this region.

Although “homosexuality” in and of itself is not a crime, laws criminalize same-sex sexual conduct between consenting adults. Among them are Antigua and Barbuda, Barbados, Dominica, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines. Punishments for buggery range from ten (10) years in Jamaica, Belize, Grenada and St. Lucia, Dominica, St. Kitts & Nevis (with or without hard labour) fifteen (15) years in Antigua and Barbuda if committed, and life imprisonment in Barbados and Guyana.

The act of “buggery” was defined in Antigua & Barbuda, Dominica and Trinidad and Tobago as anal intercourse by: “a male person with a male person” or “a male person with a female person”. In St. Lucia buggery is limited to anal intercourse by a male person with another male person while in Jamaica buggery covered anal intercourse either with mankind or with any animal. In Barbados, St. Kitts and Nevis, St. Vincent and the Grenadines where buggery was not legislatively defined, the courts have interpreted it to include anal or oral intercourse by a man with a man or woman; or vaginal intercourse by either a man or a woman with an animal. In Grenada and Belize, ‘unnatural connection’, or ‘carnal knowledge against the order of nature’ have been interpreted by the courts to include anal intercourse between consenting adults male or female, but also includes any ‘non-natural’ sexual intercourse between any

103 The authors thank the CENESEX Community Social Network activists for providing information about the context and the situation in the country.
107 The authors are especially grateful to activist Charlot Jeudy, President of Kouraj, for the information Shared on the situation of LGBTI people in Haiti.
109 Westmin R. A. James is a Lecturer in Law and Deputy Dean at the University of the West Indies Cave Hill Campus.
110 Luciën D. Govaard is the chair of the Caribbean forum for Liberation and Acceptance of Genders and Sexualities and Vice-Chair for the PANCAP Policy and Strategy Working Group on Stigma and Discrimination.
112 R v Wiseman (1718) Fortes Rep ’91; R v Bourne (1952) 36 Cr App R 135.
two people, heterosexual couples included, regardless of the orifice(s) used.113

In Antigua and Barbuda, Barbados and Trinidad and Tobago there is also the offence of serious indecency, while in Dominica, St. Lucia, St. Vincent and Grenadines the offence is gross indecency. Guyana and Jamaica have the offence of gross indecency, but only when committed between two male persons. The act of “gross indecency” or “serious indecency” is an act other than sexual intercourse by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire. It was also an offence under the laws of Guyana, “being a man, in any public way or public place, for any improper purpose, appears in female attire; or being a woman, in any public way or public place, for any improper purpose, appears in male attire...”.

The 2018 High Court of Trinidad and Tobago ruling in Jason Jones v AG of Trinidad and Tobago114 established that buggery and serious indecency laws were unconstitutional in Trinidad and Tobago. The High Court of Trinidad and Tobago following a similar case of Caleb Orozco v The AG of Belize115 from Belize held that buggery law breached the constitutional rights of the gay men to equality, privacy and freedom of thought and expression. These decisions will no doubt have an impact on the law in the wider Caribbean jurisdictions. The Court later ordered that the law be modified so it no longer applies to consensual sexual acts between adults in private.116 In 2018, the Caribbean Court of Justice (CCJ)117 evaluated the cross-dressing law in McEwan et al v AG of Guyana,118 brought by four trans women who were arrested and convicted. The CCJ concluded that the law was unconstitutionally vague and resulted in transgender and gender non-conforming persons being treated unfavourably because of their gender expression and gender identity.119

Ongoing cases pertaining to SOGIE are currently being litigated in Bermuda and Suriname. In Bermuda, the Court of Appeal upheld the Supreme Court’s ruling that revoked parts of Civil Partnership law that prevented same-sex couples’ marriage,120 while in Simson v. Suriname,121 the official registry of a trans woman’s sex change, following gender affirmative surgery —a case won at first instance— is being appealed by the Government of Suriname.

In its Advisory Opinion, OC-24/17, the Inter-American Court of Human Rights addressed issues concerning gender identity, same-sex relationships, and the rights of LGBTI persons.122 This Advisory Opinion applies to Barbados, Dominican Republic, Suriname and Haiti.123 While many welcomed this development, it is still relatively early to outline its impact on Caribbean societies.

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113 Supreme Court of Belize, Claim No. 668 of 2010, 10 August 2016.
114 Supreme Court of Trinidad and Tobago, Jason Jones vs Attorney General of Trinidad & Tobago and others, H.C. 2017-00720, 4 April 2018.
115 Ibid.
116 The British Overseas Territories repealed their anti-sodomy laws in 2000. For more information, see section on legality of same-sex sexual acts in the Global Overview section of this report.
117 The CCJ is the highest court of appeal for Guyana, Belize, Barbados and Dominica.
118 Caribbean Court of Justice (CCJ), McEwan et al v AG of Guyana [2018] CCJ 30(AJ).
120 AG v Ferguson et al; The AG is considering appealing to the Privy Council
122 For more information on the Court’s Advisory opinion see the essay wrote by Lucía Belén Araque in International Law section of this report.
123 These are the only countries in the Caribbean that have ratified the American Convention on Human Rights.

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The Fight for Rights in North America: Progress and Pushback in the Shadow of the Trump Administration

By David J. Godfrey and Kimahli Powell

Significant progress in the fight for equality has been made from local to national levels across the US and Canada over the past two years since the last State-Sponsored Homophobia report: a growing number of queer people are covered by non-discrimination provisions; cities, states and provinces are taking the lead on banning harmful conversion therapy practices; and intersex and gender non-conforming communities are beginning to receive hard-fought legal recognition.

Yet in the years since the 2015 US Supreme Court marriage equality ruling—and particularly since the installation of the Trump Administration in 2017—a wave of backlash has been growing that threatens to undermine progress towards LGBTQ equality. Faith-based and conservative campaigns have sought to either codify directly discriminatory policies like “bathroom bills” or, more insidiously, attempt to flout existing discrimination protections by claiming exemptions on the pretence of religious freedom. At the federal level, the Trump Administration has been hard at work undoing fragile protections, mostly for trans people, put in place through executive order by the Obama Administration.

In the short essay “America’s unpromising start to 2017”, included in the last edition of State-Sponsored Homophobia, Aengus Carroll and Lucas Ramón Mendos detailed some of the decisions made by the Trump Administration and the trouble they signalled on the horizon, including rescinding Obama-era guidelines instructing schools to treat trans students according to their gender identity, removing proposed census questions on sexual orientation and gender identity, and appointing Neil Gorsuch to the Supreme Court. Since then, Trump’s nomination of Brett Kavanaugh to fill the vacancy left by Justice Kennedy’s retirement has only increased concerns that the conservative tipping of the Court could lead to a backtrack on LGBTQ, sexual and reproductive health rights.

Trump’s presidency has been characterised by governing via Twitter, where he frequently announces major policy changes, conducts diplomacy, and berates the media and his detractors. Trump’s reckless propensity for using Twitter as a tool for governing was perhaps best exemplified by his July 2017 tweet announcing that trans people would be banned from serving in the
military, surprising even the President’s own defense officials.9

In addition to these prominent, visible attacks on the LGBTQ community, the Trump administration has been orchestrating a quiet campaign to erase sexual and gender minorities, most pointedly targeting the trans community. In addition to trying to remove proposed questions on sexual orientation and gender identity from the 2020 census10 and a national survey of elderly citizens,11 resources for lesbian and bisexual health were scrubbed from the Department of Health and Human Services’ Office of Women’s Health website in the fall of 2017.12

More recently, the same Department has begun leading efforts to establish a legal definition of gender as determined “on a biological basis that is clear, grounded in science, objective and administrable.”13 Aside from fundamentally denying the existence of trans people, the move would allow the Administration to deny access to government funding for health programs, and exclude trans people from protection from sex discrimination provided under civil rights law.

The Trump Administration’s international record on LGBTQ issues has been similarly dismal.

The influence on public sentiment of Trump’s rhetoric and policies regarding minority communities has been pronounced. In the first half of 2017, more LGBTQ people were killed in hate incidents in the US than in all of 2016.14 The National Coalition of Anti-Violence Programs, which tracks incidences of bias and hate crimes, recorded its highest number of anti-LGBTQ homicides to date in 2017, the majority (75%) of which were committed against people of colour. Previously, 2016 had been the deadliest year for LGBTQ individuals in the US, which signals a worrying trend.15

Canada makes amends

Though the Trump Administration’s approach to LGBTQ issues has been largely antagonistic, the Trudeau Administration to the north has taken a decidedly conciliatory approach with the queer community. In November 2017, The Canadian Prime Minister delivered a historic apology to the LGBTQ community in the country for decades of "state-sponsored, systematic oppression and rejection.”

On the occasion, the government introduced legislation – Bill C-66, the Expungement of Historically Unjust Convictions Act – that would “put into place a process to permanently destroy the records of convictions for offences involving consensual sexual activity between same-sex partners that would be lawful today.”16

In June of 2018, a Canadian Federal Court Judge approved a settlement for the LGBTQ Purge class action lawsuit, which sought compensation for damages for members of the military and other federal agencies who were investigated and fired because of their sexual orientation, gender identity or gender expression. The scope covered anyone whose career suffered due to the practice between the years 1969 and 1995, making it the largest LGBTQ settlement anywhere in the world.17

Pushback

Religious exemptions

Religious exemptions are legal provisions that allow individuals, churches, and organizations to bypass non-discrimination protections for LGBTQ people on the grounds that treating them equally “would

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8 Brian Bennett, “Trump, on Twitter, announces ban on transgender service members. Now the military has to figure out what he means” Los Angeles Times. 26 July 2017.
9 Paul McLeary, “Trump Blindsides Pentagon in Transgender Policy Shift” Foreign Policy. 26 July 2017
10 "Media Advisory: Federal Government Rolls Back Important Data Collection on LGBT Populations” The Williams Institute.
12 Rachel Berman “Overview of HHS’s Office of Women’s Health Website Overhaul: Removal of Resources and Corresponding Link Alternations on the A-Z Health Topics Page” Sunlight Foundation’s Web Integrity Project. 21 March 2018
14 Emily Waters, Sue Yacka-Bible "A Crisis of Hate: A Mid-Year Report on Homicides Against Lesbian, Gay, Bisexual and Transgender People." National Coalition of Anti-Violence Programs (NCAVP), 2017
15 Alia E. Dastagir “2016 was the deadliest year on record for the LGBTQ community.” USA Today. 12 June 2017.
16 “Prime Minister delivers apology to LGBTQ Canadians” Justin Trudeau, Prime Minister of Canada. 28 November 2017
17 Jack Julian “Federal Court approves class action settlement for LGBTQ Canadians” CBC. 19 June 2018
violate their religious beliefs.”  In the US, religious exemptions are most often claimed by small business owners refusing to provide a good or service, like flowers or a cake for a same-sex wedding, on the basis that doing so makes them “complicit” in what they see as something sinful. Since legalizing same-sex marriage, the US has seen a startling increase in the number of “religious exemption” bills. According to Movement Advancement Project, 20 states currently have some form of religious exemption law, and Alabama has gone so far as to enshrine religious exemption law in its constitution.  

In early 2017, President Trump prepared to sign an executive order pledging to “vigorously promote religious liberty” that contained language many feared could weaken antidiscrimination laws pertaining to LGBTQ people. Though that language was removed from the final order, the policy gives faith-based organizations more political power, which LGBTQ advocates say could lead to legal discrimination.

Republicans made another attempt to establish religious exemptions similar to those removed from Trump’s executive order by reintroducing the First Amendment Defense Act (FADA) in March 2018. The bill, which would prevent the federal government from punishing businesses or individuals for violating non-discrimination laws because of their religious beliefs, is again failing to advance far in the Senate.

It is not only the federal government toying with the idea of greenlighting discrimination as religious freedom. In 2018 alone, state legislatures in Iowa, West Virginia, Kentucky, Oklahoma, Arkansas, Georgia, Kansas, and Missouri considered bills that would provide religious exemptions to protections in the workplace, schools, health care access, adoption and foster care, and the provision of goods and services, among others. A 2015 Mississippi law that allows businesses and government officials to deny services to LGBTQ persons if it would conflict with their religious beliefs came into effect in October 2017, when an injunction against it was lifted.

Court cops out on cake case

The fight over the legality of religious exemptions came to a head in mid 2018 when the US Supreme Court handed down its decision on the Masterpiece Cakeshop v. Colorado Civil Rights Commission case. The case involved a bakery owner in Colorado who had been found to be in violation of the state’s non-discrimination law when he refused to bake a wedding cake for the marriage of a gay couple. The owner, claiming the state civil rights commission had violated his right to free speech, took his case to the Supreme Court seeking a religious exemption from non-discrimination law.

Yet the outcome of the case was not the clear mandate on the legality of religious exemptions that many were hoping for. This was partly due to a number of complicating factors that muddled the case from the beginning. For one, it was unclear whether the baker refused to bake any cake at all, or only one with a wedding message. At the time of the incident, gay marriage was not yet legal in the US, so the baker was also able to argue he was refusing to participate in an illegal activity. In the end, the Court ruled 7-2 in favour of the bakery owner, but on the narrow grounds that the state commission had failed to exercise neutrality in dealing with his religious exemption claim, another fact that complicated the case.

Though the decision didn’t directly rule on whether the baker was within his rights to refuse service to the gay couple, passages of the majority opinion reaffirmed that laws must protect the rights of LGBTQ persons, stating that religious objections, “do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services...” The question of the legality of religious exemptions from non-discrimination provisions is likely to make its way back to the Court given the increase in religious freedom bills and the ensuing legal battles.

18 “‘All We Want is Equality’ Religious Exemptions and Discrimination against LGBT People in the United States” Human Rights Watch. 19 February 2018.
20 Kaelyn Forde “LGBT activists react to Trump’s latest executive order” ABC News. 4 May 2017.
21 Ashley Killough “Sen. Mike Lee reintroduces religious freedom bill, LGBTQ groups cry discrimination” CNN. 9 March 2018.
23 Samantha Allen “SCOTUS Lets Mississippi’s HB 1523, America’s Most Anti-LGBT Law, Stay in Place” Daily Beast. 11 January 2018
25 James Esseks “In Masterpiece, the Bakery Wins the Battle but Loses the War” American Civil Liberties Union. 4 June 2018.
Trans military ban

Since Trump's abrupt announcement that trans people could no longer serve in the military, the ban has faced multiple challenges from civil rights groups, and an injunction from federal courts.

In November 2018, the Trump administration asked the Supreme Court to fast-track a ruling on the ban, but the court denied the request. The Court also lifted three of the four preliminary court orders preventing Trump from enforcing the ban while the cases continue in the lower courts, essentially allowing the policy to take effect, even if temporarily.

With the confirmation of two of Trump’s Supreme Court nominees, and the resulting shift to a 5-4 conservative majority, it is a distinct possibility that the Court will hand him more victories like this one, and potentially less modest.

Bathroom bills

Trans people need access to public spaces and services in accordance with their gender identity in order to avoid awkward or dangerous encounters, to enjoy access to sanitation and a basic level of dignity afforded everyone else. In the US, opponents of trans rights argue that allowing trans people to use public facilities like restrooms and locker rooms that align with their gender identities puts women and children at risk from predators taking advantage of the policy.

Though a recent study and common sense say this is not the case, it has not stopped a growing number of state and local legislatures from introducing “bathroom bills” seeking to limit trans people’s access to facilities of their choice. Bills in Texas, Virginia, and Washington were defeated, along with a ballot measure in Anchorage, Alaska. Bills in Alabama and Missouri are still being discussed, although the now-infamous North Carolina ban that sparked the national bathroom access debate was partially repealed in March 2017.

The issue has the potential to impact trans public school students on the national level. Under the leadership of Betsy DeVos, the United States Education Department indicated that it will not investigate or take action on complaints filed by trans students barred from using the restroom that matches their gender identity, confirming what had implicitly been the Department’s stance on the issue from the beginning. Though the Supreme Court declined to hear a prominent case regarding a student’s right to use the school bathroom corresponding to his gender identity in early 2017, the issue is likely to make its way back to the Court.

The trans bathroom panic is not unique to the US: conservative groups in Canada made the same argument against a 2017 bill criminalizing discrimination and bias crimes on the basis of gender identity, though it did not stop the bill from passing with a wide majority.

Federal trans-sensitive policies on the placement of inmates in prison and airport screening procedures

26 “Complaint for Declaratory and Injunctive Relief” American Civil Liberties Union. 24 April 2018; “Complaint for Declaratory and Injunctive Relief” Lambda Legal. 29 August 2017; “Complaint for Declaratory and Injunctive Relief” National Center for Lesbian Rights. 9 August 2017.
27 Samuel Garrett-Pate “U.S. District Court Denies Motion To Dissolve Nationwide Injunction Blocking Transgender Military Ban In Stockman v. Trump”. 18 September 2018.
31 “Texas governor says ‘bathroom bill’ is no longer a priority” NBC News. 1 October 2018.
33 Sydney Brownstone “For the Second Year in a Row, Anti-Trans Activists Fail to Turn in Signatures for Their Ballot Measure” The Stranger. 7 July 2017.
34 Samantha Allen “Alaska Voters Latest to Reject an Anti-Transgender Law” Daily Beast. 6 April 2018.
40 Samantha Allen, “This Could be the First Transgender Rights Case the Supreme Court Hears” The Daily Beast. 23 November 2018.
represented additional victories for the trans community in Canada.43

**Pushback in sex education**

Though Canada’s federal government has taken strides towards realizing LGBTQ equality in recent years, the country has also experienced efforts on the sub-national level to hamper progress. In July 2018, the government of Ontario cancelled a 2015 sex education curriculum that taught children about different sexual and gender identities after objections from religious groups.44 Just a few months later, the Ontario government once again angered LGBTQ and human rights groups by passing a non-binding resolution supporting establishing a rigid definition of gender and dismissing gender identity theory as “unscientific, liberal ideology”.45

“Gender identity is recognized and protected as a human right in Ontario and under the Canadian Human Rights Act and the Criminal Code,” ILGA co-Secretary General and Egale Executive Director Helen Kennedy pointed out. “It is protected for a reason. Trans people, and especially young trans and non-binary people, face a significant amount of discrimination on a daily basis.”46

**Protections from discrimination**

**Protection from SOGIE-based discrimination**

Protections from discrimination are indispensable to guaranteeing LGBTQ individuals the same rights to work, housing, family, and participation in civic life as their heterosexual counterparts. Though federal law in Canada provides many of these protections, provinces sometimes enact human rights laws to fill gaps left in federal protections. In 2017, the Canadian provinces of Nunavut and Yukon approved bills that expand non-discrimination provisions to encompass gender identity and gender expression.47 The bill passed in Yukon also allowed changing gender on a birth certificate without first undergoing gender-confirming surgery and gives citizens the option of recording their gender as other than male or female on government documents.48

As the US does not currently have federal legislation protecting LGBTQ persons from discrimination in vital areas like work and housing, state laws are the only recourse available to many LGBTQ Americans. Currently, just under half (48%) of the population in the United States is protected from discrimination at work.49 The situation improved slightly over the past two years, as bans on SOGI discrimination in different contexts were passed in a number of states across the US. The governors of Virginia, New Hampshire, and California signed into law bills banning discrimination based on sexual orientation and gender identity in the provision of state services,50 in employment, housing and public spaces,51 and in long-term care facilities for the elderly,52 respectively.

Though New York State already has strong protections on the book, the Governor went as far as to sign an executive order banning state agencies and authorities from doing business with companies that tolerate discrimination.53 Finally, during the November midterms, voters in Massachusetts made history when they voted to uphold a state law forbidding discrimination based on gender identity in public places, making it the first state to uphold trans protections on a standalone ballot measure.54

"Conversion therapy" bans

Vancouver, British Columbia became the first Canadian city to ban conversion therapy in a

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45 Alison Thornton “Harmful ‘Gender Identity’ Resolution Passed by Ontario Party” Human Rights Watch. 21 November 2018.
49 “State Non-Discrimination Laws”, Movement Advancement Project (MAP) Website.
53 “New York State - Governor Cuomo Signs Executive Order Banning All State Agencies and Authorities from Doing Business with Companies that Promote or Tolerate Discrimination” Office of Governor Andrew M. Cuomo. 4 February 2018.
54 “Historic Victory: Massachusetts Voters Uphold Transgender Rights” Freedom for all Americans. 6 November 2018.
unanimous vote in June 2018, while a similar ban was enacted in the province of Nova Scotia just a couple months later. The ban passed in Nova Scotia applies not only to health professionals, but to people “in positions of trust or authority” more generally.

Seven more states in the US were added to the growing list of states that ban conversion therapy: New Mexico, Rhode Island, Washington, Maryland, Hawaii, New Hampshire, and Delaware. Similar bans were enacted in New York City and Milwaukee (Wisconsin). On the federal level, Democratic lawmakers advanced a bill that would ban conversion therapy under the pretense of consumer fraud.

Conversion therapy bans continue to face strong opposition from religious communities in the US. The majority of state bans on conversion therapies apply only to licensed healthcare providers, meaning unlicensed religious leaders or advisors can still practice. A California lawmaker attempted to close this loophole by introducing a bill that would ban the practice for both minors and adults and applied to any commercially-available conversion therapy. However, the bill was withdrawn after strong pushback from conservative religious groups, who argued that the broad language used in the bill infringed on their right to provide “therapy” to adults who come to them looking to change their sexual orientation. Though the bill would have only applied to cases where conversion therapy was being sold as a “service”, and not to counselling provided free-of-charge, faith leaders pushed the narrative that the bill, “could even be used to ban the Bible or other printed materials.”

A recent study by the Williams Institute has shown that approximately 698,000 LGBT adults in the US have received “conversion therapy” at some point in their lives and estimates that 20,000 LGBT youth aged 13 to 17 will be subjected to such harmful treatments from a licensed healthcare professional before the age of 18.

Protection of intersex people

In 2017, Lambda Legal asked a US federal court to reopen the case of Dana Zzyym, an intersex activist whose request for an accurate passport, without a male or female gender marker, was rejected by the State Department for the second time. In September 2018, the court ruled the US State Department could not deny Zzyym a passport.

A few months prior, the California Senate approved a resolution calling on medical professionals to delay unnecessary surgery on intersex infants until they reach an age where they’re able to give their consent. The resolution makes California the first state to endorse the position that non-consensual, cosmetic genital ‘normalising’ surgery on intersex kids should only be an option when a child is old enough to participate in the decision.

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55 Craig Takeuchi “Vancouver becomes first Canadian city to ban anti-LGBT conversion therapy.” Straight. 6 June 2018.
57 Allison Turner “Rhode Island Legislature Sends Bill to Protect Youth from “Conversion Therapy” to Governor’s Desk” Human Rights Campaign. 29 June 2017.
60 “Hawaii becomes 12th state to ban gay conversion therapy for minors” Hawaii News Now. 27 August 2018.
64 Mary Spicuzza “Therapy to change a child’s sexual orientation will be banned in Milwaukee” Journal Sentinel. 27 March 2018.
65 Dominic Holden “Democrats are taking another shot at protecting LGBT kids from so-called cures” BuzzFeed News. 25 April 2017.
66 Alexei Koseff “Gay conversion therapy bill dropped by California lawmaker.” Sacramento Bee. 31 August 2018.
67 Melanie Mason, “California lawmaker shelves bill to ban paid ‘gay conversion therapy’ for adults” Los Angeles Times. 31 August 2018.
69 “State Department Again Denies Intersex Citizen Passport, Even After Federal Court Tells It To Reconsider Policy” Lambda Legal. 26 June 2017.
71 “California: Resolution Affirms Intersex Rights” Human Rights Watch. 28 August 2018.
Legal Gender Recognition (LGR)

The ability to update one’s gender on identity documents has a profound impact on trans people's quality of life. Without these documents, everyday interactions like going through airport security, or checking into a hotel, or applying for credit can, at best, be uncomfortable and, at worst, fuel instances of hate, discrimination and even violence.

Achievements in legal gender recognition have been made on the local, state, and federal levels in Canada over the past two years. The governments of Newfoundland and Labrador73 and British Columbia74 amended their policies to allow people who do not identify as male or female to choose the gender marker ‘X’ on their state-issued IDs. Similarly, the Government of Canada announced in August 2017 that it would begin working to implement an ‘X’ gender marker in Canadian passports, and other documents issued by its immigration department.75

In the US, state governments in Oregon,76 Washington,77 and Minnesota,78 in addition to New York City,79 instituted policies allowing people who don’t identify exclusively as male or female to choose ‘X’ as their gender marker on government-issued IDs. Trans women in the states of Idaho80 and Kansas81 filed lawsuits challenging the states’ bans on updating birth certificates to correctly reflect a person’s gender identity. Though the Kansas case is ongoing, a judge in Idaho ruled in favour of the plaintiff and overturned the state’s ban.82

Conclusion

In the US, the previous years of legal battles over discrimination protections and religious freedom have exemplified the tension between progress and pushback, and set the stage for what will likely be extremely impactful and long-lasting court decisions to come. The debate over whether SOGIE are protected classes comes down to interpretation of Title IX of the Civil Rights Code of 1967; since 2017, at least two federal courts have ruled in favour of plaintiffs in three separate workplace discrimination cases where the plaintiffs were fired for their sexual orientation.83 Despite these rulings, the Trump Administration, and Republicans at large, continue to argue that the term “sex” refers strictly to gender.

Similarly, whether anti-LGBT discrimination can be carried out as a protected form of free speech under religious freedom is a question that will undoubtedly find its way before the Supreme Court, and unlike the Masterpiece Cake case, a definitive ruling on the topic will have to be made. In both cases, the Supreme Court, now with two Trump nominees, has the potential to issue rulings that could adversely impact an entire generation of LGBTQ people in the US.

Outside the courts and on the societal level, the movement remains strong: US midterm elections in November 2018 delivered wins to more than 150 LGBTI candidates at federal, state and local levels; the most of any US election. And though Canada has seen some pushback on the subnational level, its federal government has proven to be a strong ally to the LGBTQ community, doing more to make up for its past wrongs than any other country before. While it’s imperative to remain vigilant and guard against rising attempts at regression, recent years are a testament to the persistence and resilience of the LGBTQ communities of Canada and the US.

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78 Paul Walsh “Minnesota now offers ‘X’ for gender option on driver’s licenses” StarTribune. 3 October 2018.
82 Nico Lang “Idaho Will Finally Allow Trans People to Change Birth Certificates Following Court Ruling” INFO. 6 March 2018.
Lights and Shadows in a Vast Region

Various authors. Introduction by Daryl Yang.

As the essays in this section reveal, the developments in SOGIE issues in Asia have been uneven. While some states shine brightly as beacons of hope, others have regressed into the shadows of intolerance. Nevertheless, it is anticipated that it is only a matter of time before the flames of change will spread across land and sea to reach those awaiting the arrival of freedom and equality through the tireless work of activists and allies.

Firstly, India, Nepal, Thailand, Vietnam and the Philippines stand out as the beacons of hope in the region. As Shakawat noted in his essay on South Asia, the repeal of Section 377 of the Indian Penal Code is perhaps “the most historic event to take place” in recent memory. Nepal’s Supreme Court similarly issued a decision that enshrined equality and non-discrimination on the basis of SOGIE. The essay on Southeast Asia discusses the encouraging progress in the three ASEAN countries in terms of the potential legalisation of same-sex marriage and stronger legal protections for sexual and gender minorities. The triumph at the Indian Supreme Court has emboldened activists in other former British colonies to fortify their efforts to repeal the same laws in their countries. There are two ongoing constitutional challenges in Singapore over Section 377A of the Singapore Penal Code while activists in Malaysia, Sri Lanka and Myanmar have become increasingly vocal and visible following the Indian decision.

These encouraging developments stand in stark contrast to the regression seen in Indonesia and most of continental Asia, especially Central Asia and the Middle East, a likely result of the growing religious fundamentalism in those countries. A similar trend can be observed in Hong Kong, South Korea and Taiwan as described in Minwoo Jung’s piece, where Christian conservative groups have become increasingly hostile in campaigning against SOGIE equality.

Despite these setbacks, the essays in this section also reveal the resilience and resistance of activists and SOGIE minorities. A key challenge faced by those championing SOGIE equality however is the lack of protections for their safety and rights as many human rights defenders have been subject to violence from both state organs and citizen vigilantes. This highlights the importance of an intersectional approach to human rights, where respect for the rights of SOGIE communities can be realised only with the entrenchment of strong democratic institutions founded on the rule of law.

While the outlook may seem bleak for Asia currently, it is hoped that things will gradually improve across the diverse societies in Asia as the hope and courage of activists and allies continue to reverberate through the continent.

A Mixed Report Card for South East Asia

By Lloyd Nicholas Vergara and Zach ZhenHe Tan.

Given the political and societal diversity of South East Asia, the report card for the region is mixed. In certain countries, progress appears ascendant. In Thailand, the military junta cabinet approved a bill...
in December 2018 that would legalize same-sex civil unions. With an election likely to be called this year, the ultimate fate of the bill will be in the hands of whoever claims electoral victory and attains control of the Thai legislature.

There is also hope in Vietnam, where the government is contemplating legal protections for transgender people. As stated by a government spokesperson, "the bill stipulates how to identify a person whose gender identity is different from their assigned sex at birth through psychological evaluations." It is expected that the bill would improve healthcare access for transgender individuals in Vietnam.

In the Philippines, the Department of Education, on June 29, 2017, issued its Gender-Responsive Basic Education Policy, which broadens the understanding of "gender" to include relations between same-sex partners, gender awareness, gender-based violence, gender-based discrimination, gender expression, and gender identity. On the judicial front, the Philippine Supreme Court heard, on June 19, 2018, oral arguments over a petition to legalize same-sex marriage, currently outlawed under the Family Code. The petition is still unresolved by the Supreme Court.

Despite this progress, significant portions of the region still remain unfriendly terrain for SOGIE issues. Still in the Philippines, the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao was signed into law in July 2018, empowering the Bangsamoro Parliament to enact Shari’ah laws on minor criminal offenses. There is potential that this power could be used to enact laws against LGBTQ Muslim citizens.

Meanwhile, the Indonesian Province of Aceh has begun enforcing the Aceh Islamic Criminal Code (Qanun Jinayat), which punishes same-sex sexual acts with 100 lashes. In May 2017, two men were publicly implicated with 83 lashes each for allegedly engaging in gay sex. In July 2018, another two men were publicly lashed. Separately in January 2018, police officers in North Aceh arrested 12 transgender people, forcefully cutting their hair and shutting down the beauty salons where they worked. They were later released without being charged.

Indonesia’s Pornography Law, which includes "bodily movements" in its coverage and imposes heavy fines as well as long prison terms, has also been used to target LGBTQ people. In April 2017, 14 men, who were occupying two hotel rooms in Surabaya, were raided for pornographic activities. In May 2017, police raided a club in Jakarta and detained 141 men also for alleged pornographic activities. A small respite came when, in December 2017, the Indonesian Constitutional Court, voting five-to-four, rejected the petition filed by the Family Love Alliance to make gay sex and sex outside marriage illegal. The court held that it was not its role to criminalize private behaviour or to usurp parliament by imposing laws on it.

In Malaysia, the mood has been one marked by immense disappointment. In May 2018, a watershed election saw the first regime change in decades, one led by a diverse coalition that

8. Ibid., paragraphs d), e), f), i), and k).
included both youths and progressives. However, this change has not translated into progress on SOGIE issues. From the top of the house, the new Prime Minister has expressly rejected “LGBT and same-sex marriage” as “things only meant for the West.” This anti-SOGIE rhetoric is reflected throughout the rest of government and society. In a series of alarming events in August 2018, authorities cracked down on a popular gay nightspot in the capital city of Kuala Lumpur, a sharia court ordered a lesbian couple to be caned for same-sex intimacy, and a trans woman was brutally beaten on the streets while a crowd watched on.

In Singapore, despite the lack of similar political headwinds, SOGIE individuals still face significant barriers to progress. In its most recent review of the country’s criminal laws, the Singapore government reaffirmed its position not to repeal Section 377A, the colonial era law that has since become the symbol of anti-LGBT discrimination in the city-state. Notwithstanding, a flicker of hope broke through when the Singapore Court of Appeal issued a landmark decision allowing a gay man’s bid to become the legal parent of a child he fathered through an overseas surrogacy. However, in a mark of the cautious and conservative approach that the state takes toward SOGIE issues, the decision was narrowly framed to avoid any broad pronouncements on the rights of gay couples. Similarly, in response to this judgment, the executive and legislative branches have expressed an intention to review current laws in a bid to strengthen and reinforce what they believe to be a “public policy” against “non-traditional” family units.

In Myanmar, Section 377 - the same colonial-era law that was recently struck down in India - continues to be selectively enforced, with the media reporting at least two instances where charges have been filed against gay individuals. In spite of this, LGBT individuals and allies continue to push back on harmful media narratives and fight to be seen and accepted in civil society.

As for Cambodia, Brunei, Laos, and Timor Leste, there are no recent reports of government discrimination based on sexual orientation in employment, citizenship, access to education, or health care.

Challenges and Opportunities in South Korea, Taiwan, Hong Kong, and Japan

By Minwoo Jung

The mobilization of anti-rights groups and their political impact in many parts of East Asia have gotten much stronger in the past years, spawning an organized resistance against SOGIE rights. The new democratic governments in the region, namely those of Taiwan and South Korea, were both inaugurated with great expectations in terms of human rights protection and promotion yet have been compromised the fundamental rights of marginalized groups by allowing anti-rights practices to flourish. Despite these growing challenges, there have been crucial achievements in the areas of marriage equality and anti-discrimination in the region as well.

South Korea experienced a monumental leadership change in May 2017 soon after the impeachment of former President Park Geun-hye. Despite the expectations from civil society to advocate for the protection of various marginalized groups including sexual minorities, newly elected President Moon Jae-in, a former human rights lawyer, has done little to defend the fundamental rights of minority groups, making political decisions that endorse the growing hatred and intolerance often rooted in conservative religious grounds.

By the time around President Moon’s election, it was found that the South Korean army had targeted dozens of soldiers in a campaign against gay men in the military, and around 20 soldiers had been tracked down on gay dating apps, interrogated, and put on trial due to the...
discriminatory provision in the Military Criminal Code.\textsuperscript{28} Article 92(6) of the Military Criminal Code outlaws “sodomy or other disgraceful conduct,” which prescribes up to two years in prison and disgraceful discharge for servicemen. Despite the domestic and international pressure from the National Human Rights Commission of Korea and the United Nations, the Constitutional Court upheld the provision’s constitutionality in July 2016.\textsuperscript{29}

State-sanctioned discrimination feeds the growing public hostility against sexual minorities. In the past two years, South Korea observed an important growth of pride parades and festivals across the peninsula beyond the capital city of Seoul, from the port city Incheon to the southern island Jeju. The growth of pride events, however, also triggered increased pushbacks by conservative religious groups. Many of pride parades in recent years faced intensifying counter demonstration and clashes by anti-rights protestors. The first pride parade in Incheon in September 2018, for example, was severely delayed as more than a thousand conservative Christian demonstrators blocked, and then attacked the pride participants both verbally and physically under police incompetence.\textsuperscript{30}

A decade-long effort of SOGIE groups to legislate anti-discrimination acts to protect people from sexuality and gender-based violence has been constantly blocked by conservative backlash and their successful lobby against SOGIE rights.

On May 24, 2017 marks an important milestone of SOGIE rights in the region as Taiwan’s Constitutional Court ruled in favor of marriage equality. The ruling stated that the current Civil Code is unconstitutional for discriminating against same-sex couples and gave lawmakers two years to legislate before same-sex marriage became automatically legal.\textsuperscript{31}

However, inaction from the ruling Democratic Progressive Party, despite campaigning on a promise of marriage equality in the 2016 election, allowed anti-rights groups to utilize the new referendum law to petition for referendum against marriage equality and SOGIE-inclusive gender equality education. In turn, marriage equality groups also launched counter referendum petition. Following a well-funded campaign of misinformation and scaremongering by anti-rights religious groups, Taiwan’s voters opted for a separate law to legalize same-sex unions rather than to change the Civil Code, denounced by the SOGIE advocates as failing to offer full equality.\textsuperscript{32} The majority also voted against the implementation of Gender Equity Education Act, the legislation of which promotes SOGIE-inclusive education in schools. Taiwan’s Ministry of Justice is now working on a same-sex marriage draft bill in response to results of the referendum, which will be presented to the Legislative Yuan before 1 March 2019.\textsuperscript{33}

Despite the setback in the anti-equality referendum results, nearly 4,000 same-sex couples have registered their partnerships in their municipalities and counties since 2015.\textsuperscript{34}

In Hong Kong, even though the anti-rights movements spread hatred and intolerance within the region, important achievements have also been made. In July 2018, at the end of a three-year long legal battle, Hong Kong’s Court of Final Appeal handed down a landmark ruling in favor of a British lesbian expatriate, requiring immigration authorities to recognize overseas same-sex marriages when issuing spousal visas previously available only to heterosexual couples.\textsuperscript{35} However, the city’s definition of marriage “between one man and one woman” remains unchanged, and same-sex partnerships are still not recognized for those born and raised in Hong Kong. There are a few ongoing legal challenges relating to spousal tax benefits and equal access to public housing.\textsuperscript{36}

The region has also observed a significant breakthrough in terms of anti-discrimination in Japan. In October 2018, the Tokyo Metropolitan Assembly passed an ordinance that bans discriminatory treatment and hate speech based on sexual orientation and gender identity. The

\begin{itemize}
  \item 28 "Soldier sentenced to prison for having sex with another soldier", Hankyoreh, 25 May 2017.
  \item 29 "Constitutional Court upholds military’s ban on sodomy", Hankyoreh, 4 August 2016.
  \item 30 "Queer festival severely delayed by violent anti-gay protests in Korean port city", The Korea Herald, 9 September 2018.
  \item 31 "Taiwan’s constitutional court rules in favor of same-sex marriage," Taiwan News, 25 May 2017.
  \item 32 "Same-sex marriage referendums: Taiwan Civil Code may remain unchanged," Taiwan News, 24 November 2018.
  \item 33 "Taiwan’s justice ministry ‘brainstorming’ on same-sex marriage bill," Taiwan News, 6 December 2018.
  \item 34 "Taiwan has registered almost 4,000 same-sex couples," Taiwan News, 8 December 2018.
  \item 35 "Giant step forward for equality‘ in Hong Kong as same-sex couples win rights to spousal visas in Court of Final Appeal," South China Morning Post, 5 July 2018.
  \item 36 "Gay civil servant will take case to Hong Kong’s top court in final bid to win spousal benefits for husband," South China Morning Post, 30 July 2018.; “Married gay man sues Hong Kong government over rejected public housing application," South China Morning Post, 23 November 2018.
\end{itemize}
ordinance, which is scheduled to take effect in April 2019, is aimed at realizing the Olympic Charter’s anti-discrimination standards ahead of hosting the 2020 Summer Olympics and Paralympics. The city-wide act is designed to support same-sex couples’ better access to hospital visits and shared renting of apartments. It also commits the city government to establish LGBT consultation centres and conduct public education about SOGIE rights. Moreover, the legislation is to regulate hateful rhetoric in public space and online. Despite this promising step forward, Japan still has no national-level laws to protect sexual minorities from discrimination and does not grant legal recognition to same-sex couples, though increasing number of cities and districts have begun to offer same-sex partnership registration since 2015 without legal weight.

The People’s Republic of China, Macau and Mongolia
By Ripley Wang.

First Chinese provision to ever include “sexual orientation” explicitly
It is noteworthy that The Specification on Information Security Technology and Personal Information Security—enacted by China’s National Information Security Standardization Technical Committee in May 2018 (GB/T 35273-2017)—has included “sexual orientation” into the scope of protection in terms of personal information. This is the first time that the term “sexual orientation” is clearly and explicitly spelled out in the national regulations and provisions and a positive step towards the respect of the right to privacy.

Cases regarding employment discrimination
In Mr. C’s case (a lawsuit brought by a Chinese trans man before local courts in south-west China), a final verdict was issued in July 2017. The court again ruled in favor of the plaintiff for the reason that the employer/defendant terminated the contract without a legitimate reason and that infringed the plaintiff’s right to equal employment. The court did not support the plaintiff’s appeal that the wrongful dismissal was de facto a discrimination on the basis of his gender identity and gender expression. However, it made a strong and clear statement in the landmark verdict, saying that “an individual’s personality right should be respected regardless of their gender identity and gender expression” and that “no one should be subject to discrimination on the grounds of gender identity and gender expression in the employment process.”

In September 2018, a gay man, named Mingjue, brought a case to the labour arbitration commission in Qingdao City, seeking a legal remedy for employment discrimination against his employer. Mingjue claimed that he was fired by his employer—a nursery school located in the city of Qingdao—after his sexual orientation was exposed by the parent of a student. The decision issued by the Arbitration Tribunal of Labour Disputes on November 13, 2018, simply ordered compensation for violation of contract provisions stipulated in the Labor Law but did not find wrongful termination and discrimination on the grounds of sexual orientation. In January 2019, Mingjue successfully filed the case to a District Court in Qingdao City, referring to the dispute of general personality right as the cause of civil case. The trial is expected to begin in February 2019.

With regard to the discussions on the Employment Non-discrimination Law, after the consultation, there is still no indication if and when this proposal was adopted and planned to make into law, judging from the NPC Standing Committee Plan for Legislation in 2017 and 2018.

Media coverage and censorship
As it relates to freedom of expression issues, the 2017 Media Monitoring Report on SOGIE Issues published by the China Rainbow Media Award indicates that the amount of media coverage made by the Chinese mainstream media was continuously declining during the recent years. Comparing to 867 reports in 2015, and 710 pieces of SOGIE-related news articles in 2016, only 447 news reports were found and documented in 2017. Regarding the GIE-related issues, the monitoring report finds that the proportion of news articles on

37 “Tokyo adopts ordinance banning discrimination against LGBT community”, The Japan Times, 8 October 2018.
38 The Specification is not a mandatory regulation, but it is of great importance to China’s Cyber Security Law and the protection of personal information in China. For more information see: Barbara Li, “Personal information security specification”, Norton Rose Fullbright Website, January 2019.
39 “Chinese court says employers should not treat workers differently based on gender identity”, Hong Kong Free Press, 8 February 2018.
transgender people is increasing. The invisible and unrestricted censorship on the mainstream and social media, in general, makes some impacts on the decline of the number of news reports on SOGIE issues.

On June 30, 2017, the China Netcasting Services Association, an organization supervised by the State Administration of Radio, Film, and Television (SAPPRTFT), issued a general rule which banning depictions of same-sex intimacy from online video and audio platforms. On November 25, 2017, Fan Chunlin, a man from Shanghai, filed a lawsuit with Beijing No. 1 Intermediate People’s Court demanding SAPPRTFT clarify to the policy basis for the regulation. The initial hearing was held on February 23, 2018, but thus far, no decision has been issued.

Furthermore, on April 13, 2018, Sina Weibo, one of China’s biggest social media companies, initiated a campaign to “clean up” the platform in accordance with China’s Cybersecurity Law, and the gay-themed content were targeted along with other contents related to violence and sex. The instance provoked intense opposition and outcry from the LGBT community and advocates. On April 16, the decision to censor gay content was reversed due to the public pressure. On May 9, 2018, Mango TV, a video-streaming site affiliated to one of China’s most watched channels, Hunan TV, blacked out the performance of Ireland’s Ryan O’Saughnessey, during which two male dancers depicted a fraught relationship while airing the Eurovision song contest semi-final.

LGBT human rights defenders

After the new Law on the Management of the Activities of Overseas NGOs within China was enacted in January 2017, apart from the challenges concerning funding and fundraising, Chinese LGBT human rights defenders and their organizations have also been experiencing persistent stress, harassment, and intimidation from the relevant police officers. Moreover, these challenges have largely impeded their capacities to carry out their work and activities.

On January 8, 2018, the Civil Affairs Bureau of Guangzhou Municipality published a list of suspected illegal social organizations that were not registered with the civil affairs department, and two of them were SOGIE-related organizations or groups, namely Guangzhou Gender and Sexuality Education Centre and Rainbow Group of Guangzhou Universities. Therefore, these two organizations were forcibly closed and cease their work. China’s laws and policies allow any individuals to register social organizations, for example, the Regulation on the Administration of Registration of Social Organizations sets forth clear requirements for NGO registration. In practice, LGBT NGOs are usually rejected from registration even if they provide sufficient documents following the relevant laws and regulations.

Trans rights in China

Trans individuals are especially vulnerable to “conversion therapy” as trans identities are still on the list of mental illness of the 2001 edition of Chinese Classification of Mental Disorders. Based on that classification, the current regulations regarding gender affirmation surgery require psychiatric or psychological treatment for at least one year in order to apply for sex reassignment surgeries, resulting in “unwanted conversion therapy” being imposed on transgender people.

A 2017 survey report released by a Chinese NGO on transgender people reveals that 11.9% out of 1,640 respondents had been coerced to receive these types of “conversion therapy” by their parents or guardians.
In terms of Legal Gender Recognition, trans people have the right to access sex reassignment surgery (available only to people over twenty years of age), and to change their gender marker on identity documents including citizenship ID cards and household registrations in China after undergoing surgery.

In 2017, the National Health and Family Planning Commission issued a new Procedural Management Standard on Sex Reassignment Surgery as well as a Quality Control Index of Clinical Application of Sex Reassignment Surgery, therefore repealing the old Standards. Furthermore, following official written replies issued by the Ministry of Public Security and the Bureau of Public Security, citizens have the right to change their gender marker on citizenship ID cards and household registrations under the condition of completing full sex reassignment surgery. However, there are still great difficulties for trans persons to change their gender marker on various other official documents, including university diplomas, and other academic and vocational certificates.

**Macau**

Laws against employment discrimination on SOGIE grounds exist in Macau. However, the majority of the LGBT people are unaware of such anti-discrimination protection in Macau, according to a research report released by Rainbow of Macau on 12 May 2016.

Same-sex marriage is not recognized in Macau and same-sex spouses are not eligible to hold visas as dependents under Macau law. In August 2018, Public Security Police Bureau of Macau admitted in an interview that four applications had been received in total regarding same-sex spouse visa, but none of them have been approved.

**Mongolia**

On July 1, 2017, the much-anticipated new Criminal Code finally came into force, outlawing discrimination of any kind, with the protected grounds including sexual orientation, gender identity. Despite the availability of protection of anti-discrimination legislation, LGBT people still report to face discrimination and violence both at home and in public on a daily basis. In November 2017, a transgender woman was arrested for being drunk and disorderly. She claimed that an officer pinned her to the floor and forcibly stripped her while in police custody. The police division responsible did not find the officer guilty of any wrongdoing. The Mongolia LGBT Centre helped the alleged victim file a complaint with the National Human Rights Commission. It is unknown if any disciplinary action has been taken against this officer.

As for Legal Gender Recognition for trans people, article 20(1) of the 2009 revised Civil Registration Law permits persons who have had gender reassignment surgery to have their birth certificate, and national identity card reissued to reflect the change. The LGBT Center of Mongolia reported to the 63rd CEDAW session 2016 that transgender people received minimal medical service and support from the local professionals to have the surgery because of the incapacity of the medical specialists. Transgender persons need to obtain gender reassignment surgery outside the country.

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49 Sex affirmation surgery is called by the Chinese government as sex reassignment surgery (SRS). In China, transgender persons are required to undergo these often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.


55 Law No. 7/2008, article 6(2).


58 *Criminal Code of Mongolia* (as amended in 2015), article 14(1).

Current State of the Law on SOGIE in Central Asia

By Zhanar Sekerbayeva and Syinat Sultanalieva.

Located in between China, Russia and the Middle East, the five countries of Central Asia, while different in their economic development and geopolitical positinalities, are very similar in their attitude to the rights of lesbian, gay, bisexual, trans people. All of them have ratified key international treaties on equality and non-discrimination and regularly present their state reports to relevant bodies, but they all fall short in meeting international standards in their implementation, and in many cases, go in direct opposition to them.

For example, in Kazakhstan in 2018 the Ministry of Information and Communication developed two draft bylaws titled the “Instruction on Classification of Informational Products” and “Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development”. The original draft bylaws declared same-sex acts a “perversion” and prohibited the dissemination of any information about LGBTIQ to minors under the age of 18. If they had been adopted in their original wording, public information related to LGBTIQ would have been banned from open access in printed media, internet, social networks and others. Additionally, the text of the draft bylaw on “Methodology (…)” contained inaccurate and stereotypical representation of LGBT people. In particular, paragraph 5 of the draft indicated: “Information prohibited for distribution among children: a) encouraging children to commit acts that threaten their lives and/or health, including harm to their health, suicide, demonstration of the culture of the LGBT society (LGBT community, gay community, also LGBT community and gay community (from English LGBT community (gay community)) - a community of lesbian, gay, bisexual and transgender (LGBT) people, united by common interests, problems and goals).”

According to the Kazakhstani Law on Public Health, trans people in Kazakhstan must undergo extensive physical and psychological examination, hormonal treatment, sterilization and sex reassignment surgeries to be able to submit their ID documents for gender marker change. However, thanks to advocacy efforts on the part of Alma-TQ initiative group of transgender people in Kazakhstan, a pool of ally medical specialists is willing to forgo some of these requirements in order to simplify the procedure. This is informal as of yet, although efforts are continuing to develop an official protocol (similar to the one developed in Kyrgyzstan, see below) which would simplify the procedure further.

The bylaws have now entered into force, however thanks to active advocacy by local LGBTQ groups in Kazakhstan, with support from foreign embassies, they do not contain provisions on “homosexual propaganda.”

Until the constitutional referendum of 2016, Kyrgyzstan had a provision in its Constitution on direct applicability and precedence of international treaties and standards in their implementation, which would simplify the procedure even further.

Bylaws are secondary to laws, as the latter are passed by the Parliament, while the former are approved by executive bodies such as ministries and departments, and as such do not require public consultation. The bylaws are usually developed with an aim to qualify the implementation of a certain law.

Zhanar Sekerbayeva is the co-founder of the Kazakhstani Feminist Initiative “Feminita”. She is a feminist, powerlifter and poet. In her work she aims at expanding the concept of ‘gender’ in the general public discourse through activism by mainstreaming questions of gender identity in the academia. She graduated with Summa Cum Laude from the ‘Gumilev’ Eurasian National University in 2005, as well as from the ‘Lomonosov’ Moscow State University in 2009. In 2014 she enrolled at the European Humanities University (Lithuania) MA program in Sociology with focus on gender and culture, continuing now at the University of Tsukuba, Japan towards a PhD degree. Her doctoral dissertation focuses on the processes of regulating identities and “normalization” of transgender people in Kazakhstan and Japan, where she is interested in understanding how the gatekeeping practices of healthcare professionals may or may not be shaping the gender identities of transgender individuals as they seek legal affirmation. Her latest publication is a chapter in the “Women, Sport and Exercise in the Asia-Pacific Region: Domination, Resistance, Accommodation” edited by Molnar G., Sara N. Amin, Yoko Kanemasu, as part of the Routledge Research in Sports, Culture and Society series.

Syinat Sultanalieva is a queer-feminist activist and researcher from Kyrgyzstan, currently enrolled in a PhD program at the University of Tsukuba, Japan. She has started her activist work in late 2007 as a staff member of LGBT organization “Labrys” in Kyrgyzstan, where she was specifically interested in raising awareness and mainstreaming LGBT human rights both on national and international levels. As part of her advocacy work, she has prepared and presented alternative reports to the UN treaty bodies (CEDAW, UPR, CCPR) on the situation of LGBT people in Kyrgyzstan, Uzbekistan and Turkmenistan. She has since then moved back into the academia, where she has focused on engaging with feminism and LGBT issues from a Critical Theory point of view ever since.

Bylaws are secondary to laws, as the latter are passed by the Parliament, while the former are approved by executive bodies such as ministries and departments, and as such do not require public consultation. The bylaws are usually developed with an aim to qualify the implementation of a certain law.

Draft bylaw on “Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development”, para. 5.


"Подзаконный акт о запрете «пропаганды» не прошёл” (The bylaw to ban “propaganda” did not pass), Feminist Initiative “Feminita” Website, 14 January 2019.
human rights treaties, while its citizens had a right to seek justice in international human rights bodies. The reform, however, rescinded all of these obligations from the government of Kyrgyzstan. Moreover, a bill named “On the introduction of amendments into certain legislative acts of the Kyrgyz Republic”, registered on 6 May 2014, aimed to introduce a prohibition of distribution of any neutral or positive information about sexual orientation and gender identity in any public and private spaces (punishable by imprisonment of up to 1 year and heavy fines). The draft law passed both first and second readings in 2014 and 2015. However, after being sent back for further editions it has not re-appeared on the parliamentary agenda since. This does not mean, however, that the draft law was struck down, as it is still listed as an active bill on the website of the Kyrgyz Parliament.

One of the initiators of the draft Law, MP Narynbek Moldobaev said that if it were up to him “he would shoot all of the LGBT people in Kyrgyzstan on the main square”, while the other initiator, MP Torobai Zulpukarov, mentioned that: “Very often homosexuals try to get themselves the same rights as in Europe, for example, like adoption of children or same sex marriage. But in Kyrgyzstan this is impossible, it is against our traditions. I am against this and I think any public actions of LGBT should be prohibited”. This manual is a result of a decade of advocacy work conducted by the LGBT organization Labrys in Kyrgyzstan, which consisted of organising awareness raising and sensitization trainings for medical specialists, round tables with Ministry officials and study visits to Ukraine and the Netherlands for key members of the Working Group on lobbying of the manual.

**Same-sex sexual acts in Tajikistan were decriminalised in 1998, however this has not translated into equal rights and non-discrimination for LGBT people in the country. The Tajik police forces have been reported to have included “fighting against homosexuality” among their legally sanctioned duties to safeguard public order and morality. Local LGBT initiatives report about active work of the “moral police”, who were tasked with combating the “spread of homosexuality” throughout the country. Their actions include intimidation, arbitrary arrest, physical or sexual abuse, blackmailing by the police, all with complete impunity. There is no redress for violence perpetrated against LGBT people, who are further threatened by police at any attempt to report these cases.

**LGBT issues in Turkmenistan** and Uzbekistan are in a similar situation. Both countries still criminalise same-sex sexual acts between consenting male adults. In Turkmenistan under Article 135 of the Criminal Code it is punishable by imprisonment for a maximum of 2 years, and in Uzbekistan under Article 120 of the Criminal Code, for a maximum of 3 years. In Turkmenistan “homosexuality” is considered a mental disorder, so punishment may also include placement in psychiatric institutions for treatment. Neither of these countries have any provisions on female same-sex relations, although in Uzbekistan local groups have reported being detained and

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67 Draft Law “On introducing amendments into certain legislative acts of the Kyrgyz Republic, such as Criminal Code, Administrative Code, Laws «On peaceful assemblies» and «On mass media»”, Parliament of the Kyrgyz Republic Website.
69 “Ministry of Health Kyrgyzstan accepts protocol on transgender health”, Labrys Website, 4 September 2017.
70 “А геев попрошу оставить. За чем таджикские милиционеры ставят гомосексуалов на учет?”, Asia Plus, 3 November 2017.
71 International Partnership for Human Rights, “We just want to be who we are!” LGBT people in Tajikistan: Beaten, Raped and Exploited by Police (2017).
72 Ibid.
73 A documentary (“Turkmenistan: Forbidden Homosexuality”) based on the story of a gay man who suffered violence by the police in Turkmenistan was released in 2015.
74 For more information, see the entry for Uzbekistan in the “Criminalisation” section of this report.
Stories of Triumph and Resilience from South Asia
By Shakhawat Hossain Rajeeb.77

On May 19, 2017, Bangladesh’s elite Rapid Action Battalion (RAB) raided a private party and detained 28 young men on suspicion of engaging in “homosexual activities”.78 However, the detainees were later arrested under the Narcotics Act as the police allegedly recovered contraband drugs in their possession. The First Information Report (FIR) also mentioned recovering condoms and lubricating gel tubes as an evidence of the men’s will and preparation to engage in “unnatural activities”. Activists claimed the unprecedented crackdown was to please the religious extremists, who have been grown significantly under the government patronage.79

During the 3rd cycle of the Universal Period Review (UPR) held during the 39th session of the Human Rights Council (HRC) from 7 – 18 May 2018, Bangladesh received 11 recommendations – the highest so far – on LGBTI-related issues. The recommendations however did not enjoy the support of the Bangladesh delegates. Mr Shameem Ahsan, Permanent Representative of Bangladesh to the United Nations Office at Geneva, said that it was a religious, social, cultural, moral, and ethical issue in the country.80

In Bhutan, Tashi Tsheten, an activist from Rainbow Bhutan, in an interview said there is a renewed momentum and hope within Bhutan’s clandestine LGBTI community since the 2018 national election, which saw a center-left political party come into power. He claimed the LGBTI movement has gained significant momentum in recent years and has led to more public conversation around the issues. The international Day Against Homophobia, Biphobia and Transphobia was celebrated in 2018 for the third consecutive time and was widely reported in local media.81

According to Tsheten, for the first time ever, one of the political parties, BKP, included the rights of LGBTI people in their manifesto for the general election of 2018. A marriage bill with gender neutral pronoun was placed during the 2018 summer parliamentary session but has been deferred due to the election. And now with the new government in place, Tsheten and the community believes that the conversation around the bill will be revived.

Bhutan is scheduled for its Universal Periodic Review in April 2019 and the community has been lobbying to LGBTI issues on the agenda. They are hoping the new government to accept recommendations related to Sexual Orientation and Gender Identity (SOGI).

For India and much of the world, the most historic event to take place in recent time was the repeal of Indian Penal Code 377. Our colleague, Arvind Narrain, has more on the decriminalisation case in his essay featured in this report.

Since the decriminalization, there has been a surge of pro-LGBT events and campaigns across India. Most of the major cities saw the Pride events taking place in a larger scale and with wider participation. More than 15,000 people—the highest so far—participated in the Queer Azaadi Mumbai Pride Parade.82 Kolkata was the first city to have a Pride walk after the Supreme Court verdict soon followed by Delhi and Bengaluru. Decriminalisation also encouraged pride events for the first time in smaller cities such as Shillong.83

The Transgender Persons (Protection of Rights) Bill passed by the Indian parliament in December 2018 came under the fire of the very community that it sought to protect. Activists and civil society organizations have been protesting the bill claiming that it violates the Supreme Court’s landmark National Legal Services Authority judgment of

77 Shakhawat Hossain Rajeeb is a gay rights activist from Bangladesh, where he led the country’s first and largest platform of gay men, Boys of Bangladesh, for 13 years. Forced to exile due to threats and persecution, Rajeeb now lives in Stockholm and works with RFSL.
79 “Bangladesh crackdown on gay men is another gesture of capitulation to Islamist extremists”, Scroll.in, 29 May 2017.
81 “Social acceptance of LGBT community is growing in Bhutan”, BBS, 21 May 2018.
83 “After The Rain Comes The Rainbow: First Pride March In Shillong”, Feminism In India Website, 17 September 2018.
2014, which recognized the right of transgender persons to identify their own gender. 84

Soon after the 377 verdict, the High Court of India's southern state of Kerala on ruled in favour of a lesbian couple who wanted to live together. 85 In a similar move, the High court of New Delhi ordered police protection for a lesbian couple who feared threat to life by their parents as they had been in a romantic relationship for around one-and-a-half year and wished to live together as a same-sex couple. 86

In the Maldives, Yameen Rasheed, a prominent blogger and human rights defender, was found stabbed to death on 23 April 2017 outside his apartment building in Male. 87 He, in his blog, wrote extensively in support of secularism and actively acknowledged the existence of minorities, such as LGBTQI people and non-Muslims, in the Maldives. 88

In September 2017, the Supreme Court of Nepal issued a historic verdict stated that members of gender and sexual minority can get all the documents including citizenship and educational documents as per their gender identity. The court has also directed government officials to organize the orientation targeting gender and sexual minority. 89 However, Manisha Dhakal, Executive Director of Blue Diamond Society, said the new Citizenship Act fails to clarify the definition of transgender persons. In a recent statement, Joint-secretary of state management committee of the Parliament Sudarsan Khadka said the issue of transgender persons to identify their own gender.

Citizenship Act fails to clarify the definition of transgender persons.

In one of the most public demonstrations to date, members of the Sri Lankan LGBTQI+ community held a press conference to protest the derogatory remark of the country’s President Maithripala Sirisena against the LGBTQI people. 90 Earlier in a statement, the community said President Sirisena should be held responsible for any homophobic incidents that Sri Lankan citizens may experience in the coming days. 91 In October 2018, Saakya Rajawasan, who identified as a bisexual caused a public stir by exposing the homophobic attitude of her school in a public statement. 92 The outpour of public support for Saakya was unprecedented in Sri Lanka. 93

In a landmark ruling, the Supreme Court of Nepal ordered the Immigration Department to provide Non-Tourist Visa to an American national who married a Nepali woman in California, USA. 91

On May 5, 2018, the National Assembly of Pakistan passed the Transgender Persons (Protection of Rights) Bill, 2018 aimed at ensuring rights of transgender persons. 92 Earlier, in June 2017, Farzana Jan became the first citizen of Pakistan to carry a passport that allows its bearer to select a gender other than male or female. 93

Two members of Pakistani human rights organisation TransAction Pakistan: Transgender Community Alliance were brutally attacked in Peshawar. On 22 January 2018, trans rights activist Shama was sexually assaulted by nine men and on 17 January 2018, trans rights activist Sonia was shot and injured in Peshawar. They were both attacked for their human rights work. 94 Earlier in August 2017, a transgender person was shot dead by unknown men in Karachi. 95

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During the Universal Periodic Review of Sri Lanka in November 2017, the government noted the recommendations regarding the decriminalization of same-sex relations. However, the government accepted, six (6) recommendations to combat the discrimination faced by the LGBTIQ community. This was a welcome change in attitude, which was commended by the activists in the country.

In the Persian Gulf, Four States Still Impose the Death Penalty

By Nazeeca Saeed

The Persian Gulf states do no differentiate much from their neighbours in the Middle East and North Africa in their understanding and treatment of LGBT persons. In fact, criminalisation, arbitrary detention, social prejudice and hate speech in the media are common place in these countries.

In the United Arab Emirates (UAE), for example, article 356 of the Penal Code classifies as a crime the act of “crime of voluntary debasement”, established a penalty of a minimum sentence of one year imprisonment. According to Human Rights Watch, the courts of the UAE utilised this article to condemn and sentence persons for sexual acts outside of heterosexual marriage, including same-sex sexual acts. At the same time, some jurisdictions within the country’s federal system explicitly criminalise such acts, among them Abu Dhabi, where sexual acts “against nature” can be punished with up to 14 years imprisonment. In August 2017, two citizens from Singapore were arrested in a shopping centre and sentenced to one year in prison “for trying to look like women”. Later, an appeal’s court commuted the sentence to a fine and deportation.

In the Kingdom of Bahrain, the norms around public morality are utilised frequently to prosecute and detain LGBTI persons. Furthermore, the Bahraini parliament is currently debating a law to punish all men or women who publicly present themselves as “pretending to be the other sex”, or acting inappropriately, contrary to the moral and public customs of the Kingdom with a penalty of one-year imprisonment or a thousand dinar fine. According to the National Foundation of Human Rights in Bahrain, the proposal is characterised as being vague and flexible and is based on the appearance of the person and their resemblance to the other gender, without taking into account the physical and psychological aspects of each person.

In Saudi Arabia there are no written laws on sexual orientation or gender identity, but judges use unregulated Islamic precepts to prosecute suspected persons of having extramarital sexual relations, such as adultery and same-sex sexual acts. As Human Rights Watch affirms, if these types of relationships come about through digital media, judges and public prosecutors utilise further vague provisions contained in the Cyber Crime Law, which criminalises electronic activities that affect the “public order, religious values, public morality or the sanctity of private life”. According to the organisation, in February 2017, the Saudi police detained at least 35 people from Pakistan, some were transgender women and one of them died in police custody. The Saudi authorities said that she had died “of a heart attack”, relatives of the victim pointed to the body which showed sign of torture.

In Iraq, at least since the start of 2017, various persons perceived as gay were brutally and quickly executed extra-judicially in regions under the control of the Islamic State Organisation (Da’esh). The security forces of the organisation (Diwan al-Hesba) subjected the areas under their control to severe restrictions and penalties, including the execution of men accused of being gay, imposing the death penalty by
In Kuwait, in addition to the criminalisation of extramarital sexual relations in a broad manner, sexual relations between men are also explicitly criminalised with a penalty of up to 7 years in prison. In 2017, it was reported that Kuwait deported 76 men suspected of being gay. Also a report shows how the authorities detain trans-persons through a provision that was added to the criminal code in 2007 and prohibited “imitating the opposite sex”.  

In the Sultanate of Oman, the criminal code imposes a prison term of one to three years for having consensual sexual relations with same-sex partners and the Criminal Code of Qatar has it own with “instigating homosexuality”. Along with Qatar, the United Arab Emirates and Yemen could eventually apply the death penalty for same-sex sexual relations if they take the public stance that they are considered “harmful to society”. Even so, to date there are no records that this penalty has been imposed on LGBT persons in these countries.

In the Persian Gulf, LGBT persons in general hide their sexual orientation and non-conforming gender identity. Expressing them could put them at grave risk of violence and criminal prosecution, not only to themselves but their families too, who could also suffer rejection from society. For this reason, it is common for meeting places to be clandestine and hidden. Even so, these places are often subject to police raids that result in the arrest, public exposure and prosecution on charges against morality and violation of religious customs and teachings. At the same time, human rights institutions and associations do not include SOGI issues among their work.

Finally, it should be noted that the media in the Persian Gulf utilises pejorative and degradative terms to refer to LGBT persons, and also uses strong hate speech in its contents, making humiliating references in their ways of dressing and behaving.

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**LGBTI Activists Fight Denial and Erasure in the Middle East**

The author wishes to remain anonymous.

Recent years have seen some progress for LGBTI issues in the Middle East, though stories of government-sanctioned discrimination and censorship remain disappointingly common. On two separate occasions, Lebanese courts conceded that same-sex conduct should not be considered a criminal offense, though the legislature has yet to make any changes to the Penal Code provision used to persecute LGBT people.

In Syria and Iraq, the impending end to the Islamic State’s self-proclaimed caliphate comes as a relief to LGBT communities, though the future of their rights remains uncertain; both countries retain criminalizing provisions in law.

Over the past two years, LGBT families in Israel were faced with setbacks in their fight for equal rights with heterosexual families. In July 2017, the Israeli government opposed a petition submitted by an LGBT organization asking that same-sex and common-law couples be allowed to adopt. The Israeli Child Welfare Services responded by arguing that having same-sex parents would be a difficulty for a child due to societal prejudice, tacitly sanctioning and perpetuating societal prejudice towards LGBT people. During protests that followed the decision, at least ten persons were reportedly arrested.

The following month, the High Court of Justice rejected a petition made by the Israeli LGBT Association which demanded the state recognise marriage equality, expressing that amending the

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109 The Penal Code of Kuwait was enacted through Law No. 16 of 1960, Article 193: “Sexual consensual acts between men of consenting age (21+ years old) will be prosecuted with up to 7 years imprisonment”. For more information, see Kuwait entry in the section on “Criminalisation” in this report.
112 The Penal Code of the Sultanate of Oman was enacted through Royal Decree No. 7/74. For more information, see Oman entry in the section on “Criminalisation” in this report.
113 The Penal Code of the Qatar was enacted through Law No. 11 of 2004, Article 296. For more information, see Qatar entry in the section on “Criminalisation” in this report.
114 For more on Lebanon, please see the “Criminalization” section of this report.
115 For more on Syria and Iraq, please see the “Criminalization” section of this report.
law to allow for same-sex marriage was the domain of the legislature, not the courts.118

Israeli rainbow families received more bad news in August 2018 when prime minister Netanyahu, caving to pressure from ultra-Orthodox parties, voted against a measure that would have granted single men and same-sex couples the same right to surrogacy as single women and heterosexual couples.119 Following the vote, thousands of people went on strike and took to the streets in cities across Israel, and two persons were arrested in Jerusalem as demonstrators were assembling outside the residence of the prime minister.120

Following the demonstrations, the heads of 14 Israeli LGBT organizations released a list of demands from the government in order to ensure full equality and put an end to discrimination. The list included prevention of violence, legal recognition of same-sex families, and equality in health care, among others, and threatened continued protests if the demands were not met.121

Just a month prior, activists staged a demonstration blocking Tel Aviv’s pride parade over what they see as the Israeli government exploiting their community to present itself as tolerant and progressive while also violating the human rights of neighbouring Palestinians. “While we’re demonstrating here,” said one of the protest organizers, “just a few kilometres away (Israeli soldiers) are shooting people exercising the right to protest.”122

Palestinian human rights activists regularly accuse the Israeli government of “pink washing,” or trying to portray the country as progressive by comparing it to “backwards” Palestinian and Muslim societies.123 Indeed, aside from a pilot programme allowing bisexual and gay men to donate blood124, Israel’s track record on LGBTI issues over the previous two years tarnishes the country’s claims of social liberalism and tolerance.

In neighbouring Jordan, the government remains hostile towards LGBTI issues and has shown it is willing to censor free speech to erase its queer community. In August 2017, Jordanian MP Dima Tahboub filed a complaint against My.Kali, a publication covering human rights and LGBTQ issues. In her complaint to the Audiovisual Media Authority, Tahboub called the magazine “shawath,” meaning “perverts” or “deviants.”125 Though media reported that her public war on the magazine had shut it down, magazine editors pointed out they had already been blocked for a year in the country.126

The following year, Jordanian authorities announced the cancellation of an event discussing the impact of art in the fight against stereotypes because My.Kali was involved. Still, the magazine’s founder has vowed to fight on in the face of censorship, saying, “In a region where we’re denied recognition, this platform isn’t waiting for anyone to provide us that, but claiming it and giving a voice to many.”127

In October 2018, the Lebanese authorities similarly attempted to stifle free speech by trying to shut down the NEDWA conference on gender and sexuality organized by the Arab Foundation of Freedom and Equality (AFE) for alleged “incitement to immorality.” The conference was moved to a different location, but not before security officers took the details of all attendees from the hotel registry, worrying participants from oppressive countries like Egypt.128

The status of LGBTI people in the Middle East in recent years gives cause for cautious optimism, as small steps towards equality are being realized. Yet, at the same time, instances of discrimination and censorship from authorities remain commonplace. Despite attempts at erasure, whether they be through silencing the press, cancelling assemblies, or refusing to recognize the rights of queer families, LGBTI activists across the region remain resilient and undeterred.

118 Ilan Lior, “Israel’s High Court Rejects Petition to Recognize Same-sex Marriages” Haaretz. 31 August 2017.
120 "LGBTQ Israelis hold mass strike, protests demanding equality" +972 Magazine. 22 July 2018.
121 "LGBT community lays out demands from government for ‘full equality’” Times of Israel. 25 July 2018.
122 "LGBT Activists Block Tel Aviv Pride March With Pro-Palestinian Protest” Palestine Chronicle. 9 June 2018.
123 Nada Elia, “Don’t try to stop us from denouncing Israel’s pinkwashing” Middle East Eye. 6 April 2018.
124 Josh Jackman, “Israel to allow gay and bisexual men to donate blood – regardless of when they last had sex” Pink News. 11 January 2018.
125 Jason Lemon, “This Jordanian MP is leading a war against the LGBT community” Step Feed. 1 August 2017.
127 Loyal Khalife, “Event in Jordan canceled because a queer publication was involved” Step Feed. 6 November 2018.
BRIEF COMMENTARY

Inside the Middle Eastern Closet

By Samar Shalhoub.

While conflicts of various sorts have engulfed the Middle East in recent decades, many individuals are battling daily wars with both themselves and society. As freedom of expression is still not a right in these countries, freedom of ‘gender-expression’ has not even become possible in this corner of the world.

Although there are many countries in which SOGI issues are seen as human rights issues, Middle Eastern countries stand their ground against this idea. Faith-based and political ideologies act as a block when it comes to understanding, learning and even speaking about issues related to sexual orientation, gender identity or expression. Consequently, laws and policies around LGBTI rights in many Middle Eastern countries are not yet open for negotiation or change. Criminalizing provisions raises the red flag in the eyes of the local LGBTI communities, most of whom are engaged in prolonged struggles on a daily basis. These laws allow government and security forces to punish anyone that defies the hetero-binary world most people are forced to live in.

One cannot help but agree with the proverb “An enemy is one whose story we have not heard”. For the large majority of these individuals, they have had to jump very difficult hurdles to get to where they are today. Some having to endure being forcibly injected with testosterone treatments, another being tortured by his father’s Pitbull dogs for being a “sissy” boy or raped by male relatives to prove she is not a lesbian.

What governments often ignore is that by marginalizing these individuals from society, they are not only causing them psychological damage, but are also negatively impacting on the long-term demographics of their countries. By promoting such culture of non-openness, this attitude is reflected onto the caregivers of LGBTI individuals who use the same punishment-based approach with their children. It all boils down to the idea that, whenever an individual is not accepted either by their government or their family, they are dislocated from their origins and roots, and eventually find themselves in the need to seek refuge.

Having any open public discussion about the subject at hand is really difficult and usually considered a taboo in most parts of the Middle East. Quite often, opinions are formulated by the press and the media, but these rare instances only offer a distorted insight into the problems LGBTI individuals are facing by being showcased as a joke or portrayed as mentally ill individuals, who need treatment in order to be readjusted into society.

While doors of freedom are being shut by numerous law and policy makers, a minority of youth and advocates in the Middle East region are proving to be open to change in this regard. These groups are paving the road to a tolerant and safer environment for LGBTI individuals. Such courageous human beings are working for a rising “Spring” to be possible in the Arab world; so that one day, LGBTI individuals will be able to walk on the street, as any other individual would, knowing that they are entitled to live in an environment that accepts and protect them and that, if they are abused, they can speak up without having to keep hiding, all their lives, inside a closet...
Decriminalising the Right to Love: Navtej Singh Johar v. Union of India

By Arvind Narrain.

Introduction

The 6th of September 2018 marked a historic victory for a vibrant and vociferous LGBT movement in India, which for over seventeen years had been demanding the repeal of Section 377 of the Indian Penal Code. The Supreme Court in its decision in Navtej Singh Johar v. Union of India, struck down the 1860 law criminalising the lives of LGBT persons.

The decision itself built upon a history of struggle carried out relentlessly across the country which involved pride marches, protests, demonstrations as well as courageous individual acts of LGBT persons coming out in their workplaces, families as well as in the media. It is also important to remember those who contributed so much to the LGBT movement but are no more with us. Our collective efforts have opened out in ways small and big, a space in Indian society for respect and acceptance of sexual and gender diversity. The struggle of the last quarter century waged by thousands of people across the country has succeeded in creating a space of visibility and acceptance in Indian society around the loves and lives of the LGBT community.

The legal backdrop

In 1950, the Indian Constitution came into force with the recognition that all persons are equal before the law. The significance of the constitutional framework was that it gave the community the language of universal human rights, which would apply to all persons without discrimination. The fundamental rights provisions relating to equality, non-discrimination, life and personal liberty would apply to all persons.

However, it took 68 years for the Court to first acknowledge that universal human rights applied to LGBT persons as well. It was only with the decision of Shah C.J. (Chief Justice) an Murlidhar J. (Justice) in Naz Foundation v. NCT Delhi in 2009, that the Courts for the first time applied the constitutional framework to LGBT persons finding that Section 377 violated the rights to equality, non-discrimination, privacy and dignity. This remarkable judgment which was truly ahead of its time was appealed by over 15 groups spanning the religious spectrum led by Suresh Kumar Koushal. On 11 December 2013, the Supreme Court in Suresh Kumar Koushal v. Naz Foundation, overruled the decision of the Delhi High Court and declared Section 377 constitutional. This decision was widely criticised, and the date of the judgment was appositely titled by Vikram Seth, ‘a bad day for law and love’.

However, in just a few months’ time, the Supreme Court on 15 August 2014, NALSA v. Union of India, found that transgender persons were entitled to the full panoply of constitutional rights protections. There was an implicit contradiction between NALSA and Suresh Kumar Koushal as the full protection of rights guaranteed to the transgender community stopped at the door of their intimate lives.

Perhaps the judgment of greatest significance was the decision of nine judges in Puttawamy v. Union of India in which the Supreme Court found that the ‘right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution’.

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2 160 Delhi Law Times, 277.
3 2013 (15) SCALE 55.
5 (2014) 5 SCC 438
In particular Chandrachud J. observed that evolution of fundamental rights protections in India, there are two ‘discordant notes’. One is the infamous decision in ADM Jabalpur v. Shivkant Shukla7 in 1976, in which the Supreme Court held that during the period when emergency subsisted, no person can move the Courts for enforcement of their fundamental rights. The other was Suresh Kumar Koushal v. Naz Foundation in 2013, in which the Court had in the course of upholding Section 377 referred to LGBT persons as a ‘minuscule minority’, had referred contemptuously to their ‘so-called rights’ and asserted that parliament should decide the matter. The opinion of the plurality authored by Chandrachud J. systematically dismantled the logic of Koushal. The Court in Puttaswamy strongly asserted that it was the responsibility of the Court to protect even so-called minuscule minorities, that the rights of LGBT persons were not so-called rights but real rights dwelling in privacy and dignity and it was the role cast by the Constitution upon the Courts to protect the rights of unpopular minorities in the face of the opinion of legislative and popular majorities.

The decisions in NALSA v. Union of India and Puttaswamy v. Union of India, overruled key aspects of the ruling in Suresh Kumar Koushal. At the same time Indian society had changed dramatically with an increasingly vibrant LGBT movement, the release of films with openly LGBT characters and greater public discourse on issues of sexuality. Thus, both legal developments and social developments had made Suresh Kumar Koushal increasingly untenable.

There was a sea change in the social and public perception of LGBT lives which was perhaps best captured in the contrast between the empathy that the judges who heard Navtej Singh Johar showed towards LGBT persons compared to the cruel indifference of the Koushal Court. In Suresh Kumar Koushal, the judges were adamant that the law criminalised sexual acts and not identities. The judges had contemptuously observed that LGBT persons were anyway a “minuscule minority” whose rights they referred to dismissively as “so-called rights”. The judges who heard Navtej Singh Johar were clear that Section 377 affected not only sexual acts but LGBT persons, that the right to privacy and dignity were real rights which applied to LGBT persons and that constitutional morality mandated that the rights of every minuscule minority were deserving of constitutional protection.

The judgment itself is an acknowledgment of the breadth and depth of the LGBT movement and references fact-finding reports, narratives of persecution, academic writing, poetry, literature, philosophy, law, and jurisprudence, weaving these diverse sources together to make an argument that Section 377 is violative of the promise of the Indian Constitution.

The other source the judgment relies on quite extensively is international law. In the range of comparative legal contexts cited, the Indian Supreme Court demonstrates an openness and a willingness to learn from the jurisprudential traditions of the world. The Court cites the decriminalisation decisions from Belize, Trinidad, Kenya, USA, Fiji, Hong Kong, European Court of Human Rights as well as soft law standards such as the Yogyarta Principles and the Yogyakarta Principles+10.

**Tonality of the judgment**

What is most remarkable about the judgment is its tonality. It is not written in the register of cold logic, but with the emotional force of someone who is very moved by witnessing the unconscionable suffering inflicted on LGBT communities. The judges refer to the suffering of Oscar Wilde, Alan Turing, Khairati (the first reported decision on transgender person singing in the streets), Nowshirwan (a Parsi shopkeeper arrested under Section 377), the poetry of Vikram Seth and the agony of his mother Leila Seth (Vikram Seth’s mother).

Chandrachud J. characterises Section 377 as a “colonial legislation” which has made it criminal for “consenting adults for the same gender to find fulfillment in love”. Chandrachud J. notes that, “the offence under Section 377 of the Penal Code – has continued to exist for nearly sixty-eight years after we gave ourselves a liberal constitution. Gays and Lesbians, Transgenders and Bisexuals continue to be denied a truly equal citizenship seven decades after independence”. The effect of legislations such as Section 377 on LGBT lives led him to observe that “civilization has been brutal”.

**Apology**

This extended meditation on the suffering imposed upon LGBT persons results in a judicial apology. An apology in essence has two dimensions, namely the acknowledgment of having done a wrong and the expression of a willingness to atone for it. Navtej
Singh Johar takes responsibility for having inflicted wrongs and seeks to atone for it. This sentiment is best captured by Malhotra J. who says, "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries".

This is important in the LGBT context, because the response to the unconscionable suffering which has been imposed upon LGBT persons is usually either indifference or pity. Rarely does one come across a judicial response which acknowledges complicity in the oppression and then promises atonement for having caused such suffering.

In NALSA v. Union of India, the Supreme Court noted the forms of suffering of the transgender community but did not go so far as to acknowledge its role in causing the suffering. This resulted in an important judgment but motivated by pity for the transgender community. However, in Navtej Singh Johar when the Supreme Court acknowledged the harm that its own historic indifference to the plight of the LGBT community had caused, it set the stage for a different kind of judgment.

The judgment broadened the ambit of its decision beyond individual petitioners to encompass the suffering of the entire LGBT community. The apology tendered in Navtej Singh Johar draws its strength and force from the other important apologies made for causing historic injustice; be it by the German nation to the Jews, by Canada to its indigenous inhabitants, by South African apartheid enforcers to those who suffered under their rule, and by the "regret" expressed by Britain for the spread of anti-sodomy laws in the Commonwealth.

However, an apology only has meaning if one wants to atone for the wrongdoing of the past. An apology is not only about the past but should really provide a pathway to the future. Navtej Singh Johar is rooted in a deep sense of responsibility for having been complicit in an egregious form of violation and then seeks to redress the wrong. As Chandrachud J. puts it, "It is difficult to right the wrongs of history. But we can certainly set the course for the future. That we can do by saying, as I propose to say in this case, that lesbians, gays, bisexuals and transgenders have a constitutional right to equal citizenship in all its manifestations".

This judgment can be seen as taking four different paths to "right the wrongs of history". Misra C.J. wrote for himself and Khanwilkar J. Justices Nariman, Chandrachud and Indu Malhotra wrote separate concurring opinions. All justices agreed with the conclusion that Suresh Kumar Koushal was overruled and that Section 377 should be struck down insofar as it criminalised consenting sex between adults. However, they took different routes to arrive at their conclusion and in the process highlighted different aspects of the Constitution and how it applied to the lives of LGBT persons.

**Freedom to choose in the intimate sphere**

The judges were unequivocal that Section 377 brutally intruded into a zone of intimate decision which is entitled to constitutional protection. As Chandrachud J. put it, the choice of partner, the desire for personal intimacy and the yearning to find love and fulfillment in human relationships have a universal appeal and the state has no business to intrude into these personal matters. Nor can societal notions of heteronormativity regulate constitutional liberties based on sexual orientation.

The opinion of Misra J. invokes Johann Wolfgang von Goethe, who had said "I am what I am, so take me as I am" – to stress the right to develop one’s individuality against the demands of social conformity. Particularly in the context of LGBT persons, where the struggle is often to assert one’s personhood, in an isolating, ostracising environment in which heterosexuality is the norm, this constitutional protection given to intimate choices against the dictates of societal conformity cannot be overstated.

**Expansive interpretation of privacy and dignity**

The judges followed the ruling in Puttaswamy v. Union of India which gave an expansive interpretation of privacy as not just meaning the right to do what one wants in the privacy of one’s home but also encompassing the right to make decisions about who one chooses to be intimate with. As J. Malhotra put it, "The right to privacy is not simply the ‘right to be let alone’ and has travelled far beyond the initial concept. It now incorporates the ideas of spatial privacy, and decisional privacy or privacy of choice".

Chandrachud J. addresses the concern that privacy is only about granting protection to acts behind closed doors, by stating that, "It must be acknowledged that members belonging to sexual minorities are often subjected to harassment in public spaces. The right to sexual privacy, founded on the right to autonomy of a free individual, must capture the right of persons of the community to navigate public places on their own terms, free from state interference".

The question of privacy of choice was closely linked to the question of dignity. The sphere of dignity
includes, 'the right to carry such function and activities as would constitute the meaningful expression of the human self'. As per Misra C.J. if the freedom to exercise one's choice of partner is curtailed it impacts an individual's sense of dignity. Since Section 377 chills one's ability to express oneself, especially in matters so integral to selfhood, it impinges upon the sense of dignity of LGBT persons.

Recognition of the "right to love"

In an evocative section, Chandrachud J. quotes Leila Seth C.J. to make the point that 'what makes life meaningful is love'. The right to love emerges as a key aspect of the judgment with Chandrachud J. recognizing that "the right to love and to find a partner, to find fulfillment in a same-sex relationship is essential to a society which believes in freedom under the constitutional order based on rights".

The right to love has elements of autonomy and dignity and the defence of the right to love is rooted in the notion of constitutional morality and the idea of a transformative constitution.

When we say 'constitutional morality' we mean that the values of the Constitution rooted in the protection of the dignity and autonomy of the individual should prevail over prejudice masquerading as social morality against LGBT persons. Further our Constitution mandates that society must transform in the direction of greater respect for autonomy, dignity and choice of the individual, including in matters of who one chooses to love.

Thus, the right to love has profound implications in a society in which love across lines of caste and religion are deeply transgressive. 'The right to love' has the potential to disturb rigid social moralities and help us to begin questioning the structures which keep in place the rigid hierarchies of Indian society be it on the lines of caste, religion, gender or sex. In fact, Chandrachud J. appositely called "the right to love not just a separate battle for LGBT individuals but a battle for us all".

Stereotypical perceptions of the LGBT person violate the right to equality and non-discrimination

The judges were also clear that the guarantee of equality at is heart was the guarantee of equal citizenship. The criminalizing ambit of Section 377 violated this guarantee as it 'singles out people, by their private choices and marks them as 'less than citizens -or less than human'.

The harm of Section 377 is not just that it prohibits a form of intimate and personal choice but that it encodes a stereotypical morality which has deep ranging social effects. As Chandrachud J. put it, Section 377, 'perpetuates a certain culture', based on 'homophobic attitudes' which make 'it impossible for victims to access justice'. Stereotypes about the LGBT community are widespread and pervasive, and it is these stereotypical perceptions which are responsible of the hatred, violence and discrimination which LGBT persons face on a day to day basis.

The fact that the Court ruled that one of the reasons for Section 377 to be ruled unconstitutional is that it fostered prejudices against LGBT persons, makes for an expansive reading of the anti-discrimination provision in Article 15 of the Constitution.

The analysis of the equality guarantee is very important as while, Navtej Singh Johar sees decriminalisation as an important assertion of 'full moral citizenship', it is the first step in the journey towards full equality of LGBT persons. As Chandrachud J. put it, "Decriminalisation is of course necessary to bury the ghosts of morality which flourished in a radically different age and time. But decriminalisation is a first step. The constitutional principles on which it is based have application to a broader range of entitlements".

Constitutional morality

This constitutional guarantee of the right to develop one’s personhood and the right to equal citizenship is firmly anchored in the notion of constitutional morality as referenced by Justices Misra, Nariman and Chandrachud. The denial of the right to dignity of LGBT persons is incompatible with the morality of the Constitution. As Chandrachud J. put it, 'there is an unbridgeable divide between the moral values on which it [Section 377 is based] and the values of the Constitution'.

The idea of 'constitutional morality', the judges derives from Ambedkar. In the Constituent Assembly, Ambedkar had famously said that, 'constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it'. The fact that 'our people' have yet to imbibe constitutional morality leads Ambedkar to the conclusion that, "Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic".

Constitutional morality is thus an ideal, rooted in the Constitution and Indian society must transform to bring social morality into conformity with the constitutional ideals of respect for the dignity and autonomy of all its citizens. The judiciary, the executive the legislature and citizens must all work towards achieving this ideal of 'constitutional morality'. The judgment in Navtej Singh Johar is on
step in this journey of bringing social morality in alignment with constitutional morality.

The idea that majority opinion should prevail over the right to dignity and liberty of the minority is explicitly rejected. As Nariman J. put it, ‘it is not left to majoritarian governments to prescribe what shall be orthodox in matters concerning social morality’.

By explicitly setting out the Court as a guarantor of minority rights, regardless of the opinion of ‘popular or legislative majorities’, the Court signals its determination to defend the Constitution. In a time when lynchings have become the order of the day and government remains a mute spectator, the role that the Courts have to play in safeguarding the right to life of minorities of all stripes and hues cannot be overstated.

It should be noted that citizens too have a role to play in achieving a society based on constitutional morality. As Chandrachud J. put it, ‘Constitutional morality requires that all the citizens need to understand and imbibe the broad values of the Constitution’. The role of the Constitution is to produce ‘a social catharsis’ and that ‘the ability of a society to survive as a free society will depend upon whether constitutional values can prevail over the impulses of the time’.

Idea of transformative constitutionalism and the way ahead

The logic of Navtej Singh Johar is anchored within what both Misra J. and Chandrachud J. call ‘a transformative constitution’. According to Misra, ‘the purpose of having a constitution is to transform society’ to ‘embrace therein’, the ‘ideals of justice, liberty, equality and fraternity’. The mandate to transform society in allegiance to the constitution is a task vested in the state, judiciary and in the citizen.

The mandate of a ‘transformative constitution’ vested in the state, civil society and judiciary and as Misra C.J. put it, aims to make Indian society ‘more pluralistic and inclusive’. The Indian Constitution is not a status quoist document, but rather in Chandrachud J.’s words, ‘an essay in the acceptance of diversity’ and ‘founded on a vision of an inclusive society which accommodates plural ways of life’.

The fact that the Constitution must transform and democratise relations in society be it between dominant caste and oppressed caste, man and woman as well as majorities and minorities of every stripe and hue is the key to the Constitution. If the deeply hierarchical relationships in society are not challenged and transformed, democracy would be meaningless, and the Constitution would be mere words on paper. This insight flows from Ambedkar who (is cited by Chandrachud J.) famously said that

Without fraternity, liberty [and] equality could not become a natural course of things. It would require a constable to enforce them...Without fraternity, equality and liberty would be no deeper than coats of paint. Unless one builds a society based on fraternal and egalitarian relations by combating the divisions of caste, religion, gender and sexuality, the Constitutional promise of equal citizenship will remain a mirage. The Constitution mandates that we collectively build such a society.

If the idea of a ‘transformative constitution’ is applied to the challenge to Section 377, then there is still a lot of work to be done post this remarkable judgement. If a law has taken root in social, cultural and a legal consciousness, the challenge of eliminating the prejudice which the law has fostered is still immense. One has to only think of the prejudice and violence still being faced at the hands of the state and society by the ‘Denotified Tribes’ even post the repeal of the colonial era Criminal Tribes Act in 1948.

It is this immense task of combating the prejudicial attitudes which were encoded in Section 377 which has to continue. Nariman J. was cognisant of this challenge and mandated the Union of India to give ‘wide publicity to the judgment’ and conduct ‘sensitisation and awareness training for government officials and in particular police officials in the light of observations contained in the judgement’.

While Nariman J. emphasises the role of the Union government in combating prejudice and stereotypes in accordance with the principles of the judgment, Chandrachud J. issues an important plea to civil society to continue to work to combat prejudices and realise full equality for LGBT persons in line with the mandate of a transformative Constitution.

Thus, as far as the LGBT movement in India is concerned there is important work ahead in popularising the judgment and using it as a tool to change societal prejudices against LGBT persons. In short, the task of converting societal prejudice into constitutional morality lies ahead. Strengthened immeasurably by Navtej Singh Johar, we can see that ‘though the arc of the moral universe may be long, it bends towards justice’.
Europe – Increased Visibility, Populist Backlash and Multiple Divisions

By Manon Beury and Yury Yoursky.

As recorded on a country-by-country level in the annual reviews of ILGA-Europe, regarding sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC), public comprehension, legal progress and political reception are embedding in complex and varied ways across the continent. While presenting some of the important gains in 2017 and 2018 towards social and legal equality in the region, this essay focuses on the current pressures and lived realities where such progress is under strain, non-existent or backsliding through lack of implementation. In the current era of populist rhetoric across the region, foundational legal issues regarding the role of international law and transnational agreements, as well as the accountability of State institutions are being evoked.

Of significance to all 27 Member States of the European Union (EU), the European Court of Justice conferred legal certainty on what had proven a major stumbling block in the lives of same sex partners. On 5 June 2018, the Court ruled that the term ‘spouse’, for the purpose of granting a right of residence to non-EU citizens, includes same sex spouses. Bringing the European total to 16 States, in 2017, marriage equality was achieved in Malta, Germany, and Austria, and came into force in Finland (having being signed in February 2015).

However, as it is often the case, the widespread activist, media and political focus for marriage equality conceals other fights that are far from being won. As discussed in the second half of this essay, the denial of trans identities as ‘ideology’, LGBTI asylum seekers, children in LGBT families, and victims of violence based on SOGIESC, for example, rarely make their way to the European headlines and democratic debates. Yet, these individuals are amongst the most vulnerable to the backlashes that affect our communities.

Despite, and in part fed by, the legal developments that pertain to SOGIESC in some parts of Europe, homophobic and transphobic fears persist and are currently finding platform across most European States: family or traditional values, ‘gender ideology’, religious, or sovereignty arguments – much akin to what has been overtly (legally) happening in Russia since 2006, culminating in the 2013 federal anti-propaganda law. Although the wider European region, through the Parliamentary Assembly of the Council of Europe (PACE) has

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4. CJEU, Judgment of the Court (Grand Chamber) of 5 June 2018, Relu Adrian Coman and Others v Inspectoratul General pentru Imigrare and Ministerul Afacerilor Interne, Case C-673/16.
7. Verfassungsgerichtshof, G 258-259/2017-9, 4 December 2017.
strong and systemic discursive mechanisms that generally include SOGIESC in their scope, divisions on these issues crystallised more than ever across the European family during the past two years.

**Looking East**

**Russia, Chechnya**

The outrageous setback in human rights equality and protections in Russia in 2013, predicated on the idea that knowledge of sexual and gender diversity is harmful to children, is still emitting disturbance throughout the world. Specifically, the negative resonance across the whole Eastern Europe and Central Asia (EECA) region is increasingly evident in the dialogues and actions of States, where right-wing forces are gaining support from their compatriots and also from European and US interests.

Laws that ban what is colloquially-known as ‘gay propaganda’ - anti-propaganda or promotion laws - have not only significantly detracted from anti-discrimination agendas on the parliamentary levels in some of these countries, but have also revealed overt governmental encouragement to officially harass individuals who identify as LGBTI. As a state of legal stasis appears across the EECA region regarding the harms of the propaganda laws and the vulnerabilities left exposed with lack of legal protection against discrimination, violence, stigmatization and discrimination continue unabated, and largely unaddressed.

Numerous individual cases, NGO documentation and media reportage have demonstrated that, based on their SOGIESC, people are routinely subjected to unpunished verbal and physical abuse in Russia. For example in August 2018, in the public media, the mayor of Novoulyanovsk, after withdrawing the approval for a gay pride action, explicitly indicated that he and his office will determinedly “protect the traditional family values” and they would be no gay parade in their city.

That individuals on the basis of a specific characteristic – their sexual orientation, and indeed their gender expression - are being targeted and tortured in a Council of Europe sub-State, Chechnya, has been the primary object of international concern in the recent period. Certainly since the 2013 federal law, Chechnya has been on an anti-LGBT rampage, as recorded by Amnesty International and others who have been on the ground, who reveal that there is currently a ‘gay purge’ being exercised in Chechnya. This purge has abducted, tortured, and killed dozens of men who are either perceived to be or actually gay, and none of those atrocities have been punished by the government. Moreover, the government’s overt ridicule and denial of these events provides an unofficial ‘green light’ for these abuse to continue with impunity.

Despite the intransigent position Russia has claimed since enacting the 2013 law, and a series of other laws that limit the establishment or funding of civil society organisations, there were two events of legal significance that happened during 2017-2018 which may help inform ongoing advocacy. The first of them is the ECHR ruling in Alexeyev and Others v. Russia the ECHR joined 51 applications from seven applicants into one case, which concerned the continuous refusal of Russia to approve LGBT persons to hold rallies. The court denied Russia’s claim that public order trumped the plaintiff’s Article 11 ECHR right to assembly, and the court also found Article 13 violations, regarding the denial of an effective remedy through the Russian courts’ delays and frustration of process. Therefore, the decision formally acknowledged the applicants’ right to hold public rallies, and Russia’s obligations under the European Convention on Human Rights. The second event was when 15 countries used the OSCE platform to file official questions to Russia, in which they demanded that Russia officially provide a statement on the Chechnya issue. Russia did not in fact provide any credible response to the matter.

At present, the Russian State acts with violent impunity and concisely illustrates what state-sponsored homophobia looks like in the modern era. For those LGBTI citizens who are harassed or purged there is little justice available to them, and there is the ever-present chill-factor that the anyone could be targeted next. None of the branches of power in Russia have yet attempted to step in and protect these individuals’ their human rights and freedoms that pertain to them.

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12. Ibid.
13. Alexeyev and Others v. Russia, 2018, ECHR.
intrinsically as human beings. Concurrently, a highly homophobic public feels encouraged by such an official position to further discriminate and even harm people based on their SOGIESC, getting away unpunished.

The wider EECA region

In wider focus, the Eastern European and Central Asian region has been both restless and divided when it comes to protection from violence or discrimination based on sexual orientation, gender identity and gender expression. Currently, it does appear that aligning with the public policy (at least legislative) standards congruent with human rights principles that are inclusive of SOGIE, and as interpreted within the European Convention, has been positive motivator for changes in the EECA region. Moldova, Ukraine, and Georgia, whose socio-legislative contexts are focused on below, were successful in introducing amendments into their legislations that include SOGI and offer LGBTI individuals, at least, some level of official protection. However, these amendments continue to be challenged in these parliaments through petitions.

No other State within the EECA adopted any protective mechanisms relating to SOGIESC during 2017-2018: and it is evident that some of their legislative loopholes create motivation for governmental and public harassment around LGBT organizing, as discussed below.

Both Ukraine and Moldova successfully adopted specialized anti-discrimination clauses that have an open list of protected grounds; although SOGI is not among them, sexual orientation and gender identity are included as protected attributes in their Labour Codes. Notably, only Georgia thus far has been able to expressly introduce SOGI into its anti-discrimination legislation and Criminal Code. Ukraine and Moldova have not yet included SOGI in its administrative or criminal legislation. However, the Supreme Court of Ukraine interpreted that the open list of anti-discrimination grounds includes both sexual orientation and gender identity. Nonetheless, drafts to introduce anti-propaganda legislation are periodically registered in all three of these countries. Communities that are set to protect the “traditional family values” and their children from being “confused” and exposed to “evil” often hold anti-propaganda actions and register respective petitions.

Despite the positive aspect of these legal amendments, there is still a long way to go for these three countries. Because of years of discrimination and stigma, LGBTI individuals and organisations are still reluctant to use the new defense mechanisms to file action against discriminators, and it may be challenging for the courts to evolve strong jurisprudence on some of these issues. Moldova and Ukraine’s hate crime laws do not enumerate SOGI as an aggravating factor, and therefore SOGI remains a non-justiciable ground for appeal.

In terms of public assembly, Ukraine has been the most successful among the EECA countries: three ‘Gay Pride’ events were held in 2016-2018 with considerable protection and assistance from the police, and with no instances of successful counter-violence or counter-actions. However, after the parade, some people were assaulted in the city, evidently based on animus to LGBTI people. The Gay Pride in Moldova in 2018 did not raise critical concerns either. There are still many loopholes and much legislation missing that would create a sophisticated anti-homophobic protection and defense mechanism, but these are highly positive steps that lay the foundation for anti-discrimination in these countries.

Unfortunately, these three States are unusual across the range of EECA countries, none of which have been able to introduce SOGIE into their anti-discrimination, or other targeted, positive laws. Lithuania, and Belarus contain provisions that to some degree mirror the 2013 Russian anti-propaganda law, in the sense that they are adopted to “protect” the “traditional family values” and the children from moral degradation. No administrative or criminal offences have been adopted to supplement these laws. Parliaments in Kyrgyzstan, Kazakhstan, Poland, Romania, Tajikistan, Azerbaijan, and Armenia were not successful in passing anti-propaganda laws as of yet, although petitions continue to be made.

15 Fedorovych, I and Yoursky, Y., 2018, Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries, ECOM.
16 Ibid.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
22 Ibid; Fedorovych, I and Yoursky, Y., 2018, Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries, ECOM.
Central Europe has proven itself uninspiring with regard to approaching anti-discrimination legislation. Where advocates draw attention to the issues regarding discrimination regarding health, privacy, access to justice amongst many other issues, they can face challenging circumstances. Armenia, despite an active LGBTI community, has interfered with NGO Pink Armenia’s attempts to raise the public awareness of the toxic discrimination that is ongoing in the country: its posters were removed from across Yerevan city without any explanations; similarly, two LGBT movies were removed from the Golden Apricot Film Festival programme without any commentary on the matter.23

During the period under review, Azerbaijan’s law enforcement conducted countless raids on LGBTI premises and individuals, arrested them, performed forced medical examinations and even blackmailed them, justifying the actions under the “necessity to protect public order” clause.24 Although Georgia adopted SOGI as an enumerated status in its 2014 Law of Georgia on the Elimination of All Forms of Discrimination, five LGBTI persons were assaulted in Batumi and received no effective support from the police. Further, the court that convicted the murderer of transgender victim Zizi Chekalidze did not consider transphobia as an aggravating circumstance while delivering the judgment.25

In Central Asia, Kyrgyzstan’s parliament adopted in its first reading of its anti-discrimination draft legislation which is inclusive of SOGI: this draft has not as yet been approved or adopted as law, so its destiny is still under scrutiny.

In Macedonia, an anti-discrimination bill is also under parliamentary consideration, which may be inclusive of SOGI: observers are cautiously hopeful as Macedonia successfully ratified the Istanbul Convention,26 and has also committed to removing the homo-and transphobic wording from the educational curricula.27

Looking West

Within the European Union it has become abundantly evident that entrenched fractures divide sections of the populations along ideological, and increasingly politicized, lines. Growing nationalism and defiance towards EU institutions, which culminated in Brexit but is palpable everywhere, coexists in symbiosis with conservative and religious forces deploying various strategies to counter social justice progress in gender equality, sexual and reproductive health and rights, SOGIESC inclusion, migration, trade unions, and various other traditionally ‘progressive’ causes. These retroactive forces are indeed frequently met with determined opposition to maintain and protect the gains made in equality and human rights-based legislation, but the fact that attempts are being made to erode foundational principles continues to sound warning bells.

In September 2016 in Finland, a petition to repeal same-sex marriage illustrated that a roll-back on acquired rights is always a possibility (it failed and the 2015 marriage bill entered into force in 2017 as scheduled).28 A common form of backlash that has reoccurred throughout Europe is the rejection of non-traditional forms of families encouraged by religious communities. For example, in the 2018 Romanian constitutional referendum concerning the definition of marriage, which inflamed rather polarized views, a boycott strategy led by human rights activists in the country proved successful, and the referendum did not get enough votes to be valid.

The recognition of systemic violation of the human rights of trans and intersex people gained ground as more European States adopted legal gender recognition in 2017 and 2018 (see 2018 TGEU Trans Rights Europe Map & Index,29 and ILGA-Europe Annual Review 2018).30 In the landmark case A.P., Garçon and Nicot v. France,31 the European Court of Human Rights ruled that the sterilisation requirement for eligibility procedure violated trans people’s right to private life. Non-consensual surgeries on intersex children were outlawed in

24 Ibid.
25 Ibid.
26 Istanbul Convention Action against violence against women and domestic violence: The Convention in brief, Council of Europe website.
27 Ibid.
29 TGEU, Trans Rights Europe Map & Index, 2018.
31 A.P., Garçon and Nicot v. France, Nos. 79885/12, 52471/13 and 52596/13, 6 April 2017.
The populist discourse on what has been framed as ‘gender ideology’ which has spread worldwide in this period serves as an illustration on how arguments picked in the queer rhetoric may be distorted to work against our causes. As illustrated in the section on Russia in this essay, the issue goes far beyond gender itself, implicating any variations in sexual orientation from a perceived ‘norm’, under a rubric of public morality and particularly the protection of minors from such ‘disturbing’ or ‘harmful’ influences. These anxieties have taken concrete form in 2017 and 2018, such as the Hungarian ban on gender studies, and Italian schools blacklisted by ‘pro-family’ conservative groups in Bologna. Hopefuly, State initiatives which are positive, such as the Welsh government’s decision to make Relationship and Sexuality Education part of the curriculum from 2022, will act as a coherent force to redirect the conversations away from the polarities this ‘gender ideology’ thinking imposes.

One year after the European Bisexual Conference (EuroBiCon) materialised, the first European Lesbian Conference took place in Vienna in 2017, with the express aim to focus on lesbians’ needs, struggles and oppression, to empower, increase visibility and broaden networks. As an organizer of the 2nd Lesbian Conference (to be held in Vienna in April 2019) remarks: “The results of many European countries’ elections have, in the last few months, brought to power individuals and movements deeply dangerous for LGBTI women, which means specifically hostile to lesbians.”

As ILGA-Europe reported in 2018, there is a critical lack of external funding available to organisations working with SOGIESC issues, and further, financial pressures can unduly influence the agendas pursued, at times at the expense of those most precarious in our communities. The Fundamental Right Agency of the European Union noted that shrinking space for civil society affects LGBTI people particularly. This trend is striking in some Eastern European countries and in Turkey, where in 2018 Istanbul Pride and Pride events were banned for the fourth year in a row. These breaches of the freedoms of assembly and association, justified by the government on safety grounds, coincides with a crackdown against Turkish NGOs and the detention of leading SOGIESC rights activists with ‘terror’ propaganda charges, such as Ali Erol who was released in February 2018.

The rise of various forms of violence based on actual or perceived SOGIESC is an undeniable reality, confirmed in anecdotal data from across the continent. However, there is still a lack of even, quantifiable data across the European region, and the mechanisms to collect such information. Even

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32 Lei 75/XIII/2 (GOV), 11 April 2018.
35 ‘Hungary to stop financing gender studies courses: PM aide’, Reuters, 14 August 2018.
37 ‘Kirsty Williams announces focus on healthy relationships in major reforms to ‘Relationships and Sexuality’ education’, Welsh Government website, 22 May 2018.
38 EuroBiCon (website).
40 European Lesbian* Conference (website).
43 ‘Ankara ban on LGBTI events continues as Turkish courts reject NGO appeals’, ILGA-Europe website, 23 February 2018.
when laws protecting LGBTI people from hate crimes exist, questions and variance around their implementation and documentation remain: linked to the capacity and willingness of police forces to recognize them in the first place, and courts to adjudicate thresholds.

Efforts to recognise hate speech or speech that aims to incite violence against persons based on a particular characteristic, particularly when defended under a freedom of expression rubric, were made in Sweden in 2018,46 and later in that year in Switzerland.47 Relatedly, sustained activity that is designed to change a person’s sexual orientation or their gender identity – generally referred to as a ‘conversion therapy’ – is slowly gaining recognition and recognition of where vulnerability lies is emerging. Malta’s law in this regard sets the bar beyond just professionals carrying out this abusive ‘treatment’, but also it applies to anyone performing on a minor. A 2018 bill in Ireland, which has received positive responses from the houses of parliament, if passed would outlaw anyone from practicing such ‘therapy’ on anyone.48

LGBTI asylum seekers, most particularly women,49 are reportedly exposed to violence in European governments’ facilities and camps.50 In the context of uneven and enduring “crisis” responses to European migration and asylum, and the absence of official statistics on asylum claims based on SOGIESC across the region, LGBTI individuals are often left largely unaided when making their claims. Targeted as ‘other’ within populist rhetoric for either or both foreigner or SOGI status, and to address the fear of false claims and the ‘floodgate’ issue, the European Union,51 civil society organisations,52 and ILGA-Europe,53 have developed guidelines and common standards in order to ensure that the specific needs and rights of LGBTI asylum seekers are respected by national committees performing asylum assessments. In 2018, the matter reached the European Court of Justice,54 which ruled to ban psychological tests for assessing asylum claims based on sexual orientation.

Family law is an area of ongoing, albeit slow, progress in which some positive developments are taking place in Europe, notably with regard to the status and well-being of children in LGBT families. In 2017, the Italian courts recognized a gay couple’s foreign adoption,55 and in another case the adoption of a child born by surrogacy by the partner of the biological father.56 In France, the High Court57 reached a parallel decision in a surrogacy case and, in 2018, the French National Advisory Committee on Ethics recommended to extend medically assisted procreation to single women and lesbian couples.58 In 2018, Malta allowed same sex couples to access in vitro fertilization, and its marriage equality law assures that same-sex couples enjoy all the rights associated with marriage, including joint adoption.59 Automatic co-parent recognition for female same-sex couples following fertility treatment was voted for in Finland.60

Within the ongoing progress made in legislative provisions towards equality in Europe, a certain shadow regarding the buoyancy or solidity of such progress has emerged. In many cases, a step forward encounters a backlash and raises debates on first principles that activists thought settled long ago (and indeed may have been in law). This is

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47  ‘Swiss Senate votes to improve protection on grounds of sexual orientation but not gender identity’, ILGA-Europe website, 29 November 2018.
56  Tribunale per i minorenni di Firenze, sezione adozioni, Decreto di riconoscimento di sentenza di adozione straniera, 7 March 2017.
57  Cour de cassation, Premire chambre civile, arrêt no. 824, 5 July 2017.
59  Act No. XXIV of 2018 to amend the Embryo Protection Act, 1 June 2018.
60  ‘Congratulations Finland!’, ILGA-Europe website, 28 February 2018.
particularly striking in countries where same-sex marriage was voted, but related rights such as second-parent adoption are still being debated and vividly opposed today. Finland, in this regard has been instructive: it took almost three years for marriage equality to enter into force while civil service and inter-related legal provisions were being prepared for. In Ireland, four years after marriage equality, donor-assisted lesbian co-parents are still denied both names on their child’s birth certificate.61

The authority and influence of the major European institutions on human rights across the region is clearly extremely varied. Transnational issues - free movement of individuals and families, granting asylum to LGBTI individuals and SOGIESC human rights defenders, the recognition of children born by medically assisted procreation or surrogacy, funding SOGIESC rights organisations and many other issues remain unresolved. The Russian-type ‘sovereignty’ approach demonstrates virtual impunity for gross violation and blanket oppression. The economic tie-in aligned to the adoption of anti-discrimination legislation that Ukraine, Moldova, and Georgia demonstrate, may indicate a certain positive trend, but such an approach also lends fuel to populist claims of ‘foreign’ imposition. The work of presenting LGBTIQ lives in each State belongs to the activists on the ground to speak with their own populations, institutions of State, allies, policy makers and media, to demonstrate that diversities SOGIESC status, and inclusion in policy, is neither alien nor immoral.


62 Ekaterina Petrova is a feminist and lesbian activist from Saint-Petersburg, Russia. She worked with Chechen refugees who were victims of the anti-LGBT campaign in the republic.


against Women (CEDAW) in 2015, identified setting of religious rules for women and girls dress-codes, marriage and family discrimination, gender-based violence — including marriage of underage girls, female circumcision — and so-called “honour killings” as issues of major concern.65 Also in 2015, research entitled “Life and the Status of Women in the North Caucasus”, based on interviews in Chechnya, Ingushetia, Cabardino-Balkariya and Dagestan, illustrated the lived effects of family budget pressure, limitation of movements because of traditions, and domestic violence.66

Prior to early 2017, very little was known or written about LGBT people’s lives in North Caucasus region, including by Russian SOGI-related groups, although there had been some reports of transgender individuals fleeing family and police violence and death threats. At the end of March 2017 information about extensive torture and killings of gay men in Chechnya became known.67 However, it was not until the end of 2017 when the first reports of detentions of lesbian and bisexual women and girls became known, amidst fears that police had lists of women’s names, and also their social media identities.

Other than Adygeya and North Ossetia, the predominant religion in other republics is interpretative of Islam. In addition to the Sharia law, the influence of traditional ‘adat’ tribal code of conduct and conflict resolution between individuals, communities, and tribes remains strong. Across the Northern Caucasus, the ‘adat’ held that the ‘teip’ was the chief reference for loyalty, honour, shame and collective responsibility.68 ‘Adat’ set norms according to traditional standards, such as ‘honour killings’, blood feuds, bride abductions and the persecution and killing of LGBT people a ‘washing away the shame’ that the victims have brought to their ‘tribe’.

In modern Chechnya the concept of the ‘tribe’ is deeply ingrained: regarding the ‘shame’ generated by a family member being known or perceived to be gay, lesbian, bisexual or transgender, both authorities and local society apply pressure on family to punish them. State authorities have also denied the existence of LGBT people by saying ‘such’ people would be killed very fast, and the people claiming refugee status must not be Chechen.69 The rhetoric of national moral superiority pervading the Chechen political space, helps explain why political and spiritual leaders deny the very existence of sexual or gender diversity in Chechnya.

It is a further twist that the people who commit ‘honour killings’, as reported, often consider themselves as “victims of the situation”, forced to carry out the act: they love their family member, but they feel they have no other choice when the person “crossed the line” and “become a gay, lesbian, bisexual and/or transgender”. To allow the entire family live “properly”, the family feels it must purge or “wash away the shame” to allow the family resume normality. There are recorded cases of family members trying to help their LGBT relatives escape, at their own personal risk.

Currently, Chechnya is presenting as the most dangerous for LGBT-identified or LGBT-perceived people among the Caucasian republics. The legacies of two recent wars have resulted in widespread weapon/gun-ownership high levels of PTSD (post-traumatic stress disorder) amongst the general public, and high levels and aptitude for violence. Further, during and after the wars, socially and politically radical interpretations of Islam came into the republic with Middle East missionaries.70

What has been described here is a situation whereby a person’s sexual orientation or gender identity is not considered a private matter but has implications for their families and wider community. The social institution of the family in the North Caucasus region includes the extended family and the “shame” generated by deviations may result in the family’s exclusion from social communications and events, and where people will avoid marrying members of this family. “Honour killing” help to repair a family’s reputation and are generally carried out by the male members of families. However, “honour killings” pose significant challenges to later investigation: they may have been organised as an accident, a disappearance or a poisoning. Relatives and neighbours rarely voluntarily come forward as witnesses. There are particular silences around “honour killings” of LGBT people claiming refugee status must not be Chechen.69 The rhetoric of national moral superiority pervading the Chechen political space, helps explain why political and spiritual leaders deny the very existence of sexual or gender diversity in Chechnya.

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people. It is understood that the executor thinks that his efforts will be rewarded after his death.

Before a killing, relatives reportedly often try to change their LGBT family member through various forms of violence: beatings, placement under house arrest for months or years, and imposed isolation through removal of all communication devices. A version of “conversion therapy” is also prevalent — the “djinn expulsion” — a form of exorcism found commonly in society and in some mosques. The procedure variously includes physical restraint, and high-volume reading of the Koran through screaming in the ears of the person or headphones. The exorcist speaks to the bad spirit or “djinn”, asking about its location in the body, the way it entered into a person, about its desires. Then the exorcist persuades “djinn” to escape the body, through threatening him. To make the ‘djinn’ exit the body will often require physical pressure of the body part where the “djinn” allegedly resides. In some mosques, it is the mullah who decides whether a “djinn” exists, but if none is detected the outcome may be worse because this may be interpreted that the person has consciously chosen their non-traditional sexual behaviour, and therefore seeks and deserves death.

International and Russian human rights activists report that the situation in the North Caucasus, especially Chechnya, is critical. But it must be noted that the conservative part of North Caucasus society does not agree; they are disgusted by several new trends: unfiltered access to information has increased, women have become more empowered and independent (increasing numbers of women are initiating divorces and refusing to marry a second time), and a social conversation about the existence of queer people has even begun. SOGI issues are a largely marginal topic for the North Caucasus, but these issues have quietly begun to be spoken out loud. Like so many other parts of the world until a problem is stated aloud, it ‘does not exist’.
Ebb and Flow: Victories and Resistance in Oceania

By ILGA Oceania.

The socio-legal situation of LGBT people in Oceania has yielded mixed results: some incredible gains and progress, but also heart-breaking pushbacks because of the misinformation and campaigns wielded by the powerful Christian right or the religious right and their extremist conservative agenda and policies.

Though consensual same-sex sexual acts remain criminalized in just under half of the countries in the region, grassroots LGBTIQ groups and advocates are becoming increasingly visible across the region and are vocally lobbying their governments and the international community to recognise and protect their rights. And despite resistance from conservative groups and, at times, their own governments, their efforts have yielded a number of results.

Australia

Aboriginal Australian Sistergirls & Brotherboys

There has been a lot of public and media attention given to Aboriginal LGBTIQ populations in Australia highlighting the dire situation of Black Rainbow / Aboriginal Rainbow lack of access to resources specifically in the fight for more awareness to be raised on Aboriginal LGBTIQ high suicide rates. Miss Ellaneous, an Aboriginal Australian Sistergirl entertainer won the prestigious Artist of the Year Award at the Australian LGBTI Awards 2019. In her speech, she highlighted the plight of Aboriginal Sistergirls and Brotherboys.

In Ella’s words: "I am honoured to have been recognised and acknowledged for my artistry and I’m lucky to be working in a career that not only creates change but allows me to pursue my passion of creating much needed visibility to my black and culturally diverse community. We currently have an epidemic of suicide in this country which is twice the national average for my Aboriginal and Torres Strait Islander community. And although not documented, we know that a large proportion of this is within our BrotherBoys, SisterGirls & Rainbow community”.

Following up on research and data, Andy Archipelago has started to archive the Aboriginal Rainbow as part of his thesis in indigenous gender and sexual diversities.

Marriage equality referendum

The postal survey on marriage equality in Australia heavily dominated news in the region for much of the latter part of 2017, ending in a 61% ‘yes’ vote and leading to the legalization of same-sex marriage shortly thereafter.

The battle for marriage equality in Australia was fraught with the issue of religious exemptions, and though the final bill contained some exemptions, they weren’t as broad as those that exist in areas like education and work. Australia’s very draw-out, very visible debate on the issue of marriage equality put many religious and conservative groups across the region at unease, leading to re-entrenchment at the prospect of marriage equality arriving on their shores.

Despite that, at the end of 2017, Australia followed in New Zealand’s footsteps and became the second country in the region to legalise same-sex marriage, and marriage equality became the law of the land in Australia with the passage of the Marriage Amendment (Definition and Religious Freedoms) Act 2017 three weeks after the country voted to legalise the practice in a nationwide postal survey. Though the results of the postal survey were positive, many LGBTIQ organizations came out against the non-binding survey. As explained above, from a human rights perspective, the

1 "Archiving The Aboriginal Rainbow", Aboriginal LGBTIQASGBB Archive And Portal (website).
3 Read more about the implications of referendums that put our rights to a vote in the essay written by Elena Brodeala and Vlad Viski in the first section of this report.
majority voting on the rights of a minority is inherently problematic and puts LGBTIQ communities at risk of and through acts of hate speech, discrimination, and violence.4

And indeed, in the lead-up to the postal survey, marriage equality opponents released offensive television5 and newspaper campaigns,6 while the incidence of homophobic vandalism and attacks increased across the country.7

Pardons, apologies and decriminalisation

In 1997, Tasmania became the last Australian state to decriminalise sexual activity between consenting males. Twenty years later, the Tasmanian government issued an apology to those whose lives were impacted by the discriminatory law,8 and a year later passed a bill allowing them to apply to have convictions for same-sex sexual acts expunged from their criminal records.9

Similar bills soon followed in the states of Queensland10 and Western Australia,11 and now there are calls for the government of Australia to deliver a national apology to former service members who were dishonourably discharged on the basis of their sexual orientation.12

Advocacy and activism

The Federal Government’s Department of Foreign Affairs and Trade (DFAT) has been organising meetings in 2018 with the view of forming a consortium of human rights NGOs in Australia to share, network and collaborate on major issues affecting the lives of LGBTIQ in Australia, and this planning and massaging culminated in its DFAT NGO Forum in Canberra in February 2018 which included NGOs such as Equality Australia, Edge Effect, Planet Ally, Kaleidescope Trust Australia amongst many that attended.13

Protections from discrimination

While federal non-discrimination law in Australia has been grappling with the question of religious exemptions, the past two years have seen significant progress in discrimination protections at the state level.

During this time, Queensland became the second last state to remove the so-called “gay panic” defence from the state’s Criminal Code. The defence had been successfully used by two men who had murdered a man over an unwanted sexual advance in 2008; both men were granted shortened reduced sentences.14

In June of 2018, the Australian state of New South Wales passed a bill protecting LGBTIQ people from vilification, making it a crime to threaten or incite violence against people on the basis of a protected characteristic. Activist groups pushed for the legislation as a response to some of the nasty campaign ads directed at the LGBTIQ community during the run-up to the postal survey on marriage equality.15

Rainbow families in South Australia had cause for celebration when the state government passed bills allowing equal access to assisted reproductive treatment and unpaid surrogacy.16 Similarly, Northern Territory passed a bill granting the legal right to adopt children to de facto and same-sex couples.17

Hate incidents & discrimination

A review of 88 suspicious deaths that took place New South Wales between 1976 and 2000

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4 Rodney Croome, “Why a referendum on gay marriage is a bad idea” The Sydney Morning Herald. 29 April 2013.
8 Lane Sainty, “Tasmania Has Apologised To People Convicted Of Historical Gay Sex Offences”, BuzzFeed News. 12 April 2017.
12 Melissa Davey, “Injustice was official: call for national apology to gay former military personnel!” The Guardian. 25 September 2018.
13 “Australia’s DFAT NGO Forum”, Australian Department of Foreign Affairs and Trade (Website), 8 February 2018.
revealed that almost a third were suspected or confirmed to be driven by gay-hate bias. 18

After receiving pressure from advocates and victim’s families, the government of NSW decided to open an inquiry into the hate crimes, looking specifically at how police handled the cases and why the state’s justice system may have failed to protect victims or provide justice for their families.

Many feel that the NSW police force, which has a documented history of homophobia, failed to properly respond to and investigate the murders. 19

Legal progress on gender identity issues

In June 2017, the United Nations Human Rights Committee issued a decision stating that Australian laws barring married trans people from changing the sex on their birth certificate are in violation of international human rights law. In six states, married persons wishing to change their gender on legal documents had to first divorce. 20

When marriage equality came to Australia later that year, the Bill included a provision outlawing ‘forced divorce’ provisions and giving states twelve months to amend their legislation. 21 This, coupled with pressure from LGBTIQ and other advocacy groups, led to the provision being scrapped soon after in Victoria, New South Wales, Queensland, and Northern Territory. 22 23 24 25 Though Western Australia missed the deadline to amend their laws, they did so in February of this year, leaving only Tasmania at odds with federal law. 26

Religious exemptions

The marriage equality debate in Australia was accompanied by an ugly public battle over religious exemptions.

Religious exemptions are legal provisions that allow individuals, churches, and organizations to bypass non-discrimination protections for LGBTQ people on the grounds that treating them equally “would violate their religious beliefs.”

Though civil society groups have expressed the marriage Bill “struck a fair balance” between civil rights and religious freedom, there has been increased debate over exemptions in non-discrimination law that allow religious institutions, particularly schools, to discriminate against employees and students for being LGBTIQ. 27

The impact of these exemptions was given a face in 2017 when Craig Campbell, a teacher at a Baptist college in Perth, was fired for revealing he was in a same-sex relationship. 28

The story brought increased visibility to the issue, with reports on calls to remove the exemptions from law and to oppose the “right” of religious schools to fire staff or expel students on the basis of their sexual orientation or gender identity. 29

In this regard, the Prime Minister has pledged to close religious exemption loopholes in law. 30

Intersex rights

More than 20 intersex human rights defenders from Australia and New Zealand came together for an historic gathering in Darlington, Sydney in March of 2017. The event led to the “Darlington Statement”, 31 which addresses key priorities for the Intersex community, and that advocates consider to be “the basis of much of our work over the coming years.” 32

The Statement informed a shadow report submitted to the UN Human Rights Committee that found, “evidence of continuing harmful coercive...
practices" against intersex persons in Australian hospitals and made recommendations for guaranteeing the rights of intersex Australians.

The primary recommendation was to stop unnecessary, irreversible surgery on children born intersex for the purpose of assigning them a sex, a position that was affirmed by the UN Human Rights Committee.33

In September 2018, the Australian government responded. The Australian Human Rights Commission acknowledged the lack of national guidelines on how to treat people born with variations in sex characteristics and launched a major consultation on how to best protect their rights.

The project, which incorporated input from intersex individuals and organizations, sought to “identify key issues and obtain perspectives on current practice, evaluate approaches taken to medical interventions in Australia and other jurisdictions, and develop recommendations for a nationally consistent human-rights based approach to decision-making about medical interventions”.”34 and the study is ongoing.

**Health**

A 2017 survey of trans and gender-diverse youth in Australia found that 48% of participants had attempted suicide, and about three in four reported experiencing anxiety or depression.35

As is the case universally, queer and trans youth in Australia are at a markedly higher risk for depression and suicide than their heterosexual and cisgender peers.

Australia’s ongoing marriage equality debate was also deeply intertwined with the mental and physical health of its LGBTIQ population.

A 2017 study of lesbian, bisexual and queer women in Australia found that “forty percent of women had experienced some form of abuse or harassment” in the past twelve months, marking an increase on previous years.36

A number of NGOs banded together to launch a campaign using the link between discrimination and suicide rates to urge Australians to vote in favour of marriage equality.

According to them, “as many as 3000 youth suicide attempts could be averted each year with a ‘YES’ vote for marriage equality.”37

As a response to high rates of depression and suicide among queer and trans Australians, the government’s peak body for LGBTIQ health announced a new plan for strategic action to address the crisis.

The plan aims “to respond to LGBTIQ people in current need, to provide interventions to those who are at risk, and to interrupt the structural factors that contribute to overrepresentation of LGBTIQ people in mental health and suicide statistics.”38

"Conversion therapy"

Though there is no federal ban on “conversion therapy” in Australia, this is a situation that local activists are lobbying to rectify.39

In September 2018, the Australian Senate passed a motion seeking to ban “conversion therapy” across the country in response to new Prime Minister Scott Morrison stating that conversion therapy, “wasn’t an issue for him.”40

Though not legally binding, the motion urges the Federal Government to pressure states to ban the practice. Victoria is currently the only state in Australia that has a Commissioner charged with investigating and bringing charges against practitioners of conversion therapy,41 and is currently seeking to ban the practice outright in law.42

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37 #mindthefacts “#mindthefacts – vote ‘YES’ for better youth mental health”, The University of Sydney (website).
39 Paul Karp, “Gay conversion therapy ban found to be LGBTIQ Australians’ top priority”, The Guardian. 3 August 2018.
40 Matt Moore, “Australia’s Senate passes a motion seeking to ban ‘conversion therapy’”, Gay Times. 16 September 2018.
Immigration and asylum

Australia’s controversial immigration policies have been reported to have a profound impact on LGBTIQ migrants seeking asylum on the grounds of their sexual orientation or gender identity.

In May 2017, Australia began closing its Immigration Detention Centre in Manus Island, Papua New Guinea, telling detainees to “consider their options”: stay in Papua New Guinea or another third country, temporarily relocate to a transit centre, or return home voluntarily. 43

The Australian Green Party officials criticised the move as “profoundly cruel” to LGBTIQ people, as they can’t return to the countries they fled because of their sexuality, and can’t stay in Papua New Guinea where same-sex sexual acts is punishable by up to 14 years in prison. 44

The following year, an immigration judge in the country came under fire from the federal court for showing “extreme illogicality” when it rejected the appeal of an Indian asylum seeker seeking protection in Australia because of his sexual orientation. 45

New Zealand

Pardons, apologies and decriminalisation

In New Zealand, it’s believed over 1,000 people were convicted before the law criminalising same-sex sexual acts was overturned in 1986.

In 2017, the New Zealand Parliament issued a formal apology for the policy, recognising, “the tremendous hurt and suffering those men and their families have gone through, and the continued effects the convictions have had on them.” 46

The following year, Parliament unanimously passed a bill to expunge those convictions, but stopped short of providing compensation. 47

The move angered many gay rights activists in New Zealand, who are fighting for compensation for the damage done by the law. 48

Advocacy and activism

In the recent cycle of the UN’s Universal Periodic Review (UPR), New Zealand received several recommendations to add gender identity, gender expression or sex characteristics as specifically prohibited grounds of discrimination on the basis of gender identity and intersex status. Additionally, Chile recommended putting an end to non-consensual medical procedures which affect intersex persons. 49

Prior to the UPR, Justice Minister Andrew Little’s speech 50 was, in many ways, as useful as the recommendations themselves. Minister Little made robust statements and was very unequivocal about the gaps in New Zealand’s human rights record.

It was a statement of intent from the government, and allows New Zealand to take a strong approach to its advocacy, including, as Minister Little alluded to, a broad review of the Human Rights Act, including amending section 21(1)(a) to include gender identity – which is in line with the Labour party’s Rainbow (incorporating gay, lesbian, bisexual, transgender, intersex akava’ine, fa’afafine, fa’afatama, fakaffine, fakaleiti, fakaleiti (leiti), mahu, palopa, takatāpui, tangata ira tane, vakasalewa, whakawahine agender, asexual, brotherboy, gender diverse, gender fluid, genderqueer, nonbinary, pansexual, queer, sistergirl, trans feminine, trans masculine, transsexual, trans) policy. 51

The New Zealand Government’s Oral Response 52 to the full UPR Report with of all 194 recommendations in Geneva, was that they have not taken a position on the recommendations and will carefully consider their position through an inter-agency process and decision by Cabinet. 53
The next stage of the UPR is the adoption of the recommendations at the 41st session of the Human Rights Council in July 2019 and although there is no formal process for civil society involvement between now and then, civil society are working hard on the ground in their advocacy to meet with government officials before they officially respond to the recommendations.

Legal progress on gender identity issues

In New Zealand, advocates were frustrated with the results of the 10-year milestone of a Human Rights Commission report called the 2008 Inquiry into Discrimination Experienced by Transgender People. The inquiry, the first of its kind in the world, was launched in 2006 to learn more about trans people’s experience with discrimination, including barriers to health services and legal gender recognition.

The Commission’s resulting report made nine key recommendations to improve the lives of trans people, including strengthening discrimination protections, improving access to healthcare, and simplifying the process of changing one’s legal gender through documentation.

The 10-year anniversary showed frustratingly little progress had been made towards realizing the recommendation: there had been no improvement in access to healthcare, birth certificates were still difficult to amend, and questions about sexual orientation and gender identity were not included on the 2018 Census.

However, the government did make some progress in October 2018 when it announced it would remove a cap on the number of publicly-funded gender affirmation surgeries it would provide. The previous caps of three male-to-female surgeries and one female-to-male surgery every two years had resulted in a waitlist of 50 years for the 105 people seeking the surgery.

Health

HIV rates in New Zealand have been steadily rising since 2011, and reached their highest to date in 2016, with the majority of new infections among men who have sex with men. Just months prior to the release of the figures, the Ministry of Health of New Zealand decided to cut funding for a landmark HIV prevention study among men who have sex with men, despite an internal report outlining the dangers of discontinuing the research.

“Conversion therapy”

In June 2018, a New Zealand television network unveiled “conversion therapy” happening at religious organisations in the country. The investigation exposed Church organisations, a School Teacher and a Trainee Counsellor as they talked to an undercover journalist offering or describing such treatments.

When they were formally approached, however, all of them denied that what they were offering was in fact conversion therapy. A couple months later, a petition was launched asking the New Zealand House of Representatives to ban the practice.

Immigration and asylum

Forty people were reported to have been granted refugee status in New Zealand in the five years preceding 2017 on the grounds of their sexual orientation and gender identity.

Three of the most recent cases granted by the Immigration and Deportation Tribunal include a bisexual Pakistani man, who lived with a transgender woman in Whangarei and Auckland, a lesbian teacher from Russia, and a gay man from Myanmar.

60 “New Zealand TV shows expose on gay conversion therapy”, Out in Perth, 17 June 2018.
The Pacific

Decriminalisation

In the Pacific, none of the criminalising states repealed its laws against consensual same-sex sexual acts between March 2017 and January 2019.

There is some positive and promising signs when in August 2017, the Cook Islands appeared to move towards decriminalisation following a planned overhaul of the 1969 Crimes Act. The local organisation Te Tiare Association (TTA) participated in the public consultation held in July 2017 to that effect, and it was even reported that Christian leaders came out in support, noting that though "it is not right", same-sex sexual acts should not be treated as a criminal offence. To date, the Crimes Bill 2017 remains on hold and does not appear to have advanced in the legislature.

Marriage equality

In light of growing momentum towards marriage equality in the region, the Governor General of the Solomon Islands reiterated in a speech that same-sex relations are illegal in the country and that, "Promoting same sex marriage is like changing the law of gravity by legislation."

Similarly, a coalition of religious, women's, youth groups and local chiefs in Vanuatu started a petition to declare their opposition to marriage equality in the country after rumours spread that lawmakers were planning to introduce a bill on the issue.

Certainly, the Pacific is shaping up to be a hot-spot in the foreseeable future for issues such as marriage equality, especially in line with Pacific Leaders public comments in Samoa, but it is not a priority for the Pacific human rights defenders currently.

Pardons, apologies and decriminalisation

In the Pacific, there no current plans in any of the jurisdictions to mirror the judicial and statutory regimes in Australia and New Zealand that have pardoned men who were cautioned or have historical convictions under previous legislation that criminalised same-sex sexual acts, and there are no apologies being planned.

Both pardons and apologies are the results of successful decriminalisation efforts and with a number of Pacific countries that still criminalise same-sex sexual acts, it is unlikely that these will occur anytime soon.

Advocacy and activism

Civil society and grassroots organisations across the Pacific have been busy launching initiatives to improve health, raising awareness around human rights issues, and advocating for better policies to support LGBTQI people.

A coalition of LGBTQI advocates started a petition in June 2018 lobbying the Pacific Islands Forum, the organisation that oversees the region's political and economic policy, to pressure its 18 member states to, "support full inclusivity, equity and equality for all people of the Pacific." The petition calls on the Forum to compel member states to decriminalise same-sex sexual acts in countries where colonial-era laws are still on the books, denounce homophobia and transphobia, and include gender and sexual minorities in positions of leadership.

In Fiji, civil society groups are pushing back against violence perpetrated against the trans community. Organisations are conducting research into transgender-based violence and trans women's access to justice, training police officers in how to handle LGBTQI cases with sensitivity and launching a campaign against teen pregnancy and
STI transmission by making free condoms available at bars, clubs, and motels around the island.  

Samoa similarly has a strong presence from LGBTIQ grassroots organisations who have been carrying out awareness-raising campaigns since 2008. The Samoa Fa’aafafine Association met with representatives of media outlets to discuss fair media reporting on LGBTIQ issues after a national newspaper misgendered a trans woman while reporting on her death.  

The Association also organised a week-long series of initiatives to tackle discrimination, stigmatisation and gender-based violence in Samoa.  

Sadly, the Samoa Fa’aafafine Association and the Pacific region were struck by tragedy early last year when the Association founder and President, So’oalo To’oto’oali’i Roger Stanley passed away. Dozens of people attended and paid their homages at her funeral service, and the country’s Prime Minister delivered a eulogy during the ceremony calling for all to respect Fa’afafine and Fa’atama. In a statement released, OutRight Action International memorialised Roger as, “courageous and dedicated to making the world a better place for LGBTQ people everywhere,” and demonstrated that her loss was felt by LGBTQ activists across the Pacific region and around the world.  

Tonga Leiti Association, a prominent LGBTIQ civil society organisation in Tonga, was similarly faced with misfortune early last year when tropical cyclone Gita, the worst to hit the main islands in 60 years, seriously damaged the organisation’s center and shelter. The Association quickly set to work rebuilding the Center, which serves as much-needed refuge to LGBTQ people who may otherwise face discrimination in housing. In addition to operating the shelter, the Association has carried out campaigns in the country’s schools against trans bullying, and provides the community with HIV testing, counselling services, and capacity building on HIV testing and sensitisation.  

Pacific LGBTIQ populations continue to face derogatory public comments from their leaders as in Fiji, despite Fiji having granted sexual and gender minorities protection against discrimination in Article 26 of the 2013 Fijian Constitution.  

Papua New Guinea (PNG) has one of the highest rates of HIV infection in the world, and still criminalises same-sex sexual activity with a 14 years imprisonment sentence and with two per cent of the adult population being HIV positive. Human rights actors and activists have called for PNG to change its laws, and if it “refuses to decriminalise homosexuality on the grounds that it is a breach of human rights, then it should consider doing so as a means of improving health”.  

The common thread amongst Pacific nations is despite the lack of legislative support in protecting LGBTIQ Pacific citizens in areas of health care, education, employment, housing, freedom of expression, association and assembly, asylum and migration, family and community and relationship recognition, their lived realities suggest a more harmonious acceptance through cultural practices indigenous to each Pacific nation and these have somehow lessened the impact of any such lack of protections.  

Hate incidents & discrimination  

Mistrust of police is not unique to Australia and New Zealand. Following recent attacks in the urban area of Nasinu, Fiji, a human rights organisation based in the country encouraged LGBTIQ persons to speak up and report incidents of violence. According to the organisation’s director, victims of violence often choose not to report as they fear both reprisals from the community and discrimination and harassment from law enforcement.  

74 Adel Fruean, “Fa’aafafine week campaign kicks off” Samoa Observer, 2 December 2018.  
75 Elizabeth Ah-Hi, “Nation bids farewell to So’oalo” Samoa Observer, 3 February 2018.  
76 “Remembering Samoan Fa’aafafine Activist Tootooali’i Roger Stanley” OutRight Action International (website).  
78 “Tonga campaign aims to empower transgender students”, Radio New Zealand Pacific. 27 March 2017.  
80 “Fiji Prime Minister tells Gay Couples to Move to Iceland”, Huffington Post. 1 June 2016.  
81 Constitution of the Republic of Fiji.  
82 “WHO - HIV & Sexually Transmitted Diseases in Papua New Guinea”, World Health Organisation Western Pacific Region.
enforcement. One of the most recent was a hate crime against a young Fijian transgender woman, Ms Akuila Salavuki who was attacked and murdered in July 2018.

However, there were signs that relations may improve: later that year, Fiji’s Human Rights and Anti-Discrimination Commission commended the police force for taking swift action on two complaints of homophobic assaults.

**Legal progress on gender identity issues**

Gender identity is a mixed bag with a checkered past as far as the Pacific is concerned. Preferred pronouns which are very much a core aspect of one’s SOGIESC and LGBTIQ identity in Australia and New Zealand are not as pronounced in the Pacific.

There has always been some hesitancy amongst activists on the ground in pursuing gender identity reform because their lived experiences and realities on the ground have more prioritised struggles - education, gainful employment, and contributions to the myriad of communal and familial obligations - these rate a higher priority in the lives of Pacific LGBTIQ.

But there is hope - the Asia Pacific Transgender Network (APTN) appointed a Pacific Co-ordinator to work with three country partners - Fiji, Papua New Guinea and Samoa - to advance legal gender recognition in Fiji, and develop a peer research study drawn from Transgender Europe’s TVT campaign and program with the purpose of using this peer research to develop a record that documents the lived experiences and realities of trans communities in these 3 countries. And there is no doubt that from that peer research, more work will be done and progress made on legal progress on gender recognition.

**Religious exemptions**

Religious exemptions legislation in the Pacific allowing discrimination against LGBTIQ citizens on the basis of their sexuality or gender identity are non-existent. The extent though of religious persecution is another matter entirely and there are recent examples of this in the Pacific.

Most notable in the religious acceptance and non-acceptance of Pacific LGBTIQ is the indigenous cultural notion of what makes a family. Some Pacific church leaders have come out in support of Pacific LGBTIQ from a religious perspective and reject the notion of cultural positionality of these identities.

**Intersex rights**

For the first time in the history of the Pacific, Intersex became a focus of discussion / workshop during the ILGA Oceania Conference Apia Samoa August 2018.

The session "Intersex Awareness & Policy - The Untold Pacific Story" was well received and attended by health professionals and intersex activists – first time Intersex was discussed in a Pacific setting.

We are starting to see the documentation of Intersex in the Pacific as was the testimonials by National Health Service of Samoa’s registered midwives who attended the session.

**Health**

The work of the Asia Pacific Transgender Network (APTN) is leading and paving the way for the development of relevant policies on Pacific Trans Health.

The Blueprint not only maps the current human rights and trans communities health in the Asia Pacific region including best practice clinical advice about meeting the health needs of trans children, youth and adults but it is also a tool that can be tailored to each country’s requirements to work in line with in-country activists strategic frameworks by enhancing their work in the improvement of

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84 “Murdered on International Day Against Homophobia, Transphobia and Biphobia”, ABC Net. 23 July 2018.
87 "Samoan Church Leader Accepts Faafafine But Rejects Their Cultural Significance" Pacific Islands Report - Pacific Islands Development Program.
88 “APTN Trans Health Blueprint” Asia Pacific Transgender Network
health and human rights for trans people and trans communities.

Developed between APTN, UNDP, and USAID and the PEPFAR-funded Health Policy Project, the APTN Trans Health Blueprint has been rolled out successfully in Fiji in a regional implementation in 2018 covering 8 countries - Fiji, Vanuatu, Papua New Guinea, Samoa, Tonga, Kiribati, Cook Islands and Niue and has since then been tailored and implemented in Fiji, Tonga, Samoa, and picked up by ASHM (Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine) and OSSHHM (The Oceania Society for Sexual Health and HIV Medicine) as the basis for development of a training package to advance STI management in trans health including bringing together in-country Health Ministries staff and professionals. So far, this training package has been delivered in Vanuatu, Kiribati and Federated States of Micronesia with more countries planned.

In other developments, budget cuts to the HIV treatment program in Papua New Guinea led to a critical shortage in stocks of anti-retroviral drugs.89

"Conversion therapy"

Since the last State-Sponsored Homophobia report, there have not been any reported incidents of gay "conversion therapy" in the Pacific, nor have there been any plans to introduce any further bans.

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89 Yara Murray-Atfield, "Papua New Guinea's critical HIV drugs shortage sparks warning that people may die", ABC News. 21 April 2018.
GLOBAL OVERVIEW

CRIMINALISATION AND RESTRICTION

STATE-SPONSORED HOMOPHOBIA 2019

By Daryl Yang. 1

50 years after the 1969 Stonewall Riots in New York City, it is timely to look back into the past to evaluate the progress that we have achieved. As writer Rebecca Solnit wrote, "To know history is to be able to see beyond the present, to remember the past gives you capacity to look forward as well, it's to see that everything changes and the most dramatic changes are often the most unforeseen." 2 This section documents the dramatic decline in the global march towards decriminalisation that was probably unimaginable only five decades ago.

The progress made over the past 50 years could not have been possible without the tireless efforts of individual activists and advocacy organisations across local, national, regional and international levels. It is also the fruit of the courage and sacrifice of the countless individuals who stood up against these laws and risked their lives and careers, by organising advocacy groups and organisations, demonstrating on the streets, raising awareness, engaging with MPs, politicians and public officials, filing petitions and launching the judicial challenges whose decisions have become synonymous with the success of the international SOGIE rights movement. Through Dudgeon, Toonen, Lawrence, Pant, Orozco, Jones, and now Navtej Singh, among many others, millions of us are represented.

In the 2018 Indian Supreme Court decision of Navtej Singh v Union of India that decriminalise consensual same-sex sexual conduct, Indu Malhotra J cited ILGA’s 2017 State Sponsored Homophobia Report and observed that "the trend of decriminalizing anti-sodomy laws world over has gained currency during the past few decades". 3 While earlier editions of this report have hinted at this trend by tracking the decrease in the number of countries with such laws, this section makes use of recent population data to conclusively demonstrate and illustrate the significant declining trend in terms of both the number of countries criminalising consensual same-sex sexual acts and the proportion of the world’s population living under such laws.

This section’s findings support the view that there is an increasingly clear international norm against the criminalisation of consensual same-sex sexual conduct. 4 It highlights that countries that do so are in a shrinking minority and should join the rest of the global community in repealing such laws in compliance with international law.

While the trend of decriminalisation is encouraging and worth celebrating, decriminalisation as a formal legal change does not in and of itself lead necessarily to effective social change. Indeed, the removal of formal legal provisions does not always or immediately translate to improvements in the lived experiences of gender and sexual minorities. 5 Decriminalisation is nevertheless a crucial step in the march towards full equality and freedom that, fuelled by the encouraging developments presented in this section, will and must continue.

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1 Daryl Yang is ILGA Legal Research Intern and one of the Main Research Assistants of this edition. He is a final-year student at Yale-NUS College, where he is reading a double degree in law and liberal arts with a minor in anthropology. He co-founded and served as the inaugural Executive Director of Singapore’s Inter-University LGBT Network and previously interned with the National Center for Lesbian Rights (NCLR) in San Francisco, USA. Daryl is interested in SOGIE, migrant and disability issues, particularly in non-liberal societies. His current research is on the impact of state ratification of human rights treaties on local civil society advocacy.


Global population data for the period 1969 to 2017 was taken from the data made available by the World Bank. To ensure reliability, only data of UN Member States are included in these charts. For Serbia, the data between 1960 and 1989 was derived from the United Nations' World Population Prospects: The 2017 Revision. The data for the various nations of the United Kingdom was taken from the UK Office for National Statistics. Data for the Australian territories is taken from the Australian Bureau of Statistics.

These charts trace the historical trends in the decriminalisation of consensual same-sex sexual acts among UN Member States. For convenience, it traces the trends of the 193 UN Member States even though some of these Member States may not have gained UN membership prior to 1969.

Findings

The three charts below reveal the dramatic decline in both the number of UN Member States that criminalise consensual same-sex sexual acts and the global population living under such laws.

Chart 1 shows the increase in the global population from around 3.5 billion in 1969 to around 7.5 billion in 2018. It shows clearly that the proportion of the global population living in criminalising UN Member States has consistently fallen over the years in comparison. The two sharp drops in 1997 and 2018 are attributed to the decriminalisation by China and India respectively.

6 “Population, total”, World Bank (website) accessed 15 March 2019. For convenience, 2018 data is extrapolated from 2017 data by assuming zero growth rate for all UN Member States.


Chart 2. Proportion of global population governed by laws criminalising consensual same-sex sexual acts. This chart shows how the population living in criminalising countries fell from around 74% in 1969 to around 27% in 2018, a 64% decrease in five decades. The proportion fell below 50% for the first time in 1997 after China decriminalised. Throughout the period, most of this population lived in Asia and Africa, with the majority in Asia. However, after India’s decriminalisation in 2018, the proportion of this population is almost equally spread between the two continents as of 2018 with 12.2% living in Africa and 10.4% living in Asia.
Chart 3. Number of Criminalising UN Member States. In 1969, 138 UN Member States were criminalising States. In 2018, the number almost halved with 70 remaining States. An average of 1.4 Member States decriminalised every year, with the highest being 5 in 1998. Most criminalising States were in Africa (44) and Asia (32) in 1969 and continue to be. By 2003 and 2004 respectively, both North Americas and Europe have completely repealed such laws. The percentage of criminalising States in Africa and Asia fell by 25% and 31% respectively between 1969 and 2018 to 33 and 22 respectively. The number of criminalising States in Latin America and the Caribbean and Oceania more than halved during that period, reducing from 19 to 9 (53%) for the former and from 14 to 6 for the latter (57%)
Consensual Same-Sex Sexual Acts: LEGAL

Highlights

123 UN Member States

65% UN Member States

<table>
<thead>
<tr>
<th>Region</th>
<th>UN Member States</th>
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</thead>
<tbody>
<tr>
<td>Africa</td>
<td>21 /54</td>
</tr>
<tr>
<td>LAC</td>
<td>24 /33</td>
</tr>
<tr>
<td>North America</td>
<td>2 /2</td>
</tr>
<tr>
<td>Asia</td>
<td>20 /42</td>
</tr>
<tr>
<td>Europe</td>
<td>48 /48</td>
</tr>
<tr>
<td>Oceania</td>
<td>8 /14</td>
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Introduction

This section presents annotated entries on the 123 UN Member States where consensual same-sex sexual acts are not criminalised. Information on several non-UN Member jurisdictions is also included.

Some of these States never contained a criminalising provision in their Penal Codes, while others consciously removed the relevant law, initiated within parliaments or by the imperatives set by courts of law.

NOTE Legality of same-sex sexual acts cannot be read as evidence of a safer living environment for people with diverse sexual orientations or gender identities or expressions. In many of the States listed below, social stigmatisation of people who are perceived as non-heterosexual or non-cisgender remains alarmingly high. In fact, in many of them, early decriminalisation dates can be explained by historical reasons completely unrelated to activism or lower hostility towards non-heterosexual forms of sexuality.

What does International Human Rights Law say?

Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person’s actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 33.

States shall repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent.

Yogyakarta Principles 2(b) and 6(b).
## Africa (21)

<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Angola</td>
<td>2019</td>
<td>In January 2019, Angola enacted a new Penal Code that does not criminalise same-sex sexual acts. Angola started the revision of its criminal law in 2004 through a presidential order that created the Commission for the Reform of Justice and Law. This commission mandated, among other things, the drafting of a new Penal Code for the country.¹</td>
</tr>
<tr>
<td>2</td>
<td>Benin</td>
<td>1877</td>
<td>The Penal Code of Benin does not criminalise consensual same-sex sexual acts between adults. A number of amendments trying to criminalise have failed to pass into law. Since 1947, article 331 of the Penal Code sets the age of consent for different-sex sexual activity at 13 but at 21 for same-sex consensual activity.</td>
</tr>
<tr>
<td>3</td>
<td>Burkina Faso</td>
<td>1960</td>
<td>Prior to and since independence from France in 1960, Burkina Faso has no law outlawing consensual same-sex sexual acts for men or women in its Penal Code.</td>
</tr>
<tr>
<td>4</td>
<td>Cape Verde</td>
<td>2004</td>
<td>The Penal Code does not criminalise consensual same-sex sexual acts between adults. However, before it came into force, Article 71 of the now-obsolete 1886 penal code provided for “security measures” for people who habitually practice “vice against the nature”.</td>
</tr>
<tr>
<td>5</td>
<td>Central African Republic</td>
<td>1961</td>
<td>Since independence from France, the Penal Code of the CAR has not outlawed consensual same-sex sexual acts between adults in private. However, article 85 criminalises “acts against nature committed in public”, defining them as “attacks on public morals” and imposing harsher penalties compared to other attacks on morals. Local CSOs indicate that these provisions have been used to blackmail and arbitrarily arrest LGBT people.²</td>
</tr>
<tr>
<td>6</td>
<td>Congo</td>
<td>1940</td>
<td>In the Republic of Congo Brazzaville, the text of the Penal Code (as amended in 2006), only prohibits same-sex sexual behaviour with a person younger than 21 years, while the age of consent for different-sex is 18.</td>
</tr>
<tr>
<td>7</td>
<td>Côte d’Ivoire</td>
<td>1960</td>
<td>Post-independence from France’s rule in 1960, Côte d’Ivoire did not criminalise consensual same-sex sexual acts between adults in its Penal Code, yet the age of consent differs under sections 356 and 358: 15 for different-sex, and 18 for same-sex. Despite the fact that no law exists which criminalises consensual same-sex sexual relations among adults, at the end of 2016 a judge in the city of Sassandra used article 360 of the Penal Code to condemn 2 men to 18 months imprisonment.³ They were caught in the act by the uncle of one of the men and, after having been reported to the authorities, they admitted before the judge that they were in a loving relationship.⁴</td>
</tr>
</tbody>
</table>

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¹ Presidential Order No. 124/12, 27 November 2004.  
³ Penal Code (Ivory Coast), article 360: “Whoever commits acts which constitute an affront to public modesty will be sentenced to imprisonment of between three months and two years, and with a fine of between 50,000 and 500,000 francs. If the affront to public modesty is considered an indecent act or against nature with a person of the same sex, the sentence will be imprisonment of between six months and two years, and a fine of 50,000 to 300,000 francs”.  
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<th></th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
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<tbody>
<tr>
<td>8</td>
<td>Democratic Republic of the Congo</td>
<td>1940</td>
<td>There are no provisions outlawing consensual same-sex sexual acts between adults in the 2004 Penal Code of the DRC. However, Article 176 of that code—which criminalises activities against public decency—has been used as the legal basis to criminalise LGBT persons. The Human Rights Committee expressed concern about this and recommended that the State ensure that no person is prosecuted under Article 176 of the Penal Code because of their sexual orientation or gender identity, as well as enact anti-discrimination legislation that expressly includes sexual orientation and gender identity.</td>
</tr>
<tr>
<td>10</td>
<td>Equatorial Guinea</td>
<td>1963</td>
<td>The Penal Code in force in Equatorial Guinea is a 1963 revision of the Spanish Criminal Code that dates back to the Francoist era. This Code does not contain specific provisions on same-sex sexual acts between adults.</td>
</tr>
<tr>
<td>11</td>
<td>Gabon</td>
<td>1960</td>
<td>Prior to and following its independence from France in 1960, the Penal Code does not criminalise consensual same-sex sexual acts between adults, yet the age of consent for different-sex sexual acts is 15, and for same-sex it is 21. However, as alluded to by the Committee on Economic, Social and Cultural Rights in 2013, Gabon remains a highly discriminatory environment for LGBT people, which may be why LGBT reporting of incidences is so low. In August 2016, the UN reiterated the need for non-discrimination legislation inclusive of SOGI.</td>
</tr>
<tr>
<td>12</td>
<td>Guinea Bissau</td>
<td>1993</td>
<td>The Penal Code which remained in force after the independence from Portugal was repealed in 1993 with the enactment of a new Penal Code which contains no provisions criminalising consensual same-sex sexual acts between adults.</td>
</tr>
<tr>
<td>13</td>
<td>Lesotho</td>
<td>2012</td>
<td>In Article 52 of the Penal Code Act (into force in 2012), sodomy is not mentioned. This article erases the punitive enumeration of [male] sodomy indicated in Section 185(5) of the 1939 Criminal Procedure and Evidence Act.</td>
</tr>
<tr>
<td>14</td>
<td>Madagascar</td>
<td>1960</td>
<td>Prior to and following its independence from France in 1960, the Criminal Code does not prohibit consensual same-sex sexual acts between adults. However, since 1999, article 331 sets the age of consent at 14 for different-sex sexual acts and 21 for same-sex.</td>
</tr>
<tr>
<td>15</td>
<td>Mali</td>
<td>1961</td>
<td>Neither the 2001 Penal Code (nor its predecessor, the 1961 Penal Code) stipulates provisions targeting consensual same-sex sexual relations between adults.</td>
</tr>
</tbody>
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5 Penal Code of the DRC, article 176: “A person who engages in activities against public decency will be liable to a term of imprisonment of eight days to three years and/or fined twenty-five to one thousand zaires”.


<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Action</th>
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<tbody>
<tr>
<td>Mozambique</td>
<td>2014</td>
<td>In July 2014, the Parliament approved Law 35/2014 repealing earlier criminalising provisions (articles 70 and 71 of the 1886 Penal Code had imposed penalties on people who “habitually practiced vices against nature”). This revised Penal Code came into force in June 2015.</td>
</tr>
<tr>
<td>Niger</td>
<td>1961</td>
<td>The Penal Code (with amendments up to 2003) does not specify provisions against consensual same-sex relations, yet Sections 278 and 282 specify that the age of consent differs: 21 for same-sex sexual acts, and 13 for different-sex.</td>
</tr>
<tr>
<td>Rwanda</td>
<td>1980</td>
<td>The Rwanda Penal Code (1980) does not contain consensual same-sex acts criminalising provisions, yet articles 358 and 362 set the age of consent as unequal: 16 for different-sex and 18 for same-sex sexual activity. The legal and social situation of LGBT people in Rwanda is captured in a 2016 report, which points to severe stigmatisation.</td>
</tr>
<tr>
<td>São Tomé &amp; Príncipe</td>
<td>2012</td>
<td>Sao Tomé and Príncipe’s Penal Code, adopted in 2012, contains no provision for criminalisation of consensual same-sex sexual activity between adults. This 2012 text drops former references to “acts against nature” that were contained in the earlier colonial-era Penal Code.</td>
</tr>
<tr>
<td>Seychelles</td>
<td>2016</td>
<td>In July 2016, Seychelles amended Sections 151(a and c) to the 1955 Penal Code came into force, thereby decriminalising “(a) …carnal knowledge of any person against the order of nature” that is consensual and amongst adult persons.</td>
</tr>
<tr>
<td>South Africa</td>
<td>1998</td>
<td>Following a case decided by the Constitutional Court of South Africa, the State abrogated laws carried through from the 1955 Penal Code in which Article 600(1) and 601 criminalised consensual same-sex sexual conduct between adults, including the common-law crime of sodomy.</td>
</tr>
</tbody>
</table>

**Latin America and the Caribbean (24)**

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>1887</td>
<td>Law No. 1,920 enacted Argentina’s first federal Penal Code, which entered into force in 1887 and made no reference to consensual sexual acts between adults. However, until very recently local regulations issued by provincial, municipal and local authorities targeted “homosexualism” and/or regulated morality, vice and mores. LGBT people were heavily persecuted under these regulations.</td>
</tr>
<tr>
<td>Bahamas</td>
<td>1991</td>
<td>Same-sex sexual acts in private were decriminalised by amendment to the Sexual Offences Act (1989), and came into force in 1991. Under Section 16(1)(2) of the Sexual Offences and Domestic Violence Act (1991) the age of consent differs for same-sex (18) and different-sex (16) sexual acts.</td>
</tr>
</tbody>
</table>

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12 Federación Argentina LGBT, Informe sobre códigos contravencionales y de faltas de las provincias de la República Argentina y la Ciudad Autónoma de Buenos Aires en relación con la discriminación y la represión a gays, lesbianas, bisexuales y trans (2006).
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legal Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belize</td>
<td>2016</td>
<td>The country’s colonial-era sodomy law was declared unconstitutional by the Belize Supreme Court. The Court revised the language of Section 53 of the Criminal Code and ordered the insertion of a clause to exclude consensual sexual acts between adults in private. Interestingly, the court dismissed the National Evangelical Association of Belize (NEAB) to join the litigation, although the Catholic church appealed the decision.</td>
</tr>
<tr>
<td>Bolivia</td>
<td>1832</td>
<td>The first Criminal Code of Bolivia (1831) entered into force in 1832. This Code largely followed the Spanish Criminal Code of 1822 that contained no provision on sodomy. There are no criminalising provisions for same-sex sexual acts between consenting adults in private in the current (2010) Penal Code.</td>
</tr>
<tr>
<td>Brazil</td>
<td>1831</td>
<td>The first Criminal Code of Brazil contained no provision on sodomy. However, it has been indicated that other provisions of that Code were used to persecute persons who engaged in same-sex sexual acts. In 2015 the Supreme Court of Brazil declared that the expressions &quot;pederasty or not&quot; and &quot;homosexual or not&quot; under article 235 of the 1969 Military Penal Code are not constitutional. These provisions had been used to restrict same-sex activity.</td>
</tr>
<tr>
<td>Chile</td>
<td>1999</td>
<td>Article 10 of Law No. 19,617 amended Article 365 of the Penal Code by decriminalising consensual same-sex sexual acts between consenting adults. However, that same provision sets the age limit at 18 for &quot;same-sex carnal access&quot;, and 14 for other sexual acts. Local organisations denounce that Article 373, which criminalises &quot;acts against decency and good mores&quot; is used as a tool to criminalise LGBT people. In its 2nd cycle of the UPR, the Government of Chile committed to repealing this article in a forthcoming Penal Code revision.</td>
</tr>
<tr>
<td>Colombia</td>
<td>1981</td>
<td>Decriminalisation of &quot;homosexual carnal knowledge&quot; occurred through repeal of Article 323(2) in the 1980 Penal Code (effective January 1981). In 1999, the Constitutional Court Decision C-507/1999 repealed (or reinterpreted) certain provisions of Executive Order No. 85/1989 which established that &quot;being homosexual&quot; or &quot;committing acts of homosexuality&quot; were affronts against Military Honour.</td>
</tr>
</tbody>
</table>

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13 Caleb Orozco v AG of Belize Supreme Court Claim No. 668 of 2010. For more information on the decision, see: "UNIBAM: And Justice For All", 7 News Belize, 10 August 2016; Ion Cacho, "Orozco vs AG 2016", YouTube (website), 11 August 2016; "About Orozco v AG", URAP Project (website), accessed 5 March 2019; IACHR Hails Unconstitutionality Decision on Criminalization of Consensual Sexual Relations between Same Sex Adults in Belize", OAS (website), 22 August 2016.

14 "Evangelical Application for Appeal Dismiss, They Must Pay Caleb's Costs", 7 News Belize, 4 October 2016.


16 Supremo Tribunal Federal, Arguição de descumprimento de preceito fundamental 291, 28 October 2015.


<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costa Rica</td>
<td>1971</td>
<td>The 1941 Penal Code criminalized sodomy under article 233. With the enactment of the 1971 Penal Code consensual same-sex acts in private were decriminalised. However, &quot;scandalous sodomy&quot; remained a misdemeanour under article 378(15), until it was repealed by article 2 of Law No. 8,250 in 2002. In 2013, the last provisions which provided for security measures in cases of &quot;homosexualism&quot; were repealed by Resolution N° 010404 issued by the Constitutional Chamber. In 2008, the Committee against Torture noted that local provisions in Costa Rica on &quot;public morals&quot; granted the police and judges discretionary power to discriminate on the basis of sexual orientation.</td>
</tr>
<tr>
<td>Cuba</td>
<td>1979</td>
<td>The Social Defence Code, which deemed &quot;homosexual practices&quot; as a &quot;social threat&quot; and imposed preventive measures to combat it, was repealed in 1979 by the New Criminal Code of Cuba. This Code did not criminalise homosexuality per se. However, Article 359(1) criminalised those who made &quot;public display of their homosexual condition&quot; (repealed by Article 303(1) of Law No. 62 of 1987) or bothered or solicited others with &quot;homosexual requests&quot; (amended by Executive Order-Law No. 175 in 1997 to refer only to &quot;sexual&quot; requests).</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>1822</td>
<td>The first Criminal Code in force in the Dominican Republic, imposed after the Haitian invasion in 1822, did not criminalise consensual same-sex sexual acts between adults in private. The new 2007 Criminal Code does not innovate in this regard. However, Article 210 of the 1966 Police Justice Code still outlaws sodomy (defined as a &quot;sexual act between persons of the same-sex&quot;) among members of police forces.</td>
</tr>
<tr>
<td>Ecuador</td>
<td>1997</td>
<td>Article 516(1) of the Penal Code imposed a penalty of 4-8 years in prison for &quot;acts of homosexualism&quot; which did not fall under the crime of rape. This provision was repealed by the 1997 Constitutional Court decision in Case No. 111-97-TC. In 2014, the new Organic Integral Penal Code entered into force. In 2016, the Inter-American Court of Human Rights issued its decision in the Homero Flor Freire case regarding the powers of dismissal encoded in the 1997 Rules of Military Discipline for consensual same-sex sexual acts between adults.</td>
</tr>
<tr>
<td>El Salvador</td>
<td>1822</td>
<td>The first Penal Code of El Salvador was enacted in 1826 following the Spanish Criminal Code of 1822 that contained no provisions on consensual same-sex sexual acts between adults. In 2003, the Human Right Committee noted that local provisions (&quot;ordenanzas contravencionales&quot;) were being used to discriminate against people on account of their sexual orientation.</td>
</tr>
</tbody>
</table>

19 Committee against Torture, Conclusions and recommendations of the Committee against Torture for Costa Rica, CAT/C/CRI/CO/2, 7 July 2008.
Consensual Same-Sex Sexual Acts: LEGAL

| 13 | Guatemala | 1871 | According to Guatemalan historian Manuel Fernandez, consensual same-sex sexual acts were decriminalized as a result of the 1871 Revolution "on the constitutional grounds that private sexual acts between consenting adults were not the concern of the state." The new Penal Code (updated version) entered into force in 1877. |
| 14 | Haiti     | 1804 | When Haiti became independent from France in 1804, no law criminalising consensual same-sex sexual acts was introduced, and no such law has come into force since. France repealed its sodomy laws in 1791 (see entry below). |
| 15 | Honduras  | 1899 | Consensual same-sex sexual acts between adults have been legal since the entry into force of the 1899 Penal Code of Honduras. |
| 16 | Mexico    | 1872 | The first federal Penal Code of Mexico was approved in 1871 and entered into force in 1872. This Code made no reference to consensual same-sex acts between adults. |
| 17 | Nicaragua | 2008 | In 2007, the New Penal Code repealed the 1974 Penal Code that had criminalised “sodomy” under article 204. |
| 18 | Panama    | 2008 | Presidential Executive Order No. 332 of 31 July 2008 repealed section 12 of Executive Order No. 149 of 20 May 1949, which criminalised “sodomy”. The Executive Order states that “sodomy was the term by which homosexuality was referred to prior to 1973”. |
| 19 | Paraguay  | 1880 | The first Penal Code of Paraguay of 1880 was adapted from the Penal Code of the Province of Buenos Aires (Argentina), in force there since 1877). This code made no reference to consensual same-sex acts between adults. However, Article 138 of the Penal Code currently in force specifies that the age of consent for “homosexual acts” is 16, while it is set at 14 for different-sex sexual acts. |
| 20 | Peru      | 1924 | Article 272 of the 1863 Penal Code criminalized sodomy. Since the inception in the 1924 Penal Code, consensual same-sex sexual acts have been legal. However, civil society indicates that Article 183 of the Penal Code on "obscene exhibitions and publications", provides the legal basis for State discrimination regarding issues such as public display of affection. |
| 21 | Suriname  | -    | When Suriname became fully independent from the Netherlands in 1975, no sodomy law was in force and no such law has been reintroduced since then. Sodomy was repealed in the Netherlands in 1811. However, Section 302 of the Criminal Code stipulates that the age of consent for same-sex acts is 18 (limit established at "minority age"), while it is 16 for different-sex sexual relations. |

<table>
<thead>
<tr>
<th>Country</th>
<th>Year(s)</th>
<th>Decisions/Reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trinidad &amp; Tobago</td>
<td>2018</td>
<td>The 2018 High Court of Trinidad and Tobago ruling in <em>Jason Jones v AG of Trinidad and Tobago</em>(^{25}) established that buggery and serious indecency laws were unconstitutional in Trinidad and Tobago. This decision follows the line of <em>Caleb Orozco v The AG of Belize</em>(^{22}).</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1934</td>
<td>The 1934 amendment of the Penal Code repealed the crime of 'sodomy' in Uruguay. It bears mentioning that this provision was placed under the section on 'rape': this, together with other indicia in local case law, suggests that the crime of 'sodomy' repealed in 1934 referred to non-consensual same-sex acts.(^{23})</td>
</tr>
<tr>
<td>Venezuela</td>
<td>1836</td>
<td>Since 1836, when Venezuela produced its first Penal Code, consensual same-sex sexual activity has not been criminalised. As reported by the IACHR, in 1997, the Supreme Court of Venezuela declared the unconstitutionality of the <em>Law on Vagrants and Crooks</em>, which had been used to prosecute LGBT persons.(^{24})</td>
</tr>
</tbody>
</table>

### North America (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year(s)</th>
<th>Decisions/Reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>1969</td>
<td>The enactment of the Criminal Law Amendment Act (Bill C-150) in 1969 introduced an exception that decriminalized &quot;buggery&quot; between spouses or two persons over 21 years of age who had consented to the commission of the act. In 1988, Section 159(2)(b) of the Criminal Code replaced that buggery law altogether, but retained a different age of consent: 18 for &quot;acts of anal intercourse&quot; and 16 for non-anal sex. This provision has been impugned by five provincial courts. In 2016, the Toronto police Chief apologized for the 1981 gay bathhouse raids.(^{25}) In early 2017, the Canadian government announced that it intended to review many historical gay conviction cases.(^{26})</td>
</tr>
<tr>
<td>United States of America</td>
<td>1962</td>
<td>Under the USA federal system, all 50 states enact their own Criminal Codes.(^{27}) &quot;Sodomy&quot; was criminalized throughout the USA until 1962, when Illinois became the first state to decriminalise consensual same-sex sexual acts between adults. In 2003 all remaining sodomy statutes — still in force in 14 States — were invalidated by the Supreme Court verdict in <em>Lawrence v. Texas</em> (2003). Age of consent laws also vary across the USA.(^{28}) Three states still keep laws establishing unequal laws of consent: Alabama, Kansas and Texas.(^{29})</td>
</tr>
</tbody>
</table>

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\(^{25}\) Supreme Court of Trinidad and Tobago, *Jason Jones vs Attorney General of Trinidad & Tobago and others*, H.C.720/2017. CV.2017-00720, 4 April 2018.


### Asia (20) + Taiwan (China) + Palestine (West Bank only)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bahrain</td>
<td>1976</td>
<td>Repealing the colonial British code that had pervaded the Persian Gulf, Bahrain’s current Penal Code was enacted in 1976. This code decriminalised consensual same-sex sexual acts between adults. However, it set the age of consent at 20 for different-sex and at 21 for same-sex sexual acts.</td>
</tr>
<tr>
<td>Cambodia</td>
<td>1953</td>
<td>Following royal request, in 1867 Cambodia became a French Protectorate, thereby coming under French law, which had decriminalised same-sex sexual acts between consenting adults in 1791. Following 1946, and Independence in 1953, no criminalising provisions were added to the Penal Code in this regard.</td>
</tr>
<tr>
<td>China</td>
<td>1997</td>
<td>China's current Penal Code (1997) contains no explicit prohibition of consensual sexual acts between persons of the same-sex. Explicit prohibitions of “consenting jijian” (sodomy) were abolished in China around 1912 (end of Qing Dynasty). However, a ‘hooliganism’ provision in the 1979 Penal Code was used to target male same-sex activity until the code was repealed in 1997. Same-sex sexual acts were decriminalised in the territories of Hong Kong in 1991 and Macau in 1996 respectively.</td>
</tr>
<tr>
<td>East Timor</td>
<td>1975</td>
<td>On Independence from Portuguese rule in 1975, the new Penal Code (2009 revision) made no mention of a prohibition on same-sex sexual acts between consenting adults in private.</td>
</tr>
<tr>
<td>India</td>
<td>2018</td>
<td>On 6 September 2018, the Supreme Court of India declared that Section 377 of the Penal Code is unconstitutional. For more information on the Supreme Court decision, see: “Decriminalising the Right to Love: Navtej Singh Johar v. Union of India” by Arvind Narrain in the Global Perspectives section of this report.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>1976</td>
<td>Most parts. Having achieved independence from Dutch governance in 1945, the Indonesian Penal Code has no provisions outlawing same-sex sexual relations. The 2002 Law on Child Protection sets an unequal age of consent for same-sex (18) and different-sex (16) acts. Several jurisdictions in Indonesia criminalise consensual same-sex sexual acts between adults. See: entry for Indonesia in the “Criminalisation” chapter of this report.</td>
</tr>
<tr>
<td>Israel</td>
<td>1988</td>
<td>Although the 1977 Penal Law contained a sodomy provision, at Section 347, the parliament repealed that provision in 1988.</td>
</tr>
<tr>
<td>Japan</td>
<td>1882</td>
<td>According to some scholarship, consensual same-sex sexual activity was never criminalised in modern Japan (except a very short period 1873-1881).</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jordan</td>
<td>1960</td>
<td>Legal</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>1998</td>
<td>Legal</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>1998</td>
<td>Legal</td>
</tr>
<tr>
<td>Laos</td>
<td>1954</td>
<td>Legal</td>
</tr>
<tr>
<td>Mongolia</td>
<td>1961</td>
<td>Decriminalised</td>
</tr>
<tr>
<td>Nepal</td>
<td>2007</td>
<td>Legal</td>
</tr>
<tr>
<td>North Korea</td>
<td>1950</td>
<td>Legal</td>
</tr>
<tr>
<td>Palestine</td>
<td>1960</td>
<td>Legal</td>
</tr>
<tr>
<td>Philippines</td>
<td>1932</td>
<td>Legal</td>
</tr>
</tbody>
</table>

**Notes:**

34 Jcob Wirtschafter, “In much of the Middle East, it’s getting more dangerous to be gay”, PRI, 30 August 2016.
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law Reference</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Korea</td>
<td>1962</td>
<td>The 1962 Criminal Act (updated 2009) contains no provisions criminalising consensual same-sex sexual acts between adults. Article 305 (amended 1995) indicates 13 as the age of consent (information verified by practitioners in South Korea, as there are English versions of the Criminal Act that state 15 as the age of consent). The fact that such equal age protection is not afforded to the crime of rape is highlighted in Rainbow Action against Sexual Minority Discrimination’s Shadow Report to CAT in March 2017.</td>
<td></td>
</tr>
<tr>
<td>Taiwan (China)</td>
<td>1954</td>
<td>The Criminal Code of 1954 contains no provisions prohibiting consensual same-sex sexual activity between adults.</td>
<td></td>
</tr>
<tr>
<td>Tajikistan</td>
<td>1998</td>
<td>There are no restrictions on adult, consensual same-sex sexual acts between adults in the 1998 Criminal Code of Tajikistan (amended to 2010).</td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>1957</td>
<td>The Thai Penal Code of 1956 came into force in 1957 and has no criminalising provision on consensual same-sex sexual acts between adults.</td>
<td></td>
</tr>
<tr>
<td>Vietnam</td>
<td>1945</td>
<td>Following independence from France in 1945 (with subsequent non-criminalisation), the 1999 Penal Code made no provisions to criminalise consensual same-sex sexual acts between adults.</td>
<td></td>
</tr>
</tbody>
</table>

**Europe (48) + Kosovo**

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law Reference</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>1995</td>
<td>Prior to its repeal by Article 116 of the Criminal Code, the previous Article 137 penalised “homosexuality” amongst men with up to 10 years imprisonment.</td>
<td></td>
</tr>
<tr>
<td>Andorra</td>
<td>1791</td>
<td>As a co-principality with France, Andorra was subject to the same Penal Code provisions that decriminalised “sodomy” in 1791.</td>
<td></td>
</tr>
<tr>
<td>Armenia</td>
<td>2003</td>
<td>Armenia’s former Soviet Union provision that punished consensual sex between adult men with five years imprisonment (under Article 116), was repealed in the 2003 Criminal Code.</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>1971</td>
<td>The previous Penal Code of 1852 penalised (with five years imprisonment) “sodomy” between men, and unusually in Europe, amongst women. The 1971 Criminal Code lifted all such sanctions.</td>
<td></td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>2000</td>
<td>Prior to 1988, aligned to the Soviet Union provisions, Article 113 criminalised “anal intercourse between men”. This was repealed by a new Criminal Code that came into force in 2000.</td>
<td></td>
</tr>
<tr>
<td>Belarus</td>
<td>1994</td>
<td>‘Homosexual acts’ were criminalised with up to five years imprisonment under Article 119(1) in line with the Soviet Union code, and was repealed under the Belarus 1994 Criminal Code.</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Country</th>
<th>Year(s)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>1830</td>
<td>Neither the Napoleonic Code of 1810 (which Belgium operated under until independence in 1830) nor the Belgian Penal Code of 1867 conferred penal sanctions for consensual same-sex sexual activity between adults.</td>
</tr>
<tr>
<td>Croatia</td>
<td>1977</td>
<td>The provisions of 1951 Yugoslavia Criminal Code regarding consensual same-sex relations were rescinded in the Croatian Penal Code of 1977, and the age of consent was equalised in 1998.</td>
</tr>
<tr>
<td>Cyprus</td>
<td>1998</td>
<td>Under Section 171 of the 1959 Criminal Code, male/male sexual ‘unnatural acts’ could be punishable with five year’s imprisonment. This clause was removed in the 1998 following the Modinas v Cyprus case. Northern Cyprus decriminalised in 2014, the last part of Europe to do so.</td>
</tr>
<tr>
<td>Czechia</td>
<td>1961</td>
<td>The current Criminal Code came into force in 1962, which removed sodomy provisions from previous ruling codes (that of Austria ruled Bohemia and Moravia, and Slovakia used the Hungarian penal code).</td>
</tr>
<tr>
<td>Denmark</td>
<td>1933</td>
<td>Replacing a Criminal Code and a series of laws that criminalised sodomy, the 1933 Penal Code removed provisions on consensual adult same-sex sexual relations.</td>
</tr>
<tr>
<td>Finland</td>
<td>1971</td>
<td>The 1889 Criminal Code was revised in 1971 to remove Chapter 20 ‘Unlawful sexual intercourse and other lewdness’.</td>
</tr>
<tr>
<td>France</td>
<td>1791</td>
<td>The newly-formed constitutional monarchy of France adopted a Penal Code that removed sodomy provisions, thus becoming the world’s first country to decriminalise same-sex sexual acts between consenting adults. Pursuant to Article 73 of the French Constitution, the law applies to the Overseas Departments of Martinique, Guadeloupe, Saint Barthelemy, French Guiana, Mayotte, and Réunion, and to the islands of Saint Pierre and Miquelon.</td>
</tr>
<tr>
<td>Georgia</td>
<td>2000</td>
<td>The Criminal Code of Georgia removed the pre-existing sodomy provisions that were carried through from the Soviet Union period.</td>
</tr>
<tr>
<td>Germany</td>
<td>1968-1969</td>
<td>Although East Germany and West Germany stopped applying its Criminal Code provisions (Paragraph 175 – &quot;lewd and lascivious acts&quot;) among consenting adults in 1968 and 1969 respectively, the black letter law was not abolished until 1994.</td>
</tr>
</tbody>
</table>

40 “Northern part of Cyprus decriminalises homosexuality”, EU Intergroup on LGBT rights (website), 27 January 2014.
41 “Germany to pay convicted gays 30 million euros – media”, DW News, 8 October 2016.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Greece</td>
<td>1951</td>
<td>Prior to the post-war 1951 Penal Code, consensual male same-sex sexual acts were outlawed. Articles 339 and 347 stipulate the age of consent: ‘contact against nature between males’ is 17, while for different-sex that age is 15.</td>
</tr>
<tr>
<td>20</td>
<td>Hungary</td>
<td>1962</td>
<td>The Criminal Code of Hungary removed the 1878 provisions that referred to ‘crimes against nature’.</td>
</tr>
<tr>
<td>21</td>
<td>Iceland</td>
<td>1940</td>
<td>The General Penal Code of 1940 removed the provisions of 1869 Penal Code, Clause 178 that stipulated, “unnatural forms of sexual intercourse are punishable by a term in prison”.</td>
</tr>
<tr>
<td>22</td>
<td>Ireland</td>
<td>1993</td>
<td>Section 2, Criminal Law (Sexual Offences) Act (1993) removed the ‘buggery’ provisions Ireland inherited from British rule.</td>
</tr>
<tr>
<td>23</td>
<td>Italy</td>
<td>1890</td>
<td>The first Italian Penal Code in 1889 had no prohibition on consensual same-sex sexual acts between adults in private.</td>
</tr>
<tr>
<td>24</td>
<td>Latvia</td>
<td>1992</td>
<td>Following dissolution of the Soviet Union, Latvia’s Criminal Law removed its punitive provisions under Paragraph 124(1) regarding consensual same-sex sexual relations between adults.</td>
</tr>
<tr>
<td>25</td>
<td>Liechtenstein</td>
<td>1989</td>
<td>The Criminal Code was revised in 1989 to remove Sections 129 and 130 &quot;lewdness against the order of nature&quot;.</td>
</tr>
<tr>
<td>26</td>
<td>Lithuania</td>
<td>1993</td>
<td>Following independence from the Soviet Union, Lithuania abolished Articles 121 and 122(1) of its Criminal Code, thereby decriminalising consensual same-sex sexual relations between adults.</td>
</tr>
<tr>
<td>27</td>
<td>Luxembourg</td>
<td>1795</td>
<td>As Luxembourg came into the possession of France, any sodomy provisions from its Criminal Code were removed in 1795.</td>
</tr>
<tr>
<td>29</td>
<td>Moldova</td>
<td>1995</td>
<td>The Criminal Code of Moldova removed the pre-existing sodomy provisions (at Article 106) that were carried through from the Soviet Union period.</td>
</tr>
<tr>
<td>30</td>
<td>Monaco</td>
<td>1793</td>
<td>As Monaco was in the possession of France, it removed any sodomy provisions from its Penal Code in 1793.</td>
</tr>
<tr>
<td>32</td>
<td>Netherlands</td>
<td>1811</td>
<td>When the Kingdom of Holland became annexed to France in 1811, the Napoleonic Penal Code of 1810 came into operation containing no provision on sodomy, and that standard applies in the current Penal Code, as well as to the three Netherlands Associates (Aruba, Curaçao and St Maarten) and in the their Territories of Bonaire, Saba and St Eustatius.</td>
</tr>
<tr>
<td>Country</td>
<td>Year</td>
<td>Description</td>
<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td>North Macedonia</td>
<td>1996</td>
<td>The Criminal Code of 1996 removed provisions regarding consensual [male] same-sex relations (penalised with one year in jail) that were previously encoded under Article 101.</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>1972</td>
<td>&quot;Indecent intercourse&quot; between men was decriminalised by repeal of Paragraph 213 in Norway’s Penal Code of 1972.</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>1932</td>
<td>After its independence in 1918, Poland returned to the Napoleonic tradition that it had enjoyed in the early 19th century, and subsequently its 1932 Penal Code contains no criminalising provisions regarding consensual same-sex sexual relations amongst adults.</td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>1983</td>
<td>Under the reign of Louis I form 1886 on, Portugal criminalised consensual same-sex sexual acts between men, but that law was repealed in the 1983 Penal Code.</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>1996</td>
<td>Prior to 1996, Section 200 of the Penal Code had penalised “sexual relations between persons of the same-sex” with 1-5 years imprisonment. This was then repealed but replaced with a clause “committed in public or producing a public scandal”, which was itself removed in 2001.</td>
<td></td>
</tr>
<tr>
<td>Russian Federation</td>
<td>1993</td>
<td>Article 121(1) of the 1934 Criminal Code of the Soviet Union had stated “sexual relations of a man with a man (pederasty)” was punishable with up to five years imprisonment. This is the model language that was transposed into penal codes in States throughout the former Soviet Union. The 1993 Criminal Code removed such provisions from the Russian law.</td>
<td></td>
</tr>
<tr>
<td>San Marino</td>
<td>2004</td>
<td>Although San Marino decriminalised “sodomy” in 1865, it was reintroduced at article 274 into the Penal Code in 1975, targeting those who “habitually” practice (not known to have been ever implemented). This was finally repealed in the 2004 Penal Code.</td>
<td></td>
</tr>
<tr>
<td>Serbia</td>
<td>1994</td>
<td>In its modern history, and as part of the Kingdom of Yugoslavia in 1918, “lewdness against the order of nature” in Serbia was banned. The 1994 Criminal Code removed that prohibition.</td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>1962</td>
<td>The current Criminal Code came into force in 1962, and removed sodomy provisions from previous ruling codes (Slovakia relied on the Hungarian law that had previously referred to &quot;crimes against nature&quot;).</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>1977</td>
<td>When Slovenia was still a part of Yugoslavia in 1976, work on the Criminal Code to remove provisions penalising consensual same-sex sexual acts commenced, and the resultant law came into force in 1977.</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>1979</td>
<td>Following the re-establishment of constitutional democracy in Spain after Franco, consensual same-sex sexual intercourse amongst males was removed as an offence in the Penal Code.</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>1944</td>
<td>Sweden removed its ‘sodomy’ provisions from the Penal Code in 1944, specifying freedom for both men and women in the subsequent revision.</td>
<td></td>
</tr>
</tbody>
</table>

Although various cantons had remained with the Napoleonic Code since 1798 in not penalising same-sex sexual relations, the entire country became free from such criminalisation by way of the **Penal Code** that came into force in 1942.

The **Turkish Imperial Penal Code of 1858** (thought to be based on the 1810 French Penal Code) makes no mention of consensual same-sex sexual acts between adults, and neither does the current **Penal Code**.

"Homosexual acts" were criminalised with up to five years imprisonment in line with the Soviet Union code of 1934: this was repealed under the Ukraine **Criminal Code** of 1991.

In 1861, the death penalty for "buggery" was abolished across the United Kingdom, but the offence was codified in Section 61 of the **Offences Against the Person Act (1861)** as life sentence, and the lesser misdemeanour of gross indecency was codified in Section 11 of the **Criminal Law Amendment Act 1885**, with a penalty of up to two years imprisonment, hard labour possible.

These were the model laws that spread throughout the Commonwealth.

England and Wales removed the provisions in 1967, Scotland in 1981, and Northern Ireland in 1982 (following the **Dudgeon case** at the European Court of Human Rights).


Decriminalisation of consensual same-sex sexual acts took place variously across the eight provinces of Australia between 1975 and 1997.43 In 1975, South Australia abolished the offences of "buggery", "gross indecency" and "soliciting for immoral sexual purposes", and 22 years later the last jurisdiction to decriminalise was Tasmania in 1997.

Following the seminal UN Human Rights Committee’s finding of incompatibility in **Toonen v. Australia** in 1994 (primarily on the basis of privacy), the federal government introduced Section 4(1) of the **Human Rights (Sexual Conduct) Act 1994** to uphold that principle in Australian law.

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43 Graham Carbery, "Towards homosexual equality in Australian criminal law – A brief history" (Australian Lesbian and Gay Archives, 2014).
<table>
<thead>
<tr>
<th>Country</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiji</td>
<td>2010</td>
<td></td>
<td>In 2005, in its decision in <em>Dhirendra Nadan and Thomas McCosker v. The State</em>, the High Court of Fiji invalidated two convictions based on sections 175(a), 175(c) and 177 of the Penal Code which criminalised “carnal knowledge against the order of nature” and indecent practices. These provisions were finally repealed by the Crimes Decree 2009, which came into force in February 2010.</td>
</tr>
<tr>
<td>Micronesia</td>
<td>1982</td>
<td></td>
<td>The first 1982 legal code of the FSM (which included criminal provisions) did not contain any provision criminalising same-sex consensual sexual acts between adults and no such provision has been introduced since.</td>
</tr>
<tr>
<td>Nauru</td>
<td>2016</td>
<td></td>
<td>In May 2016 the Crimes Act 2016 repealed the Criminal Code 1899 that itself was drawn from the 1899 Queensland Criminal Code. The Government of Nauru stated that this law —by far the most comprehensive new law in the country— removed homosexuality as an offence. Nauru had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1st cycle of the UPR in 2011.</td>
</tr>
<tr>
<td>New Zealand</td>
<td>1986</td>
<td>2007</td>
<td>The General Assembly passed the Homosexual Law Reform Act 1986 which decriminalised sexual acts between consenting men aged 16 and over. Same-sex sexual acts between consenting women were not illegal. In 2007 Niue (associated state) and Tokelau (dependent territory) decriminalised same-sex consensual relations as a result of the amendment of the Niue Act by the Niue Amendment Act 2007. The act came into force on 20 September 2007. In February 2017, the government of New Zealand announced that it would introduce legislation to open an application process to quash historical convictions for consensual sex between men.</td>
</tr>
<tr>
<td>Palau</td>
<td>2014</td>
<td></td>
<td>Palau repealed its legal provisions that criminalised consensual same-sex sexual activity between gay men, introducing a new Penal Code with no such provisions, signed by the President in April 2014. Palau had previously accepted three recommendations to decriminalise same-sex sexual activity in its 1st cycle of the UPR in 2011.</td>
</tr>
</tbody>
</table>

45 Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (Nauru), A/HRC/17/3/Add.1, 30 May 2011.
47 “Palau decriminalises homosexuality”, Human Dignity Trust, 15 October 2014.
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vanuatu</td>
<td>1981</td>
<td>18</td>
</tr>
</tbody>
</table>

Soon after becoming an independent State in 1980, Vanuatu enacted its first Criminal Code (in force 1981), which did not criminalise (see page 122) same-sex activity between persons over 18 years of age. The 2006 Consolidation of the Criminal Code maintained the same provision under Section 99. In that same year, the Penal Code (Amendment) Act 2006 (in force March 2007) repealed section 99 altogether, which had the effect of equalising ages of consent for same-sex and different-sex sexual acts at 15.

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Consensual Same-Sex Sexual Acts: ILLEGAL

Highlights

68 UN Member States
35% UN Member States

AFRICA
LAC
NORTH AMERICA
ASIA
EUROPE
OCEANIA

32 /54
9 /33
0 /2
21 /42
0 /48
6 /14

41%
59%
27%
0%
50%
0%
57%
43%

Introduction

This section provides an overview of the countries that still criminalise consensual same-sex sexual acts between adults.

The chart specifies the specific terms used by the provisions in force to refer to such acts. In several cases, the law is very specific as to what conduct falls under the scope of the provision. In others, vague terms such as “acts against nature”, “indecency”, “immoral acts”, leave the door open to arbitrary interpretation, which frequently leads to the discretionary use of these norms to persecute LGBT people.

Singapore is the only country that does not criminalise sexual intercourse itself, but still keeps laws against “acts of gross indecency”. The rest of the countries have provisions that, one way or another, criminalise same-sex intercourse.

As recorded in the “Criminalisation” section of this report, instances of judicial prosecution and conviction for consensual same-sex sexual acts between adults in private still take place in several criminalising countries.

What does International Human Rights Law say?

Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person’s actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 33.

States shall repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent.

Yogyakarta Principles 2(b) and 6(b).
<table>
<thead>
<tr>
<th>N</th>
<th>CN</th>
<th>COUNTRY</th>
<th>PROVISION IN FORCE</th>
<th>LAST AMEND</th>
<th>TERMS OF PROVISION</th>
<th>GENDERS</th>
<th>MAX PRISON PENALTY</th>
<th>DEATH PENALTY</th>
<th>PROVISION IN FORCE</th>
<th>LAST AMEND</th>
<th>TERMS OF PROVISION</th>
<th>GENDERS</th>
<th>MAX PRISON PENALTY</th>
<th>DEATH PENALTY</th>
<th>PNH / OTHER</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>AFRICA</td>
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<tr>
<td>1</td>
<td>1</td>
<td>Algeria</td>
<td>Penal Code, Article 338.</td>
<td>1966</td>
<td>Homosexual acts</td>
<td>ALL GENDERS</td>
<td>2 years</td>
<td>No</td>
<td>Yes</td>
<td>Penal Code, Article 333</td>
<td>1982</td>
<td>Indecent act against the order of nature</td>
<td>ALL GENDERS</td>
<td>3 years</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>Botswana</td>
<td>Penal Code, Article 164.</td>
<td>1964</td>
<td>intercourse against the order of nature</td>
<td>ALL GENDERS</td>
<td>7 years</td>
<td>No</td>
<td>No</td>
<td>Penal Code, Article 167</td>
<td>-</td>
<td>Acts of gross indecency</td>
<td>ALL GENDERS</td>
<td>2 years</td>
<td>Yes</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>Burundi</td>
<td>Penal Code, Article 590.</td>
<td>2017</td>
<td>Sexual relations with a person of the same sex</td>
<td>ALL GENDERS</td>
<td>2 years</td>
<td>No</td>
<td>Yes</td>
<td>Penal Code, Article 572.</td>
<td>-</td>
<td>Acts of indecency contrary to Burundian morals</td>
<td>ALL GENDERS</td>
<td>2 years</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
<td>Cameroon</td>
<td>Penal Code, Article 347-1.</td>
<td>2016</td>
<td>Sexual relations with a person of the same sex</td>
<td>ALL GENDERS</td>
<td>5 years</td>
<td>No</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>5</td>
<td>5</td>
<td>Chad</td>
<td>Penal Code, Article 354.</td>
<td>2017</td>
<td>Sexual relations with a person of the same sex</td>
<td>ALL GENDERS</td>
<td>2 years</td>
<td>No</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>6</td>
<td>6</td>
<td>Comoros</td>
<td>Penal Code, Article 318(3).</td>
<td>1981</td>
<td>Unnatural acts with a person of the same sex</td>
<td>ALL GENDERS</td>
<td>5 years</td>
<td>No</td>
<td>Yes</td>
<td>Penal Code, Article 1981, Article 318(3).</td>
<td>-</td>
<td>Improper or unnatural act</td>
<td>ALL GENDERS</td>
<td>5 years</td>
<td>Yes</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>Eritrea</td>
<td>Penal Code, Article 10(1).</td>
<td>2015</td>
<td>Homosexual acts/Sexual act with person of same sex</td>
<td>ALL GENDERS</td>
<td>7 years</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
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<tr>
<td>8</td>
<td>8</td>
<td>Eswatini</td>
<td>Common law offence</td>
<td>1907</td>
<td>Sodomy</td>
<td>MALE</td>
<td>Not specified</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
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<tr>
<td>9</td>
<td>9</td>
<td>Ethiopia</td>
<td>Penal Code, Article 629.</td>
<td>2004</td>
<td>Homosexual acts</td>
<td>ALL GENDERS</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>10</td>
<td>10</td>
<td>Gambia</td>
<td>Criminal Code, Article 144.</td>
<td>2005</td>
<td>Homosexual act; carnal knowledge through anus or mouth</td>
<td>ALL GENDERS</td>
<td>14 years</td>
<td>No</td>
<td>No</td>
<td>Criminal Code, Article 147(2).</td>
<td>2005</td>
<td>Gross indecency</td>
<td>FEMALE</td>
<td>5 years</td>
<td>No</td>
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<tr>
<td>11</td>
<td>11</td>
<td>Ghana</td>
<td>Criminal Code, Section 99.</td>
<td>2003</td>
<td>Unnatural carnal knowledge</td>
<td>MALE</td>
<td>3 years</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>12</td>
<td>12</td>
<td>Guinea</td>
<td>Penal Code, Article 274.</td>
<td>2016</td>
<td>Act against nature</td>
<td>ALL GENDERS</td>
<td>3 years</td>
<td>No</td>
<td>Yes</td>
<td>Penal Code, Articles 274, 275, 276.</td>
<td>2016</td>
<td>Indecent acts</td>
<td>ALL GENDERS</td>
<td>2 years</td>
<td>Yes</td>
</tr>
<tr>
<td>13</td>
<td>13</td>
<td>Kenya</td>
<td>Penal Code, Section 162.</td>
<td>2003</td>
<td>Carnal knowledge against the order of nature</td>
<td>ALL GENDERS</td>
<td>14 years</td>
<td>No</td>
<td>No</td>
<td>Penal Code, Section 165.</td>
<td>2003</td>
<td>Gross indecency</td>
<td>MALE</td>
<td>5 years</td>
<td>No</td>
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<tr>
<td>14</td>
<td>14</td>
<td>Liberia</td>
<td>Penal Code, Article 1474.</td>
<td>2008</td>
<td>Sodomy / Deviate sexual intercourse</td>
<td>ALL GENDERS</td>
<td>1 year</td>
<td>No</td>
<td>No</td>
<td>Penal Code, Article 1474.</td>
<td>2008</td>
<td>Gross indecency</td>
<td>ALL GENDERS</td>
<td>1 year</td>
<td>No</td>
</tr>
<tr>
<td>N</td>
<td>CN</td>
<td>COUNTRY</td>
<td>SAME-SEX SEXUAL INTERCOURSE</td>
<td>SAME-SEX ACTS OTHER THAN INTERCOURSE</td>
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<td>Provision in Force</td>
<td>Last Amend</td>
<td>Terms of Provision</td>
<td>Genders</td>
<td>Max Prison Penalty</td>
<td>Death Penalty</td>
<td>Fine / Other</td>
<td>Provision in Force</td>
<td>Last Amend</td>
<td>Terms of Provision</td>
<td>Genders</td>
<td>Max Prison Penalty</td>
<td>Fine / Other</td>
</tr>
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<td>15</td>
<td>15</td>
<td>Libya</td>
<td>Penal Code, Article 407(4)</td>
<td>1976</td>
<td>Illicit sexual intercourse</td>
<td>ALL GENDERS</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td>Penal Code, Article 408(4)</td>
<td>-</td>
<td>Disgrace the honour</td>
<td>UNCLEAR</td>
<td>Not specified</td>
<td>No</td>
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<tr>
<td>16</td>
<td>16</td>
<td>Malawi</td>
<td>Penal Code, Article 153.</td>
<td>2011</td>
<td>Carnal knowledge against order of nature</td>
<td>ALL GENDERS</td>
<td>14 years</td>
<td>No</td>
<td>Corporal Punishment</td>
<td>Penal Code, Arts. 137(a) and 156.</td>
<td>2011</td>
<td>Gross indecency</td>
<td>ALL GENDERS</td>
<td>5 years</td>
<td>Corporal Punishment</td>
</tr>
<tr>
<td>17</td>
<td>17</td>
<td>Mauritania</td>
<td>Penal Code, Article 308.</td>
<td>1984</td>
<td>Acts against nature</td>
<td>ALL GENDERS</td>
<td>2 years</td>
<td>Poss.</td>
<td>(men)</td>
<td>Yes (female)</td>
<td>Penal Code, Article 408(4)</td>
<td>-</td>
<td>Disgrace the honour</td>
<td>UNCLEAR</td>
<td>Not specified</td>
</tr>
<tr>
<td>18</td>
<td>18</td>
<td>Mauritius</td>
<td>Penal Code, Article 250</td>
<td>1838</td>
<td>Sodomy</td>
<td>MALE</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td>Penal Code, Article 250</td>
<td>-</td>
<td>Disgrace the honour</td>
<td>UNCLEAR</td>
<td>Not specified</td>
<td>No</td>
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<tr>
<td>19</td>
<td>19</td>
<td>Morocco</td>
<td>Penal Code, Article 489</td>
<td>1962</td>
<td>Lewd or unnatural acts</td>
<td>ALL GENDERS</td>
<td>3 years</td>
<td>No</td>
<td>Yes</td>
<td>Penal Code, Article 489</td>
<td>-</td>
<td>Disgrace the honour</td>
<td>UNCLEAR</td>
<td>Not specified</td>
<td>No</td>
</tr>
<tr>
<td>20</td>
<td>20</td>
<td>Namibia</td>
<td>Common law offence</td>
<td>-</td>
<td>Unlawful sexual relations per annum between males</td>
<td>MALE</td>
<td>Not specified</td>
<td>No</td>
<td>No</td>
<td>Penal Code, Article 489</td>
<td>-</td>
<td>Disgrace the honour</td>
<td>UNCLEAR</td>
<td>Not specified</td>
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<td>21</td>
<td>21</td>
<td>Nigeria</td>
<td>Criminal Code, Section 214</td>
<td>1990</td>
<td>Carnal knowledge against order of nature</td>
<td>ALL GENDERS</td>
<td>14 years</td>
<td>Yes</td>
<td>No</td>
<td>Criminal Code Act, Section 217</td>
<td>-</td>
<td>Gross indecency</td>
<td>MALE</td>
<td>3 years</td>
<td>No</td>
</tr>
<tr>
<td>22</td>
<td>22</td>
<td>Senegal</td>
<td>Penal Code, Article 319(3)</td>
<td>1965</td>
<td>Unnatural acts</td>
<td>ALL GENDERS</td>
<td>5 years</td>
<td>No</td>
<td>Yes</td>
<td>Penal Code, Article 319(3)</td>
<td>-</td>
<td>Disgrace the honour</td>
<td>UNCLEAR</td>
<td>Not specified</td>
<td>No</td>
</tr>
<tr>
<td>23</td>
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<td>Sierra Leone</td>
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**The Caribbean**

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**Asia**

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<td>42</td>
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<td>Penal Code, Section 645 / 649</td>
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<td>Livat (penetration of man’s penis into to another male person’s anus)</td>
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<td>Islamic Penal Code Articles 235 - 240</td>
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<td>Tafkhiz, Musahheq and any other homosexual act</td>
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</tr>
<tr>
<td>60</td>
<td>19</td>
<td>UAE</td>
<td>Penal Code, Article 356.</td>
<td>-</td>
<td>Voluntary debasement</td>
<td>ALL GENDERS</td>
<td>15 years</td>
<td>Psys</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>61</td>
<td>20</td>
<td>Uzbekistan</td>
<td>Criminal Code, Article 120.</td>
<td>-</td>
<td>Besoqolbozlik (male sexual intercourse)</td>
<td>MALE</td>
<td>3 years</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>62</td>
<td>21</td>
<td>Yemen</td>
<td>Penal Code, Arts. 264/268.</td>
<td>-</td>
<td>Homosexuality and lesbianism.</td>
<td>ALL GENDERS</td>
<td>3 years</td>
<td>Yes</td>
<td>100 lashes</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**OCEANIA**

<table>
<thead>
<tr>
<th>N</th>
<th>CN</th>
<th>COUNTRY</th>
<th>PENAL CODE/CRIMINAL CODE/STATUTE</th>
<th>LAST AMEND</th>
<th>TERMS OF PROVISION</th>
<th>GENDERS</th>
<th>MAX PRISON PENALITY</th>
<th>DEATH PENALITY</th>
<th>FINE / OTHER</th>
<th>PENAL CODE/CRIMINAL CODE/STATUTE</th>
<th>LAST AMEND</th>
<th>TERMS OF PROVISION</th>
<th>GENDERS</th>
<th>MAX PRISON PENALITY</th>
<th>DEATH PENALITY</th>
<th>FINE / OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>63</td>
<td>1</td>
<td>Kiribati</td>
<td>Penal Code, Article 153.</td>
<td>1977</td>
<td>Buggery</td>
<td>ALL GENDERS</td>
<td>14 years</td>
<td>No</td>
<td>No</td>
<td>Act of gross indecency</td>
<td>MALE</td>
<td>5 years</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>64</td>
<td>2</td>
<td>Papua New Guinea</td>
<td>Criminal Code, Section 210.</td>
<td>2016</td>
<td>Unnatural Offences against the order of nature</td>
<td>ALL GENDERS</td>
<td>14 years</td>
<td>No</td>
<td>No</td>
<td>Criminal Code 1974, Section 212</td>
<td>MALE</td>
<td>3 years</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>3</td>
<td>Samoa</td>
<td>Crimes Act 2031 Section 67</td>
<td></td>
<td>Sodomy</td>
<td>MALE</td>
<td>5 years</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>66</td>
<td>4</td>
<td>Solomon Islands</td>
<td>Penal Code 1996 Section 160</td>
<td>2016</td>
<td>Buggery</td>
<td>ALL GENDERS</td>
<td>14 years</td>
<td>No</td>
<td>No</td>
<td>Penal Code 1996 Section 162</td>
<td>MALE</td>
<td>5 years</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>5</td>
<td>Tonga</td>
<td>Criminal Offences Act Section 136</td>
<td>2015</td>
<td>Sodomy</td>
<td>MALE</td>
<td>10 years</td>
<td>No</td>
<td>Whipping</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**Cook Islands**

<table>
<thead>
<tr>
<th>PENAL CODE/CRIMINAL CODE/STATUTE</th>
<th>LAST AMEND</th>
<th>TERMS OF PROVISION</th>
<th>GENDERS</th>
<th>MAX PRISON PENALITY</th>
<th>DEATH PENALITY</th>
<th>FINE / OTHER</th>
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</thead>
<tbody>
<tr>
<td>Crimes Act, Section 155.</td>
<td></td>
<td>Sodomy</td>
<td>MALE</td>
<td>14 years</td>
<td>No</td>
<td>Whipping</td>
</tr>
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Legal Barriers to Freedom of Expression on SOGIESC Issues

Highlights

31 UN Member States
16% UN Member States

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<tr>
<th>AFRICA</th>
<th>LAC</th>
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<th>ASIA</th>
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<tr>
<td>12/54</td>
<td>1/33</td>
<td>0/2</td>
<td>15/42</td>
<td>3/48</td>
<td>0/14</td>
</tr>
</tbody>
</table>

Introduction

This section covers laws and regulations that have been enacted to restrict the right to freedom of expression in relation to sexual orientation issues.

This can take several forms: restrictions on expressions of same-sex intimacy and restrictions on expressions of support or positive portrayals of non-heterosexual identities and relationships. These restrictions can be imposed on individuals generally, as well as educators and the media.

Morality codes pertaining to public discussion have long been in force in some Arabic States. However, a new legal vehicle has been employed more recently to criminalise expressions of affirmation or support for homosexuality, known as “propaganda laws”.

Some countries have also recently introduced laws that criminalise communications between individuals on same-sex dating applications or websites and even aggravate penalties if that communication leads to sexual encounters.

What does International Human Rights Law say?

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 19

States shall [...] take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, [...] including the receipt and imparting of information and ideas concerning sexual orientation, gender identity, gender expression and sex characteristics [...].

Yogyakarta Principle 19.a
## Africa (11)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year(s)</th>
<th>Legal Barriers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Algeria</td>
<td>2014</td>
<td>Article 333 bis <em>(Reiterated)</em> of the <strong>Penal Code</strong> penalises the possession, dissemination or display of anything contrary to “decency” with imprisonment from 2 months to 2 years and a fine between 500 Da to 2000 Da. Under the second paragraph of article 333 <em>(Modified)</em> the “indecent exposure of an act against the order of nature” constitutes aggravated crime against good mores.</td>
</tr>
<tr>
<td>2</td>
<td>Cameroon</td>
<td>2010-2016</td>
<td>Article 83 of the Law on Cybersecurity and Cybercrime <em>(Law No. 2010/12 of 2010)</em> criminalises electronic communication between individuals of the same sex for the purpose of sexual proposition. Penalties are enhanced when the communication is actually followed by sexual intercourse. Sections 264 of the <strong>Penal Code</strong> <em>(2016)</em> criminalises the public utterance of any immoral speech and the drawing of the public’s attention to any occasion of immorality. In light of the criminalisation of same-sex intimacy, a legal scholar has suggested that a publicly uttered speech advocating “unnatural sexual indulgence” would be considered immoral.¹</td>
</tr>
<tr>
<td>3</td>
<td>Egypt</td>
<td>1937-2018</td>
<td>Individuals have been prosecuted for publicly expressing support for LGBTQI communities under article 86bis of the <strong>Penal Code</strong> *(1937).*² Article 25 of the Law on Cyber Crimes <em>(Law No. 175/2018)</em> states that “anyone who publishes online content that threatens society’s and family’s values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds.” In 2017, the Supreme Council for Media Regulation <em>(SCMR)</em> released an order to ban all forms of support towards the LGBT community on media outlets.³</td>
</tr>
<tr>
<td>4</td>
<td>Kenya</td>
<td>2009</td>
<td>Section 12 of the <strong>Film and Stage Plays Act</strong> restricts the exhibition of films according to the discretion of the Kenya Film Classification Board. According to the Board’s <strong>Classification Guidelines</strong> <em>(2012)</em> films with themes that &quot;glamorise a homosexual lifestyle&quot; are either age-restricted to those above 18 years old or banned. In April 2018, the Board issued a ban against the film &quot;Rafiki&quot; on the basis that it was intended to promote lesbianism in Kenya though this was temporarily lifted for seven days by a High Court judge after the film was nominated at the Academy Awards.⁴ In 2014, the Board also banned another film, &quot;Stories of Our Lives&quot; similarly for &quot;promoting homosexuality&quot;.</td>
</tr>
<tr>
<td>5</td>
<td>Libya</td>
<td>1953</td>
<td>Article 421 of the <strong>Penal Code</strong> refers to distribution of “articles of an indecent nature”. As Article 410 criminalises *indecent acts between persons of the same sex, content relating to same-sex intimacy would fall under the definition of “articles of an indecent nature”.</td>
</tr>
</tbody>
</table>

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² For more information see the essay "Rights of LGBTQ people in Egypt: Between State, Society, and de facto Criminalization" written by an anonymous group/collective working on LGBTQI issues in the MENA region in the entry for Egypt in the "Criminalisation" section of this report.
³ "All Forms of Support to the LGBT Community to be Banned on Media Outlets: SCMR", *Egyptian Streets*, 1 October 2017.
### Legal Barriers to Freedom of Expression on SOGIESC issues

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legal Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morocco</td>
<td>1962</td>
<td>Article 483 of the Penal Code criminalises acts or gestures of public obscenity and indecency. In 2015, two men were prosecuted under this law for kissing in public as an act of protest.(^5)</td>
</tr>
<tr>
<td>Nigeria</td>
<td>2014</td>
<td>Section 5(2) of the Same-sex Marriage (Prohibition) Act (2014) provides that a person who “directly or indirectly makes public show of same-sex amorous relationships” may receive a penal sentence of up to 10 years imprisonment.</td>
</tr>
<tr>
<td>Somalia</td>
<td>1964</td>
<td>Article 402 prohibits the commission of any obscene act while Article 403 of the Penal Code (1964) prohibits the sale, distribution and exhibition of any obscene object. Article 404 deems acts and objectives as obscene where they, in the general opinion, are offensive to modesty. Article 409, which criminalises same-sex intimacy, is part of the same chapter on offences against modesty in the legislation.</td>
</tr>
<tr>
<td>Tanzania</td>
<td>1981</td>
<td>Article 175 of the Penal Code stipulates materials that are tending to “corrupt morals” may not be distributed, sold or exhibited. Article 154 which criminalises same-sex intimacy is located in Chapter XV, titled “Offences Against Morality”. In 2017, 12 people were arrested for “promoting homosexuality”.(^6)</td>
</tr>
<tr>
<td>Togo</td>
<td>1980</td>
<td>Article 392 and 394 of the Penal Code penalise the publication and distribution of materials “contrary to public morals”, “decency”. Offenses against morality include “unnatural acts” with a person of the same sex under Article 392.</td>
</tr>
<tr>
<td>Tunisia</td>
<td>2004</td>
<td>Amended in 2004, Article 226bis of the Penal Code of 1913 criminalises any act that publicly draws attention to the opportunity to commit debauchery through any form of writing, audio or visual recording. This law is found in the same section titled “Section III: attacks on morals” where the law criminalising same-sex intimacy is located.</td>
</tr>
<tr>
<td>Uganda</td>
<td>1995</td>
<td>Under Section 9 of the Press and Journalist Act 1995, the Media Council is authorised to censor films, plays and other media content for public consumption. In 2017, the Media Council banned a Dutch film for “glorifying homosexuality”.(^7) The Broadcasting Council, established under the Electronic Media Act, is similarly empowered to regulate radio content pursuant to the minimum broadcasting standards of First Schedule which prohibits programmes that are contrary to “public morality”; in 2004, it fined a radio station for hosting gay men during a live talk show on the basis that it was “contrary to public morality”.(^8) The Ugandan government has also tried to explicitly prohibit the “promotion” of homosexuality under the defunct Anti-Homosexuality Act 2014 (struck down in August 2014) and The Prohibition of Promotion of Unnatural Sexual Practices Bill.</td>
</tr>
</tbody>
</table>

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\(^5\) "Moroccan men 'jailed for four months for kissing in public", The Telegraph, 19 June 2015.


Latin American and the Caribbean (1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paraguay</td>
<td>2017</td>
<td>The Ministry of Education and Sciences issued Resolution No. 29.664/2017 prohibiting the dissemination and use of educational materials referring to “gender theory and/or ideology”. The Inter-American Commission on Human Rights (IACHR) noted that this measure “represents a setback for the rights of women, people with diverse sexual orientations and gender identities, and children to receive an education free of stereotypes that are based on ideas of inferiority or subordination”.</td>
</tr>
</tbody>
</table>

Is there more in LAC?

Jamaica

In Jamaica, approval is required from the Cinematograph Authority under the Cinematograph Act to present a film. In 2013, a film about two lesbians who were murdered by their boyfriends was banned though no reason was given by the Cinematograph Authority. Though the Cinematograph Authority has the power to make rules to approve or ban films, those rules are not publicly available.

Haiti

In 2017, the Senate voted to ban marriage equality as well as “any public demonstration of support for homosexuality and proselytizing in favour of such acts.”

North America (0)

Is there more in North America?

United States of America

In the United States of America, seven states (that make up around 17.4% of the total population) have enacted local laws—informally referred to as ‘No Promo Homo Laws’—which prohibit educators from discussing same-sex intimacy in an affirming or positive manner. For example, in Alabama and Texas, educators must emphasise that “homosexuality is not a lifestyle acceptable to the general public”. In Arizona, educators cannot promote or portray homosexuality as a “positive alternative lifestyle”. In South Carolina, educators cannot discuss non-heterosexual relationships except in the context of sexually transmitted diseases. The other states with such laws are Oklahoma, Louisiana and Mississippi.

In March 2017, the governor of Utah signed SB 196, revising the state law that prohibited the “advocacy of homosexuality” in schools. Because less than half of the country’s population is affected by these laws, the US is not included in the list.

9 Ministerio de Educación y Ciencias (Paraguay), Resolución No. 29.664/2017, por la cual se prohíbe la difusión y la utilización de materiales impresos como digitales, referentes a la teoría y/o ideología de género, en instituciones educativas dependientes del ministerio de educación y ciencias, 5 de octubre de 2017; Teo Armus, “Paraguay Bans Material on ‘Gender Ideology’ in Public Schools”, NBC News, October 18, 2017.


### Asia (15)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>1965-2006</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Afghanistan</strong></td>
<td>1965-2006</td>
<td>Articles 32 and 33 of the Afghanistan Press Law (1965) prohibit the use of the press to incite others to commit an offense or to &quot;seek depravity&quot; (which includes the publication of articles which tend to debase public morals). Additionally, article 31(1) of the Law on Mass Media (2006) also prohibits the publication of matters &quot;contrary to principles of Islam&quot;. In 2014, the Afghan government threatened to prosecute a gay activist for using social media to advocate for LGBT issues. In 2009, it was reported that a memoir by a gay Afghan man could not be distributed in the country.</td>
<td></td>
</tr>
<tr>
<td><strong>China</strong></td>
<td>2015</td>
<td>Following the removal of a gay-themed web series, China issued the General Rules for Television Series Content Production banning content which &quot;expresses or displays abnormal sexual relations or sexual behaviour, such as homosexuality&quot;. In 2017, a directive was circulated that prohibits content relating to homosexuality as well. In 2018, China's top social networking site, Weibo, announced a plan to censor gay-related content but reversed its decision after public backlash. A novelist whose work included homoerotic content was sentenced to 10 years' imprisonment for making and selling &quot;obscene material&quot; for profit.</td>
<td></td>
</tr>
<tr>
<td><strong>Indonesia</strong></td>
<td>2016</td>
<td>In February 2016, the Indonesian Broadcasting Commission (KPI) released the Circular to All Broadcasting Companies on Effeminate Men which prohibits all broadcasting companies from representing sexual and gender diversity in men. In the same month, it also released a statement banning TV and radio programmes that &quot;promoted&quot; the LGBT lifestyle on the basis that it was in violation of the Broadcasting Program Standards (2012) in the name of protecting children. In 2016, the Indonesian Ulema Council released a fatwa that rejected &quot;all forms of propaganda, promotion and support towards lesbian, gay, bisexual and transgender (LGBT) in Indonesia&quot;, with the Council's chairman, Maruf Amin, declaring that &quot;LGBT activities and campaign are forbidden in Islam and other Abrahamic religions.&quot; Over the past few years, the Communications Ministry has been trying to ban same-sex dating applications on mobile phones albeit unsuccessfully.</td>
<td></td>
</tr>
</tbody>
</table>

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17 Josh Horwitz et al., "China’s new television rules ban homosexuality, drinking, and vengeance", Quartz, 3 March 2016.
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legal Barriers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iran</td>
<td>1986 2009</td>
<td>The Press Law contains a variety of limitations on material that may be considered offensive to the public. The government has used this law and the Law on Computer Crimes (Law No. 71,063 of 2009) to shut down newspapers and websites with content related to sexual orientation.</td>
</tr>
<tr>
<td>Jordan</td>
<td>1988</td>
<td>Article 37 of the Press and Publication Law prohibits the publication of content that “encourages perversion or lead to moral corruption”. In July 2017, the Jordanian Audiovisual Commission blocked access to an LGBTQIA-inclusive online magazine on the basis that they had not applied for a license.</td>
</tr>
<tr>
<td>Kuwait</td>
<td>1960</td>
<td>Article 21 of the Press and Publications Law prohibits the publication of anything that would insult the public morals or instigate others to violate the public order or to violate the laws or to commit crimes, even if the crime did not occur. This law was extended to include online publications pursuant to the Law Regulating Electronic Media (Law No. 8 of 2016). In 2017, the Ministry of Information prohibited the screening of a Disney film (The Beauty and the Beast) that contained a same-sex kiss.</td>
</tr>
<tr>
<td>Lebanon</td>
<td>1943</td>
<td>Article 532 of the Penal Code prohibits the possession, making, or distributing of materials that may incite others to immorality. In May 2018, an organiser of Beirut Pride was detained for organising a demonstration that incite immorality. In January 2019, the Ministry of Telecom reportedly ordered a ban on Grindr (an online dating app mostly used by gay men).</td>
</tr>
<tr>
<td>Malaysia</td>
<td>2018</td>
<td>In 2010, the Film Censorship Board (LPF) relaxed its ban on “homosexual content” pursuant to the Film Censorship Act, provided that gay characters became straight at the end. In 2018, in a response to a parliamentary question and following a national controversy over a gay kiss in a Disney film, the deputy home minister reiterated that LGBT content will be banned from broadcast unless there were “lessons to be learnt”, pursuant to guidelines set by the LPF.</td>
</tr>
<tr>
<td>Oman</td>
<td>1984</td>
<td>Articles 25 and 28 of the Publications and Publishing Law (1984) prohibit the publication of anything that “disrupt the public order or call people to embrace or promote anything deemed in contravention of the principles of the Islamic religion” or “that might prejudice the public code of conduct, moral norms or divine religions”. Article 42 of the 2007 Executive Regulations promulgated under the Telecommunications Regulation Law prohibits a person from using telecommunication services that contain data or</td>
</tr>
</tbody>
</table>

25 "Jordan blocks access to LGBTQ online magazine", Committee to Protect Journalists, 8 August 2017.
27 Hugo Lautissier, “Beirut Pride’s Hadi Damien Q&A: Lebanon’s LGBT movement is ‘growing’”, Middle East Eye, 19 May 2018.
29 “It’s OK to be gay in Malaysian movies - as long as you go straight”, Herald Sun, 22 March 2010.
Information which are "contrary to the public ethic system, infringe the religious practice or upset others or promote any subject breaching the law".

In September 2013, the newspaper The Week was shut down for one week after printing an article about the country’s LGBT community. In 2015, the Ministry of Information was purportedly taking legal action against a French radio station based in Oman that hosted a gay Omani activist who spoke about the challenges of being gay in the country.

10  🇵🇰 Pakistan  2016  Section 34 of the Prevention of Electronic Crimes Act (2016) grants the Pakistan Telecommunication Authority the power to remove or block access to content if it considers it necessary in the interest of the glory of Islam, public order, decency, or morality.

Prior to this law, the government has already been banning LGB-related content online and in the media.

11  🇶🇦 Qatar  2004  Article 296 (3)-(4) of the Penal Code (2004) states, "One is convicted to no less than a year and no more than three years in prison in case of (3) Leading, instigating or seducing a male anyhow for sodomy or immorality and (4) Inducing or seducing a male or a female anyhow to commit illegal or immoral actions".

In 2018, it was reported that LGB-content were censored in international newspapers.

12  🇸🇦 Saudi Arabia  2007  Article 6 of the Anti-Cyber Crime Law (2007) prohibits the production, publication and promotion of online content or webpages that the government deems to be pornographic or in violation of religious values or public morals or order.

For instance, in January 2018, Saudi police arrested a group of men who had uploaded a video of a "gay wedding".

13  🇸🇬 Singapore  2016  The Info-communications Media Development Authority promulgated a series of Codes of Practices for broadcast media, radio, films and the internet, all of which prohibit the positive portrayal or advocacy of "homosexuality" and "lesbianism".

The authorities may also censor the media or impose age restrictions based on these regulations and have done so many times.

14  🇸🇾 Syria  1948  Article 208 of the Syrian Penal Code prohibits offensive public utterances in writing, graphics, images, etc. Prior to the civil war, it was reported that films on LGBT content were censored.

32 Fahad Al Mukrashi, "Interview with gay Omani lands radio station in hot water", Gulf News, 29 October 2015.
33 Zofeen T Ebrahim, "Pakistan's gay website ban reflects bigotry", Index on Censorship, 15 October 2013; "The gay kiss that was censored in Pakistan", GayTimes, 1 February 2016.
34 Nick Duffy, "Qatar is censoring LGBT news coverage ahead of 2022 World Cup", Pink News, 21 July 2018.
Legal Barriers to Freedom of Expression on SOGIESC issues

15 United Arab Emirates 2003

Article 3(5)(4) of Law on Combating Cybercrimes (Law No. 5 of 2012) criminalises the condoning, provoking or promoting of sin through the computer network or any information technology means or a website.

The Telecommunications Regulatory Authority also blocks websites that “promote destructive principles such as homosexuality” as part of its Internet Access Management Regulatory Policy.

In 2018, the Knowledge and Human Development Authority of the Dubai Government banned a textbook used in a private international school for “violating the religious and traditional norms in the UAE” because it featured a family with two mothers.\(^{38}\)

16 Yemen 1990

Article 103 of the Law on the Press and Publications (Law No. 25 of 1990) prohibits the publication or dissemination of “anything which undermines public morals”.

In 2004, a court sentenced three journalists to imprisonment for publicly discussing homosexuality and interviewing men jailed for homosexuality.\(^{39}\) In 2012, a government-funded cultural magazine, Al Thaqafiya, was shut down for publishing a review of an Egyptian film that contained a scene depicting lesbian sex.\(^{40}\)

Is there more in Asia?

Kazakhstan

Kazakhstan’s Constitutional Council announced on May 26, 2015, that a proposed legislation on “propaganda of non-traditional sexual orientation” is unconstitutional.\(^{41}\)

Kyrgyzstan

In 2014, the government of Kyrgyzstan had introduced a bill that copied Russia’s legislation against “gay propaganda”, with additional jail sentences for people who “promote homosexual relations” through the media.\(^{42}\) The bill had a second reading in June 2015 with little discussion, no questions asked of the 28 MPs who sponsored it, and 90 votes in favour. However, in May 2016, the Parliamentary Committee on Law, Order and Fighting Crime withdrew the draft legislation for further consideration, and to date, it has not been put back before the parliament.\(^{43}\)

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\(^{38}\) “Dubai Bans Private School Book on Homosexual Parents”, Albawaba The Loop, 9 October 2018.


\(^{40}\) “Yemeni Magazine Dares Exploit a Fine Cinematic Work to Promote Radical Gay Agenda”, Queerty, 30 April 2010.


Europe (3)

1. **Belarus** 2017

The Bill on the Protection of Children from Information Harmful to their Health and Development was passed and came into effect in July 2017 as Law No. 362-Z2.

Similar to Russia’s propaganda law, Article 37 prohibits the dissemination of information that “discredits the institution of family and marriage”.

2. **Lithuania** 2014

In January 2014, the Lithuanian Parliament introduced amendments to the Code of Administrative Violations of Law (at Section 214 and elsewhere) penalising activities or publication that violate so-called constitutionally-established family values.

These amendments were enacted in the context of the Law on the Protection of Minors against the Detrimental Effect of Public Information that came into effect in March 2010.

3. **Russian Federation** 2013

Federal Law No 135-FZ which prohibits the promotion of non-traditional sexual relations among minors has been used to prosecute a range of people since it was enacted, including activists, websites and the media.

*For more information on this law, read “The Censorship “Propaganda” Legislation in Russia” by Alexander Kondakov below.*

Is there more in Europe?

**Armenia**

In Armenia, an attempt was made in 2013 to introduce an amendment to the Administrative Offences Code to impose fines for “propaganda of non-traditional sexual relations” but subsequently withdrawn. In October 2018, a similar law was introduced in the legislature.

**Hungary**

The Hungarian government issued a decree in 2018 to revoke accreditation and funding for gender studies programmes at the two universities that offer them in the country. This was because the Hungarian government believed that there are only two genders and did not wish to spend public funds in this area.

**Latvia**

The Latvian parliament successfully passed amendments to the Education Law in 2015 which obliges education institutions to provide students with ‘moral’ education that mirrors constitutional values, especially regarding marriage and family. It had previously failed to enact an anti-gay propaganda law in 2013, which aimed to prohibit children as participants or spectators of events aimed at the promotion of LGBT relations.

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46 Trudy Ring, “LGBT Website Gay.ru Blocked Within Russia”, The Advocate, 2 April 2018.
48 Ani Meijumyan, “Ahead of elections, Armenia’s opposition attacks LGBT right”,
49 “Hungary to stop financing gender studies courses: PM aide”, Reuters, 14 August 2018.
<table>
<thead>
<tr>
<th>Country</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moldova</td>
<td>In 2013, the Moldovan government first enacted then repealed an anti-gay propaganda law inspired by the Russian law in its bid to join the European Union. Two bills were tabled in 2016 and 2017 to ban &quot;propaganda of homosexual relations among minors&quot; and censor public distribution of information about non-heterosexual relationships and identities and remain under legislative consideration.</td>
</tr>
<tr>
<td>Poland</td>
<td>In March 2017, draft propaganda legislation was proposed in Poland to ban homosexual people from the teaching profession. The proposed bill was never voted on due to a change in the party compositions of the Polish parliament following new elections. In late 2018, the Polish president said that he would &quot;seriously&quot; consider a law banning &quot;homosexual propaganda&quot; in schools.</td>
</tr>
<tr>
<td>Ukraine</td>
<td>Ukraine had tried to &quot;protect&quot; children from &quot;propaganda&quot; about homosexual relations with Draft Law 1155 and Draft Law 0945. However, after international pressure, they were removed from parliamentary consideration in April 2014.</td>
</tr>
</tbody>
</table>

The Censorship “Propaganda” Legislation in Russia

By Alexander Kondakov, 57

In June 2013, Russian Parliament (the State Duma) adopted the bill 135-FZ meant to “protect children from information that promotes denial of traditional family values.”58 This piece of legislation amended several federal laws and the Code of Administrative Offences of the Russian Federation with the final purpose to ban from public access something called “propaganda of non-traditional sexual relations”.

Most importantly, the bill ads Article 6.21 to the Administrative Code that establishes responsibility for dissemination of information about “non-traditional sexual relations” punishable by fines (for citizens and officials), fines and suspension of organizational activities (for entities) or fines and deportation (for foreign nationals and stateless persons).59

This law does not deliver on criminal liability; it is a misdemeanor that has a specific legal procedure and different legal consequences in comparison to criminal law. Substantially, the “propaganda” law is a censorship legislation that limits people’s freedom of expression. It simply prohibits certain information from being part of the commonly accessible domain.

First attempts to ban “homosexual” propaganda

Initially, the bill was introduced to the Duma in 2012 by regional parliamentarians from the Novosibirsk branch of the United Russia Party. Their proposition was more articulate as they sought to ban “propaganda of homosexuality” just like in a dozen other regions across Russia where similar legislation was already in place.60 The first in line was the Ryazan region, where the propaganda bill was introduced as early as 2006. In that period at the federal level, Member of Parliament Aleksandr Chuev had been trying to criminalise “propaganda of homosexual lifestyle” for some years after unsuccessful attempts to criminalise “sodomy” beforehand. Wording of his legislation drafts (also proved unsuccessful due to the criminal nature of his legal initiative) were mostly inspired by decisions of the Constitutional Court of the Russian Federation regarding national family values, as well as by the US evangelicals’ doctrine of “traditional family values”.61

This language was used in drafting the current law with the purpose of avoiding overtly mentioning “homosexuality” so that the text itself would not “promote” what it sought to prohibit. Thus, by summer 2013 despite protests from the Duma’s Law Department, the Duma’s Committee on Family, Women and Children headed by the Member of Parliament Yelena Mizulina drafted the ban of “non-traditional sexual relations” supported by all but one parliamentarian during voting.

Prohibited conduct

Despite common misconception, this piece of legislation is very straightforward and clear. The text of the law says that if someone promotes “non-traditional sexual relations” to minors, then they have to face legal consequences. The ways in which one may “promote” these relations are of two types:

a) personal presentation (private conversation, teaching, public rally and campaigning) or

60 The regions that adopted the ‘propaganda’ legislation include: Arkhangelsk, Vladimir, Irkutsk, Kaliningrad, Kostroma, Krasnodar, Magadan, Novosibirsk, Ryazan, Samara regions, the city of St Petersburg, and the Republic of Bashkortostan.
61 Christopher Stroop, “Russian Social Conservatism, the WCF and the Global Culture Wars in Historical Perspective”, Political Research Associates. 16 February 2016.
b) mediated presentation (airing on the Internet or TV, in newspapers and magazines).

Moreover, an actual child must not be in fact exposed to the information in question: children in general should be able to access the information in order for it to be considered “propaganda”. This also uncovers the nature of “propaganda” in the text of the law: since a child is not required to be present at the event of alleged misdemeanour, then any consequences of the information to the child’s sexual orientation are of no legal relevance. In other words, although the law pretends to protect children from the “harm” of becoming gay, it does not matter if any particular child has been really converted to a gay person as a result of being exposed to a plaintiff’s political rally banner.

In the absurdist world of Russian legislators, this is a smart move because otherwise no case would stand trial. The legislators do mention that in result of children’s exposure to information about “non-traditional sexual relations” the following possibilities are projected: “formation of non-traditional sexual attitudes,” ”attraction to non-traditional sexual relations,” “perverse impression of social equality between traditional and non-traditional sexual relations,” etc.

However, the practice of the law demonstrates that no proof of these effects on children is ever required in the courtroom. This law is about quality of information (its potential ability to convince someone that queer sexuality is a normal part of our society and even maybe an interesting practice to try), not about human capacity to experiment with one’s sexuality under external influence.

The law targets information: as a censorship law, it limits freedom of expression. Court experts are called upon to testify that a piece of information may potentially ignite children’s interest in homosexuality and therefore, it is a piece of “propaganda.” Hence, the “frightening” consequences of “gay propaganda” are nothing more than rhetorical ornaments that serve for the creation of moral panic.

The notion of “non-traditional sexual relations”

Furthermore, in the federal legislation, the formula “non-traditional sexual relations” does divert attention from a franker wording, such as St. Petersburg’s “propaganda of homosexuality, lesbianism, bisexuality and transgenderism” (paraphrased “LGBT” acronym). Yet, the Supreme Court of the Russian Federation previously clarified that “traditional sexual relations” do not include lesbian experiences, male homosexuality, bisexuality and transgender issues, so these are considered “non-traditional”.

Besides, people rarely learn about law from legal books. Thus, while lawyers have the Supreme Court’s rulings to understand a correct interpretation of “non-traditional” sexuality, other people may rely on TV and newspaper articles, where this linguistic formula is heavily used in reference to LGBTQ questions. Therefore, no mistake shall be committed in interpretation of the law by legal professionals or lay people.

The effects and consequences of the law

This last point actually bares discussion of the effects of the law. First, as any censorship law and contrary to its said purpose, the bill 135-FZ generated a lot of interest to the object it censored. Studies show that there are more publications about queer sexualities in Russia after adoption of the law than before it.62 Certainly, some of them are meant to convince the public that it is in danger of “homosexuality”. This is especially so for materials aired on government-controlled media resources. Yet, other publications, on the contrary, try to convey a more LGBTQ-friendly approach and are published in “oppositional” or independent media. Some of these latter types of materials were subjected to administrative litigation, while others are freely available anyway. The thing is that in order to open an administrative case, state agencies have to show that a publication in question was meant for children. Hence, if a sign marked the said publication as intended for an “18+ age” audience, then a case cannot be built.

Secondly, the law also generated legal enforcement: it is not an inactive piece of legislation (see “The implementation of the law” below).

Finally, the law also has social effects beyond its legal implementation or censorship controversies. Most importantly, academic and activist studies registered growth of violence against LGBTQ populations in Russia after 2013.63

The “propaganda” law is a symbolic articulation of the government’s hatred policy. The law officially established that some citizens of Russia are of less
value than others (its text refers to “social equality” between sexual groups as a “perverse impression” one must be protected from). Thus, the law and official political commentaries around it spread and reinforced the idea that queer sexualities are wrong. Judging from the growth of violence against LGBTQ people in Russia, some bigots acted violently upon this conclusion.

Russia’s legislation in limiting LGBTQ populations’ freedom of expression also has an international dimension. As the result of this official policy of bigotry, many queer people in Russia felt especially threatened and endangered, even experiencing actual violence and persecution because of their sexual or gender identities. Therefore, some of them had to flee the country and seek for international protection in safer places.

On the other hand, the law generated positive responses in some Post-Socialist countries. Similar “anti-propaganda” laws have been considered in Poland, Lithuania, Latvia, Hungary, Moldova, Belarus, Ukraine, Kyrgyzstan, Kazakhstan and Armenia. All attempts have proved unsuccessful so far, but the issue brings these states closer together despite political rivalry and mutual grievances and therefore, may have further developments.

Conclusion

In sum, the 135-FZ law banning “propaganda of non-traditional sexual relations” to minors is a censorship legislation that limits freedom of expression by making neutral and positive information about LGBTQ topics a misdemeanor subjected to penalties. The text of the law is clear, and the procedure of its implementation does not require an actual child to be harmed in any way. This is why it is relatively easily enforced, especially in cases against media outlets and activists’ publications.

The legislation has a variety of other effects, beyond its implementation. One of the most important results of the spread of bigotry it generated is the growth of violence against queer populations in Russia. Since the law is in place, Russia is a less safe location for queer expressions than it has been before. Therefore, the law sends the country backwards on the line of progression to a more inclusive sexual citizenship.

The implementation of the law

Currently, for the years 2013-2018 there are at least 57 court rulings in the official state registrar of court decisions managed by the Ministry of Justice (unfortunately, not all court rulings appear in this database and not all of them are properly classified).

The graph shows the number of cases in which the law is cited in these rulings: the majority of court decisions are taken in respect to media publications.

These cases are most commonly brought to court by Russia’s censorship agency, Roskomnadzor (The Federal Service for Supervision of Communications, Information Technology and Mass Media). Cases regarding political rallies are initiated by LGBTQ activists who are denied the right to conduct a public rally by municipal authorities on the ground of the “propaganda” law and then challenge this decision in courts.
Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs

Highlights

41 UN Member States
21% UN Member States

Introduction

The ability of sexual orientation-related (SOR) civil society organisations (CSOs) to formally register and operate in a country allows them to more effectively serve and advocate for SOR issues.

Registration refers to the ability of organised groups to be recognized as independent legal entities under the law, which would allow them to receive funding and conduct their activities formally. In this section, a SOR CSO is defined as one that is explicitly sexual orientation-related, whether in its name or registration documents. While some NGOs may achieve registration by using non-explicit names or descriptions (e.g. as “human rights” or “sexual health” groups), they would not be regarded as SOR CSOs for the purpose of ascertaining the existence of legal barriers to registration.

Additionally, even if SOR CSOs may be able to get formal registration, they may also be prevented from effectively conducting their activities and advocacy. In this section we also include States with laws that may seriously interfere or obstruct the work of SOR CSOs. This may include legal restrictions on funding or the types of activities that are permitted.

What does International Human Rights Law say?

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation, gender identity, gender expression or sex characteristics.

Persons may form and have recognised, without discrimination, associations based on sexual orientation, gender identity, gender expression and sex characteristics, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations, gender identities and expressions and sex characteristics.

Yogyakarta Principle 20
Mapping the legal barriers to the registration or operation of sexual orientation-related civil society organisations can be quite challenging. Unlike other laws, which may be more straightforward in their wording or in its effects, the barriers that usually prevent the registration or operation of organisations can be more difficult to trace in the abstract.

Therefore, in order to confirm the existence of a legal barrier, additional information needs to be gathered with regard to the official response or explanation given to a failed attempt to register an organisation. In this regard, this section does not pretend to be exhaustive. Other countries with legal barriers may be included if more information becomes available.

In this section ILGA lists States in two tiers:

- **TIER 1: confirmed legal barriers.**
  ILGA has found that there may be an explicit prohibition against SOR activities or associations, where the law specifically forbids SOR NGOs from registering. Although this kind of prohibitions exist, they are quite rare.

  Most cases include countries with NGO laws that prohibit the registration of groups that engage in illegal, immoral or “undesirable” activities or purposes. These provisions may be interpreted to prohibit SOR NGOs, what is often the case in countries where consensual same-sex sexual acts are criminalised. Tier 1 countries are those for which ILGA was able to corroborate that local groups have been actually denied registration of a SOR CSO based on a provision of law. Reference to the source in which the rejection was documented is always provided.

- **TIER 2: legal barriers very likely to exist.**
  This tier includes countries for which ILGA was not able to find evidence of official rejection but where criminalisation of same-sex intimacy, restrictive NGO laws and generalised hostility (state-sponsored or otherwise) make it very unlikely that a request for registration will be accepted.

  Lack of evidence of official rejection can be attributed to various reasons. First, in several countries no SOR CSO or civil society groups are known to exist on the ground. In others, for various reasons (exposure, governance, interference, cost, etc.), groups expressly choose not to pursue NGO status, and opt for other creative strategies to be able to operate at the policy level.

  For example, in countries with the death penalty or harsh penalties for same-sex consensual acts, where activists may find it too dangerous even to organise or come out, it is highly likely that any attempt at registration will be denied. Additionally, when the legal terminology used to criminalise same-sex intimacy is the same or similar to that used in the provisions on CSO registration, the likelihood of a legal barrier increases.

  Additionally, as most laws on NGOs and associations prohibit the registration of organisations with “illegal purposes”, the criminalisation of same-sex activity can be indicative of a legal barrier to register a SOR CSO. However, this cannot be taken as a hard and fast rule given that in many countries that still criminalise, local courts have argued that advocating for the rights of LGBT people cannot be equated with the sexual acts that fall under sodomy laws. Therefore, not every criminalising country is included in this second tier.
### Africa (12)

| Tier | Country                  | Year | Legal Barrier                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------|--------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
| 1    | Burkina Faso             | 2015 | Article 16 of Law 064-2015/CNT on freedom of association allows authorities to reject the registration of groups that are based on a cause or object that is "illicit, or contrary to laws and good morals". Repeated attempts by LGBT organizations to register with the Ministry of Territorial Administration, Decentralization, and Security were not approved though no explanation was provided for the refusals.¹                                                                                       |
| 2    | Burundi                  | 1992 | Decree-Act No. 1/11 of 18 April 1992² allows the authorities to deny registration when the object of the association is contrary to the law, public order or morality.³ Activists have reported being unable to register their groups except when they focus on HIV/AIDS issues.⁴                                                                                                                                                                                                                     |
| 3    | Cameroon                 | 1999 | Law no 99/014 of 22 of December 1999⁵ regulates NGOs in Cameroon, which are required to pursue aims that are in the “public interest”.⁶ Groups report that they face obstacles in the process of obtaining legal recognition and some groups have had to exclude any reference to LGBT people to become legally registered.⁷                                                                                                                                                                                                 |
| 4    | Democratic Republic of Congo | 2001 | Article 3 of the Decree-Law No. 004 of 20 July 2001 requires organisations seeking registration to undergo a two-tiered process, with legal personality granted by the Minister of Justice after a favourable opinion is received from the ministry responsible for the sector in which the organization is engaged. According to a joint submission by 6 SOR NGOs to the 2017 UPR, most organisations have been denied registration when they make reference to LGBT persons in their constitutions.⁸                                                                                       |
| 5    | Egypt                    | 1964 | Article 14(2) of The Law of Associations and Other Foundations Working in the Field of Civil Work (Law No. 70 of 2017) prohibits associations from any "activities that result in destabilizing the national unity, national security, public law and order, and public morals". As a result of hostile state and social attitudes, groups have not been able to register their organisations officially and often have to work secretly and anonymously to avoid state persecution.⁹                                                                                                                                 |

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² No online text of law could be located.
⁵ No online text of law could be located.
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legal Basis</th>
</tr>
</thead>
</table>
| Liberia | 1977 | Section 21(1) of the Associations Law of 1977 provides that a non-profit corporation may be formed for “any lawful purposes”.

In November 2016, the Trans Network of Liberia (TNOL) sought registration as a legal entity with the Liberia Business Registry but was refused on the basis that its articles of incorporation include activity which is not allowed in Liberia.\(^{10}\)

| Mali | 2004 | Article 4 of the Law on Associations (Law No. 04-038 of 5 August, 2004) prohibits the recognition of associations that are based on a purpose that is contrary to law and morality.

In June 2005, the governor of the District of Bamako cited this law to refuse official recognition of a gay rights association.\(^{11}\)

| Mauritania | 1964 | Article 3 of Act No. 64-098 of 9 June 1964 on associations limits the freedom to legally engage in activities unless prior authorisation has been granted from the Ministry of the Interior.

A request for official recognition of the Nouakchott Solidarity Association, the country’s only LGBT group, has been denied by local authorities.\(^{12}\)

| Morocco | 1958-2005 | Article 3 of the Decree Regulating the Right of Association (Decree 1-58-376 of 1958) prohibits associations from engaging in activities that, inter alia, “breach the laws or public morals” or “offend Islam”. Further amendments to the 1958 law were made in Decree 2-04-969 of 2005, which include prohibitive provisions, such as capacities of the association at start-up.

Akaliyat, a Moroccan organization, attempted to register in 2016 but authorities refused even to take the application and hustled those applying out of the registration office.\(^{13}\)

| Nigeria | 2013 | Article 4(1) of Nigeria’s Same-sex Marriage (Prohibition) Act prohibits “the registration of gay clubs, societies and organisations, their sustenance, processions and meetings”. Articles 5(2) and (3) impose a 10-year prison sentence on anyone who “registers, operates or participates in gay clubs, societies organization” or “supports” the activities of such organisations.

In 2018, a group called “Lesbian Equality and Empowerment Initiatives” lost their appeal challenging the refusal of the Corporate Affairs Commission (CAC) to register them under the Companies and Allied Matters Act.\(^{14}\) The judge held that the group’s name was “in collision with an existing and operational law”, referring to the Same-sex Marriage (Prohibition Act).


\(^{12}\) No online text of law could be located.

\(^{13}\) “Germany keeps blocking activist training – this time for a Mauritanian”, *Erasing 76 Crimes*, 20 February 2017.


\(^{15}\) Ikechukwu Nnochiri, “Court throws out suit seeking registration of lesbian group”, *Vanguard News* (Nigeria), 18 November 2018.
Section 30(1)(a) of the Non-Governmental Organizations Act states that an "organisation shall not be registered under this Act, where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda".

Sexual Minorities Uganda’s (SMUG) application for registration was rejected on the ground that its name and objectives were unacceptable because same-sex sexual relations were criminalised in the country. They sued the Uganda Registration Services Bureau in 2016 and the judgment is pending.

Section 8 of the Societies Act 1958 empowers the Registrar of Societies to refuse to register any society that is prejudicial to or incompatible with the peace, welfare or good order in Zambia.

In 1998, the Registrar of Societies refused to entertain activists who tried to register their group, Lesbians Gays and Transgender Association (LEGATRA), and said that he could not register the group “any more than I could a Satanic organisation”. While there are several LGBTI human rights organisations, they operate underground and strategically negotiate the dangerous legal landscape.

In 2016, several UN Special Procedures expressed concern regarding undue delays, the subsequent refusal to register and arrests of civil society and defenders in the registration of the Engender Rights Centre for Justice on grounds of “soliciting for immoral purposes.”

The Law on Associations (Law 12-06 of 2012) affords the government broad discretion to refuse to register an association with an object that is contrary to "good mores" (bonnes moeurs). The title of the section of the Penal Code that criminalises "homosexual acts" uses the same terminology. The law also imposes heavy fines and criminal penalties for members or leaders of informal associations.

Local LGBT groups have reported that gathering publicly or registering an organisation under this legal framework is impossible. Human rights activists have also expressed the fear that supporting or advocating rights of LGBT people will “result in the immediate withdrawal of accreditation.”

11 Uganda 2016

12 Zambia 1958

13 Algeria 2012
### Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ethiopia</strong></td>
<td>2009</td>
<td>In Ethiopia, Article 69 of the Charities and Societies Proclamation Law (Law No. 621/2009) prohibits the registration of any group that is contrary to “public morality” or is illegal. This has led activists in Ethiopia to believe that they cannot be legally registered though it has not been tested.</td>
</tr>
<tr>
<td><strong>Libya</strong></td>
<td>2016</td>
<td>Various articles within the Law on associations and non-profit foundations of 21 April 1928 (amended 2016) could make the registration of a SOGI-based NGO virtually impossible.</td>
</tr>
<tr>
<td><strong>Malawi</strong></td>
<td></td>
<td>In Malawi, organisations working on LGBT issues were able to receive legal status after they strategically chose to register as a human rights organisation and used non-descriptive names to avoid additional scrutiny. Even then, they have been faced with significant obstacles to operate: in April 2011, the Ministry of Information and Civic Education held a string of press conferences to “expose” a funding proposal for SOGI issues it had 'unearthed', which had been submitted to the Norwegian Embassy. The Council for Non-Government Organisations in Malawi (CONGOMA) publicly denounced LGBT activism in May 2011 after a meeting with the President.</td>
</tr>
<tr>
<td><strong>Senegal</strong></td>
<td>2010</td>
<td>In Senegal, Prudence is the only SOR NGO to have obtained registration with explicit language on sexual minorities in their by-laws. However, they are hesitant to renew their registration, fearing it could be rescinded when the documents are resubmitted. Some activists have also faced police harassment though their charges for “establishing an illegal organization” were eventually overturned on appeal.</td>
</tr>
<tr>
<td><strong>Somalia</strong></td>
<td>2010</td>
<td>In Somalia, the danger of coming out makes it practically impossible to even attempt registration though it is highly unlikely that registration would be successful anyway. Article 10 of the Law on Welfare (or Charitable) Non-Governmental Organisations, (Law No. 43/2010) which imposes a duty on NGOs to “respect the culture and belief of the people” while Article 11 prohibits NGOs from engaging in any act that violates the country’s laws. A community group of Somali activists based in Ethiopia has not been able to attempt registration due to the dangerous climate in the country.</td>
</tr>
<tr>
<td><strong>Sudan</strong></td>
<td>2006</td>
<td>In Sudan, the threat of the death penalty coupled with a rigorous registration process mandated under Section 8(1) of the Voluntary and Humanitarian Work (Organisation) Act, 2006 makes it highly unlikely that an SOR CSO would be registered.</td>
</tr>
</tbody>
</table>

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28 Mariam Armisen, “We Exist: Mapping LGBTQ Organizing in West Africa” (Foundation for a Just Society), 19.
Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs

### Tanzania

2016

Though there are existing registered organizations working on issues related to sexual orientation, in August 2016, the justice minister announced controversial new plans to suspend the registration of any charity or non-governmental organisation that supports homosexuality.\(^{31}\)

In the same year, the health ministry shut down community-based HIV programmes that served men who have sex with men.\(^{32}\)

There has been continued threats of violence against LGBT people and a taskforce was set up in late 2018 to "hunt" LGBT people, which have forced activists to hide for their own safety.\(^{33}\)

### Mozambique

In 2017, the Mozambique Constitutional Council ruled in favour of an LGBT advocacy group after it had been refused registration on the basis of Law on Associations (Law No. 8/91) and held that the government’s interpretation of the law violated the principle of non-discrimination under the Constitution.\(^{34}\)

### Tunisia

In May 2015, Shams became the first LGBT group to receive official authorisation from Tunisia’s interior ministry.\(^{35}\) In February 2016, Shams succeeded on appeal to the Administrative Court against a suspension order by the Tunisian government which accused the organisation of violating.\(^{36}\) The Government had argued on the basis that Shams’ aim to “defend homosexuals” was contrary to Article 3 of the NGO Law (Law No. 88/2011). Since this argument was rejected by the judiciary, it should mean that LGBT-related objectives are not any more a legal ground for refusing registration to SOR CSOs.

### Latin American and the Caribbean (0)

### Cuba

Even though the Cuban Law on Associations (Law No. 54) guarantees the constitutional right to freedom of association, the actual implementation of the law presents its nuances. The largest groups of LGBTI activism in the country, although without legal personality, work under the umbrella of the state-run National Center for Sex Education (CENESEX), and have relative autonomy to draw their bases and objectives, and even in some cases are already members of ILGA. The main limitation to the creation of new associations has to do with alignment with governmental directives. According to local sources, this is due to the attempts by the government of the United States to allocate resources to subvert the Cuban socio-political order through civil society organizations. This limitation, however, has not prevented the emergence of new associations according to local needs, such as the creation of the Information Technology Union of Cuba in 2016.

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32 "Now Tanzania also ends vital HIV programmes targeting gay men", Mamba Online, 4 November 2016.
33 Nick Charity, "Tanzania taskforce to start "witch hunt" to round up and imprison LGBT community", Evening Standard, 1 November 2018.
Haiti

A pending bill aims to prohibit public demonstrations of “support for homosexuality”, which would severely restrict the freedom of association and speech among LGBT activists.37 In 2016, the Massimadi arts and film festival that celebrates Haiti’s Afro-Caribbean LGBT community was shut down by the commissioner of Port-au-Prince on the basis that he was protecting public morals.38

Asia (18)

<table>
<thead>
<tr>
<th>Tier</th>
<th>Country</th>
<th>Year(s)</th>
<th>Legal Barriers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bangladesh</td>
<td>1860</td>
<td>Only specific types of societies may be registered under the Societies Registration Act (1860) pursuant to Section 20 and activists have reported that registration of their groups have been rejected on the basis of the criminalisation of same-sex sexual conduct.39 In addition, due to threats to the safety of activists by state officials and citizens, activists have been unable to complete the registration process which requires them to meet with government officials.40</td>
</tr>
<tr>
<td>2</td>
<td>China</td>
<td>1998–2017</td>
<td>Article 11 of the Interim Regulations on the Registration and Administration of Private Non-enterprise Units confers a discretion on the relevant authorities to approve the registration of associations, of which one ground is violation of Article 4. Article 4 specifies that such groups shall not endanger the “social interest” as well as the lawful rights and interest of other organizations and citizens, and shall not breech “social ethics” and “morality”. While some NGOs have been successful in registering, others have reported being rejected because their names or activities explicitly referred to issues on sexual orientation.41 Furthermore, under the Charities Law (2016) only charitable organisations certified by the government are permitted to conduct public fundraising and uncertified individuals may be severely penalised for doing so. Also, in January 2017 the Law on the Management of the Activities of Overseas NGOs within Mainland China came into force, severely impeding funding capabilities. These restrictions severely restrict the ability of CSOs, particularly those that have had their registration rejected, to raise funds and organise.42 In January 2019, the Municipal Affairs Bureau in the southern metropolis of Guangzhou shut down two organisations for “failure to register properly” by not explicitly declaring their objectives and activities related to sexual orientation.43</td>
</tr>
</tbody>
</table>

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37 “In Haiti, Slight Progress for LGBT Rights Seen as Victory”, VOA, 14 August 2018.
38 “Haiti LGBT festival cancelled due to threats”, BBC World, 28 September 2016.
42 “China’s Complicated LGBT Movement”, The Diplomat, 1 June 2018.
<table>
<thead>
<tr>
<th>#</th>
<th>Country</th>
<th>Year</th>
<th>Law or Regulation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Jordan</td>
<td>2008</td>
<td>Article 3 of the Law of Societies (Law No. 51 of 2008 as amended by Law No. 22 of 2009)</td>
<td>prohibits the registration of any society which has illegal goals or purposes. In 2009, a registration application was rejected and a ministry official explained to the media that if the government authorized such an organization, it &quot;would violate 'public morals' and 'decency'&quot;.</td>
</tr>
<tr>
<td>4</td>
<td>Kazakhstan</td>
<td>1996</td>
<td>Article 5 of the Law on Public Assembly (1996)</td>
<td>states that the formation and operation of public association infringing the health or moral principles of the citizens, as well as the activity of unregistered public associations are not allowed. Feminita, a queer feminist collective, has been rejected multiple times since 2015 allegedly because of their focus on LGBT rights. According to an Amnesty International report, there is no registered SOR CSO in operation as &quot;obtaining registration for an NGO is a bureaucratically arduous process, and registration is often refused on spurious grounds&quot;.</td>
</tr>
<tr>
<td>5</td>
<td>Kyrgyzstan</td>
<td>1999</td>
<td>Article 12 of the Law on Non-commercial Organizations</td>
<td>states that non-commercial organizations shall have the right to conduct &quot;any type of activity which is not prohibited by Law&quot;. While there are several registered groups, the Ministry of Justice of the Kyrgyz Republic denied registration to the public association Alliance and Social Services of Gays and Lesbians Pathfinder in January 2011 because it deemed that the &quot;designation of the words 'gay and lesbian' in a name of the legal entity promotes the destruction of moral norms and national traditions of the people of Kyrgyzstan&quot;.</td>
</tr>
<tr>
<td>6</td>
<td>Lebanon</td>
<td>1909</td>
<td>The Ottoman Law on Associations</td>
<td>prohibits organisations that are founded on an &quot;unlawful basis&quot; and requires notification to the government upon the founding of an organisation, which will respond with a receipt that officially recognises the organisation. However, an LGBT group which applied for registration in 2004 never received any receipt though subsequent groups which did not describe themselves using any term related to sexual orientation or gender identity were successfully recognised. In May 2018, Lebanese General Security officers attempted to shut down a conference on LGBT Rights organised by the Arab Foundation for Freedoms and Equality (AFE) on the basis that it &quot;promoted homosexuality&quot; and drug abuse.</td>
</tr>
</tbody>
</table>

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45 "Kazakhstan's Queer Feminist Uprising is Now", Queer Here, 5 October 2015.
47 Id., 33.
### Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legal Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Malaysia</strong></td>
<td>1966</td>
<td>Under Section 7(3)(a) of the Societies Act 1966, the Registrar of Societies shall refuse to register a local society where it appears that such a local society is unlawful or is likely to be used for “unlawful purposes”. In 2017, LGBTI group Pelangi Campaign’s application for registration was rejected without any reason and its appeal was also rejected in 2018, citing section 7 of the Act, which empowers the Registrar of Societies to reject applications without the need to provide any reasons.</td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>1966</td>
<td>Section 4(2)(b) of the Societies Act allows the Registrar of Societies to refuse to register a society that it considers to be “likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore”. A gay advocacy group, People Like Us, was not allowed to register in 1997 and 2004, and the reason given in 2004 was on the basis of that provision.</td>
</tr>
<tr>
<td><strong>Afghanistan</strong></td>
<td>2005</td>
<td>Article 7 of the Law on Non-Governmental Organizations and article 5 of the Association Law prohibit groups from engaging in activities that are illegal or against the “national interest”. Reports suggest that LGBT advocates largely function underground out of fear of persecution due to the threat of severe punishment.</td>
</tr>
<tr>
<td><strong>Bahrein</strong></td>
<td>1989</td>
<td>Article 3 of Law No. 21 of 1989 stipulates that a group that is deemed to “contradicts the public order or moral” or undermines the “social order” is considered illegal. There are many restrictions and conditions set and as decision-making on what construes these is dispersed across government agencies, it is highly likely a SOGI-based application would be instantly rejected.</td>
</tr>
<tr>
<td><strong>Kuwait</strong></td>
<td>1962</td>
<td>Article 6(4) of the Law on Clubs and Public Welfare Societies (Law No. 24 of 1962) states that &quot;societies and clubs are not allowed to seek achieving any purpose that is illegal or defies ethics or related to purposes stipulated in the statute&quot;. NGO registration is mandatory under articles 2 and 3 and an implausible prospect for SOR CSOs groups.</td>
</tr>
<tr>
<td><strong>Iran</strong></td>
<td>1979</td>
<td>Article 8 of the Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations (2005) provides that the organisation’s constitution and activities must not be in violation of the Constitution. Article 26 of the Constitution of the Islamic Republic of Iran (1979) provides for the freedom of association provided that they do not violate &quot;Islamic standards&quot; and &quot;the basis of the Islamic Republic&quot;.</td>
</tr>
</tbody>
</table>

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52 Stephan Ortmann, Politics and change in Singapore and Hong Kong: Containing contention (Routledge, 2009), 154.
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legal Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oman</td>
<td>2000</td>
<td>Law No. 14 of 2000 confers the Ministry of Social Affairs and Labour the power to deny registration when it considers that the services to be provided by the association “are not needed” (or for “any other reasons”). Though there are no SOR CSOs in operation in Oman, it is likely that even if there was one, it would be refused registration in light of the hostile environment in the country.</td>
</tr>
<tr>
<td>Qatar</td>
<td>2004</td>
<td>Articles 1 and 35 of the Law on Private Associations and Foundations (Law No. 12 of 2004) disallow associations from being “involved in political issues”, as human rights advocacy is often framed as. This limited margin of action coupled with the harsh penalties imposed to consensual same-sex sexual acts makes it very unlikely that a SOR NGO will get formal registration.</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>2016</td>
<td>Article 8 of the Civil Society Associations and Organisations Law (Royal Decree No. M/8, 19.2.1437H) prohibits the establishment of an association if its charter conflicts with the provisions of Shariah, “public policy” or “public morality”.</td>
</tr>
<tr>
<td>Syria</td>
<td>1958</td>
<td>Various articles of Law No. 19/1958 (amended 1969) allow the Ministry to appoint or remove board members, disallow political participation, foreign funding, and allow the registration to be rescinded at will. Further, article 35 allows any Board decision to be suspended “if it deems it to be against the law, the public order or morals”. This legal framework appears to pose severe barriers to the formal registration and the operation of a SOR NGO.</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>2008</td>
<td>Besides the possible imposition of the death penalty under Shariah Law, local Penal Codes impose harsh penalties to consensual same-sex sexual acts. Moreover, Federal Law No. 2 (2008) confers broad powers of supervision (including sending representatives to meetings) and heavily restricts the activities that organisations can carry out without receiving first permission from the Ministry of Social Affairs. This legal framework appears to pose severe barriers to the formal registration of a SOR NGO.</td>
</tr>
<tr>
<td>Yemen</td>
<td>2001</td>
<td>Although Article 58 of the Constitution asserts the rights on citizens to form associations, the Penal Code in force imposes the death penalty for consensual same-sex sexual acts. Such provision coupled with the hostile situation on the ground makes it very unlikely that a request to formally register an organisation to advocate on issues of sexual orientation will be accepted.</td>
</tr>
</tbody>
</table>

Is there more in Asia?

**Mongolia**
The first LGBT NGO in Mongolia was denied registration in 2007 and was only granted legal status after domestic and international pressure in 2009.

**North Korea**
Civil society human rights activity of the type that would produce a SOGI-based NGO does not appear to be possible in North Korea. However, the amended Penal Code of 2009 does not refer to “illegal societies” as did the 1950 Code.

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55 For more information, see the entry for the United Arab Emirates in the Criminalisation section of this report.
## Europe (2)

### TIER 1: CONFMRED LEGAL BARRIERS

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
</table>
| **Belarus**              | 1994 | Article 7 of the *Law on Public Associations* prohibits the operation of unregistered associations. Attempts to register LGBT groups have been unsuccessful.  
Activists have also faced harassment by State officials after submitting their registration application.  
The head of Gay Belarus, fearing for his personal safety, was forced to flee the country with his family in 2013. |
| **Russian Federation**   | 2012 | The "Foreign Agent" legislation has been employed to fine several LGBT organisations, which activists have criticised for discrediting the work that they carry out.  
Being labelled as a "foreign agent" also imposes further restrictions on funding and introduces bureaucratic burdens like extensive audits. It also confers supervisory powers on the state to interfere in the organisation’s affairs. |

**Is there more in Europe?**

**Turkey**  
Reflecting increasing tensions, in 2013, a Turkish court rejected an application by the authorities to shut down an organisation on the basis that it included a clause stating that it "may work in the field of sexual orientation".

## Oceania (1)

### TIER 1: CONFIRMED LEGAL BARRIERS

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
</table>
| **Fiji** | 1978 | LGBT groups cannot be registered under the *Charitable Trusts Act* due to the limited scope of what constitutes a "charitable purpose".  
In 2014, several LGBT advocacy groups called on the government to revise the law to allow LGBT groups to register as legal entities. |

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**Footnotes:**

60 "Russian member organisation fined as "foreign agent"", *LGL National LGBT Rights Organisation Website*, 9 March 2015.
61 "Ekogenc’s Closure Case Ends: Work in the area of sexual orientation is not "contrary to morality"", *LGBTI News Turkey*, December 19, 2014.
Constitutional Protection against Discrimination based on Sexual Orientation

Highlights

9 UN Member States
5% UN Member States

<table>
<thead>
<tr>
<th>Region</th>
<th>Count</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>1/54</td>
<td>54</td>
</tr>
<tr>
<td>LAC</td>
<td>3/33</td>
<td>33</td>
</tr>
<tr>
<td>North America</td>
<td>0/2</td>
<td>2</td>
</tr>
<tr>
<td>Asia</td>
<td>1/42</td>
<td>42</td>
</tr>
<tr>
<td>Europe</td>
<td>3/50</td>
<td>50</td>
</tr>
<tr>
<td>Oceania</td>
<td>1/14</td>
<td>14</td>
</tr>
</tbody>
</table>

Introduction

Constitutions are the legal texts that collect the most fundamental legal principles of any given State. They usually set the organizational basis of the government and establish general rules that laws and regulations cannot contravene.

Additionally, most constitutions contain a list of fundamental rights and non-discrimination provisions. These provisions may be written in “broad” terms to apply to “all” people or may list a number of protected characteristics which cannot be the basis of discrimination in law (de jure) or in practice (de facto).

A few States have explicitly included the term “sexual orientation” in their non-discrimination clauses to protect people against discrimination based on that characteristic. This also means that the entire legal framework should abide by that legal principle. However, this is not always the case. Local courts can also read in “sexual orientation” into those general equality provisions, thus triggering inclusion of the term in State practice and in law.

In the following list, only those constitutions that spell out the term “sexual orientation” in an unambiguous way are listed.

What does International Human Rights Law say?

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected.

The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. [...] Yogyakarta Principle 2
### Africa (1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>1994-1996</td>
<td>Prohibition of sexual orientation discrimination was first included at Section 8 of the Interim Constitution that came into force in April 1994, and was carried through Section 9(3) of the Constitution of South Africa, 1996.</td>
</tr>
</tbody>
</table>

### Latin American and the Caribbean (3)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bolivia</td>
<td>2009</td>
<td>Article 14 of the Constitution of Bolivia prohibits discrimination based on sexual orientation (among other grounds).</td>
</tr>
<tr>
<td>Ecuador</td>
<td>1998</td>
<td>Article 11(2) of the Constitution of Ecuador prohibits discrimination based on, <em>inter alia</em>, sexual orientation. Furthermore, the Constitution contains several other relevant provisions: Article 66(9) enshrines the right of every person to make free, informed, voluntary and responsible decisions with regard to their sexuality, life and sexual orientation; article 66(11) protects the rights of every person to the confidentiality of information on their sexual life; article 83(14) establishes as a &quot;duty&quot; and a &quot;responsibility&quot; of every Ecuadorian to respect and acknowledge diverse sexual orientations.</td>
</tr>
<tr>
<td>Mexico</td>
<td>2011</td>
<td>Article 1 of the Political Constitution of the United Mexican States (federal constitution) prohibits discrimination based on &quot;sexual preferences&quot;. Several State Constitutions also prohibit such discrimination: Campeche (Art. 7, 2015); Chihuahua (Art. 4, 2013); Coahuila (Art. 7, 2013); Colima (Art. 1, 2012); Durango (Art. 5, 2013); Guanajuato (Art. 1, 2015); Michoacán (Art. 1, 2012); Morelos (Art. 1bis, 2016); Nuevo Leon (Art. 1, 2016); Oaxaca (Art. 4, 2016); Puebla (Art. 11, 2011); Querétaro (Art. 2, 2016); Quintana Roo (Art. 13, 2010); San Luis Potosí (Art. 8, 2014); Sinaloa (Art. 4bis, 2013); Sonora (Art. 1, 2013); Tlaxcala (Art. 14, 2012); Veracruz (Art. 4, 2016); Yucatan (Art. 2, 2014) and Zacatecas (Art. 21, 2012).</td>
</tr>
</tbody>
</table>

Is there more in Latin America and the Caribbean?

**Argentina**
The Constitution of Argentina does not contain an explicit prohibition of discrimination based on sexual orientation. However, such prohibition is contemplated in the Constitution of the Autonomous City of Buenos Aires (Art. 11, 1996).

**Brazil**
The Constitution of Brazil does not contain an explicit prohibition of discrimination based on sexual orientation. However, several jurisdictions within the country do. These include the Constitutions of the States of Alagoas (Art. 2.1; 2001), Federal District (Art. 2.5; 1993), Mato Grosso (Art. 10.3; 1989), Pará (Art. 3.4; 2007), Santa Catarina (Art. 4.4; 2002) and Sergipe (Art. 3.2; 1989).
Constitutional Protection against Discrimination based on Sexual Orientation

North America (0)

Is there more in North America?

Canada

Constitutional protection against discrimination based on sexual orientation was introduced in paragraph 15(1) of the Canadian Charter of Rights and Freedoms by a 1995 decision issued by the Supreme Court of Canada in Egan v. Canada.

Asia (1)

1  Nepal  2015  Section 18(3) of the Constitution of Nepal specifically explains that the State shall not discriminate against, *inter alia*, "sexual minorities".

Europe (3) + Kosovo

Kosovo  2008  Article 24(2) of the Constitution of Kosovo establishes that no one shall be discriminated against on grounds of their sexual orientation, among other grounds.

1  Malta  2014  Article 32 of the Constitution of Malta entitles the individual fundamental rights and freedoms regardless of sexual orientation, and Article 45(3) specifies such protection from discrimination.

2  Portugal  2005  Article 13(2) of the Constitution of Portugal concerning principles of equality, states that no one shall be "privileged, favoured, prejudiced, deprived of any right or exempted from any duty" on the basis of sexual orientation.

3  Sweden  2003  Article 2 of the Constitution of Sweden mandates all organs of the State to exercise and promote equality and non-discrimination in health, employment, housing, education, and social security on the basis of sexual orientation.

Is there more in Europe?

Switzerland

Article 8 of the Swiss Constitution includes the expression "way of life" as a prohibited ground of discrimination. This expression has been interpreted as encompassing "sexual orientation".¹

### Oceania (1)

<table>
<thead>
<tr>
<th></th>
<th>🇫🇯 Fiji</th>
<th>1997</th>
<th>2013</th>
</tr>
</thead>
</table>

Section 38(2) of the Constitution of Fiji (1997) prohibited discrimination based on a person’s “actual or supposed personal characteristics or circumstances” including sexual orientation (among other grounds). This Constitution was repealed in 2009. In 2013, the prohibition was kept under section 26(3)(a) of the Constitution of Fiji (2013).
Broad Protections against Discrimination based on Sexual Orientation

Highlights

52 UN Member States

<table>
<thead>
<tr>
<th>Region</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFRICA</td>
<td>3</td>
<td>27%</td>
</tr>
<tr>
<td>LAC</td>
<td>10</td>
<td>73%</td>
</tr>
<tr>
<td>NORTH AMERICA</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>ASIA</td>
<td>32</td>
<td>98%</td>
</tr>
<tr>
<td>EUROPE</td>
<td>3</td>
<td>7%</td>
</tr>
</tbody>
</table>

Introduction

Legal protections against discrimination are a key element in the human rights legal framework of every country. They serve to ensure that the principle of equality before the law is fully observed and provide remedies to victims of acts of discrimination.

Despite the fact that the 1948 Universal Declaration of Human Rights was categorical in that “every person” is born free and equal in dignity and in rights, international and domestic non-discrimination clauses have had to enumerate the grounds on which unfair distinctions cannot be made. These grounds usually reflect the reasons why people have been historically discriminated (i.e., race, religion, nationality, language, sex/gender, etc.). As these grounds can vary greatly and can be difficult to enumerate exhaustively, equality laws generally contain “open clauses” (generally phrased “or any other ground”) into which other grounds can be read.

However, in many contexts, there is strong resistance against including “sexual orientation” in those open clauses. Therefore, explicit protection on ground of sexual orientation becomes of key importance to effectively protect people from discrimination.

What does International Human Rights Law say?

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination. [...] The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. [...] States shall adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 2
### Africa (3)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Angola</td>
<td>2019</td>
<td>Section 197 of the Penal Code criminalises acts of discrimination based on sexual orientation with regard to the provision of goods and services, employment and obstructing economic activities.(^1)</td>
</tr>
<tr>
<td>2</td>
<td>Mauritius</td>
<td>2008</td>
<td>Sections 5, 6, 7 and 8 of the Equal Opportunities Act 2008 establish general rules on discrimination based on the “status” of the aggrieved person. Section 2 includes “sexual orientation” in the definition of “status” and defines it as “homosexuality (including lesbianism), bisexuality or heterosexuality”. Section 3(2) establishes that the Act applies to employment, education, qualifications for a profession, trade or occupation, the provision of goods and services, facilities or accommodation, among others.</td>
</tr>
<tr>
<td>3</td>
<td>South Africa</td>
<td>2000</td>
<td>Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 includes sexual orientation as one of the prohibited grounds of discrimination.</td>
</tr>
</tbody>
</table>

### Latin American and the Caribbean (10)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bolivia</td>
<td>2010</td>
<td>Article 5 of the Law against Racism and All Forms of Discrimination (Law No. 45 of 2010) prohibits discrimination on the ground of sexual orientation (among others). Furthermore, article 281 of the Criminal Code (as amended by said Act) criminalises any act of discrimination based on, inter alia, sexual orientation and aggravates the penalty if it is committed by public servants or by private individuals providing public services.</td>
</tr>
<tr>
<td>2</td>
<td>Brazil</td>
<td>1998-2015</td>
<td>At the federal level, there is no law prohibiting discrimination on the basis of sexual orientation in broad terms. However, around 70% of the population resides in jurisdictions where local laws provide for such protection. Several jurisdictions have enacted laws banning discrimination based on sexual orientation with varying levels of protection: Amazonas (2006); Distrito Federal (2000); Espírito Santo (2014); Maranhão (2006); Mato Grosso do Sul (2006); Minas Gerais (2002); Pará (2007); Paraíba (2003); Piauí (2004); Rio de Janeiro (2015); Rio Grande do Norte (2007); Rio Grande do Sul (2002); Santa Catarina (2003); São Paulo (2001); as well as a number of cities such as Fortaleza (1998), Recife (2002) and Vitória (2014).</td>
</tr>
<tr>
<td>3</td>
<td>Chile</td>
<td>2012</td>
<td>Law No. 20,609 (on the adoption of measures against discrimination)(^2) affords protection against discrimination based on sexual orientation (among other grounds) with regard to any constitutional right.</td>
</tr>
</tbody>
</table>

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\(^1\) The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed [here](#).

\(^2\) This law is informally referred to as “Zamudio Law” in honour of Daniel Zamudio, a young gay man, who was brutally tortured and murdered because of his sexual orientation in Santiago de Chile in 2012.
<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year 1</th>
<th>Year 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Colombia</td>
<td>2011</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Ecuador</td>
<td>1998</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Honduras</td>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Mexico</td>
<td>2003</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Peru</td>
<td>2004</td>
<td>2017</td>
</tr>
<tr>
<td>9</td>
<td>Suriname</td>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Uruguay</td>
<td>2004</td>
<td></td>
</tr>
</tbody>
</table>

Is there more in Latin America and the Caribbean?

**Argentina**

At the federal level, there is no law against discrimination on the basis of sexual orientation in broad terms in Argentina. However, the Autonomous City of Buenos Aires (2015), the Province of Río Negro (2008) and the City of Rosario (1996) grant such protection.

**North America (1)**

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Canada</td>
<td>1996</td>
</tr>
</tbody>
</table>
Is there more in North America?

United States of America

There is no federal law proscribing discrimination based on sexual orientation in broad terms. Protections against such discrimination vary according to state but less than 50% of the population lives in states where such protection is offered in broad terms.

Asia (3)

1   Mongolia  2017  Section 14(1)(1) of the Penal Code criminalises acts of discrimination based on sexual orientation. Section 14(1)(2)(3) aggravates penalties when such acts are committed by public officials.

2   Nepal  Even though there is no law expressly prohibiting discrimination based on sexual orientation, the constitutional prohibition enshrined in Section 18(3) of the Constitution of Nepal (proscribing discrimination against “sexual minorities”) offers broad protection against discrimination.

3   South Korea  2001  Article 30(2) of the National Human Rights Commission Act (2001) defines “unreasonable discrimination” based on sexual orientation (among other grounds) as a violation of the right to equality. This law applies to employment, provision of goods and services, education and more.

Is there more in Asia?

Japan  In 2018, the Tokyo Metropolitan Government enacted a law that prohibits discrimination on the basis of sexual orientation.

Europe (32) + Kosovo

1   Albania  2010  Article 5 of the Protection from Discrimination Act (Law No. 10,221) prohibits discrimination on the basis of, inter alia, sexual orientation, both in the public and private sectors (Article 7.1). The scope of this protection includes employment (Chapter II), education (Chapter III) and goods and services (Chapter IV), among other contexts.

2   Andorra  2005  Article 338 of the Penal Code criminalises acts of discrimination based on sexual orientation (among other grounds) with regard to goods and services and employment, among others.

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3  See "Non-Discrimination Laws", Movement Advancement Project (MAP) Website.
<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Law/Act References</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Austria</td>
<td>Each province (Burgenland, Carinthia, Salzburg, Styria, Tyrol, Upper Austria, Lower Austria, Vienna and Vorarlberg) have provisions prohibiting discrimination on grounds of sexual orientation with regard to goods and services offered by the provinces and communities, including social protection, social advantages, education and self-employment.</td>
</tr>
<tr>
<td>4</td>
<td>Belgium</td>
<td>Article 4 of the Anti-Discrimination Law (2003) proscribed discrimination in the provision of goods and services, employment, economic, social, cultural and political activities and other matters, and Article 2 included sexual orientation as one of the protected categories. This law was substituted by Anti-Discrimination Law (2007). Articles 2 and 4 of the Anti-Discrimination Law (2007) ban discrimination based on, <em>inter alia</em>, sexual orientation. Article 5 determines that the prohibition applies, among other settings, to goods and services, including social protection (education) employment in the public and private spheres.</td>
</tr>
<tr>
<td>5</td>
<td>Bosnia and Herzegovina</td>
<td>Article 2 of the Gender Equality Act (2003) prohibits sexual orientation discrimination, both in the public and private sectors (article 1), with regard to education (chapter IV), employment (chapter V), health (chapter VII) and other matters. Article 2 of the Act on Prohibition of Discrimination (2009) proscribes discrimination on the basis of, <em>inter alia</em>, sexual expression or sexual orientation within the private and public spheres concerning employment, education, health and goods and services, among other matters (article 6 also refers to the scope of application of the law).</td>
</tr>
<tr>
<td>6</td>
<td>Bulgaria</td>
<td>Section 4(1) of the Law on Protection Against Discrimination (supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation (among other grounds) in employment (Section I), education (Section II), the field of goods and services (Article 37) and more.</td>
</tr>
<tr>
<td>7</td>
<td>Croatia</td>
<td>Articles 1, 2 and 9 of the Anti-Discrimination Act prohibit direct and indirect discrimination because of sexual orientation (among other grounds) regarding employment, education, health, goods and services and other matters in the public and private sectors.</td>
</tr>
<tr>
<td>8</td>
<td>Cyprus</td>
<td>Article 6(1) of the Combating Racism and Other Forms of Discrimination (Commissioner) Act proscribes direct and indirect discrimination in the public and private spheres based on, <em>inter alia</em>, sexual orientation in matters such as employment, education, health and goods and services.</td>
</tr>
<tr>
<td>9</td>
<td>Czechia</td>
<td>Sections 2 and 3 of the Anti-Discrimination Act proscribe discrimination on the basis of sexual orientation (among other grounds). As per Section 1, the law applies to employment, health, education and goods and services.</td>
</tr>
</tbody>
</table>
### Estonia
- **Year:** 1999, 2006, 2009
- **Article 19(2)(12) of the Chancellor of Justice Act** includes sexual orientation among the protected grounds for which claims on discrimination in the public and private spheres can be brought before the Chancellor of Justice.
- Article 152(1) of the *Penal Code* (as amended in 2006) proscribes the unlawful restriction of any right on the basis of, *inter alia*, sexual orientation.
- Sections 1 and 3 of the *Equal Treatment Act (2009)* prohibit direct and indirect discrimination based on sexual orientation (among other grounds). Section 2 determines that the law applies to employment, education, health, goods and services and others.

### Finland
- **Year:** 2004
- **Section 8 of the Non-Discrimination Act** prohibits any discriminatory act on the basis of sexual orientation (section 8) within public and private activities. The law applies to education and employment and allows victims of discrimination to receive compensation from the authorities, education providers or suppliers of goods or services who discriminated against them.

### France
- **Year:** 2001
- Articles 225-1 and 225-2 of the *Penal Code* (as amended by Act No. 1066 of 2001) prohibit discrimination based on, *inter alia*, sexual orientation with regard to goods and services and employment, among other fields. Article 432-7 aggravates the penalty when committed by public authority or public service.

### Georgia
- **Year:** 2014
- **Articles 1 and 2(1) of the Act on the Elimination of All Forms of Discrimination** prohibits every form of discrimination, including that based on sexual orientation. As per Article 3, the scope of this protection comprises all public and private fields of action.

### Germany
- **Year:** 2006
- **Sections 1 and 2 of the General Act on Equal Treatment** prohibit discrimination based on, *inter alia*, sexual orientation and determine that the protection applies to employment, social protection (including health), education and the access to and supply of goods and services.

### Hungary
- Articles 7(1), 8(m) and 9 of the *Equal Treatment and Promotion of Equal Opportunities Act (No. CXXV of 2003)* prohibit discrimination on the basis of sexual orientation. Under articles 4 and 5 the law applies to both public and private relationships in employment (articles 21-23), health (articles 24-25) and education (articles 27-30), among others.

### Iceland
- **Year:** 1998, 2006, 2018
- **Article 180 of the Penal Code** prohibits discrimination based on sexual orientation in the provision of goods and services. This is complemented by several provisions of the *Law amending several legal provisions relating to the legal status of homosexuals* and by article 7 of the *Act on Equal Treatment in the Workplace (2018)* prohibits sexual orientation discrimination in employment.

### Ireland
- **Year:** 2000
- **Section 3(2)(d) of the Equal Status Act** defines sexual orientation as a prohibited ground of discrimination. Chapter II lists the activities to which the ban on discriminatory acts applies: the disposal of goods and the provision of services (Section 5), education (Section 7) and others.
### Kosovo
2004

Articles 1 and 2 of the Anti-Discrimination Act prohibit discrimination based on sexual orientation. As per article 4, the protection applies to employment, health, education, access to and supply of goods and services and more.

### Liechtenstein
2016

Article 283(4) of the Penal Code proscribes acts of discrimination based on sexual orientation in broad terms. Article 283(6) refers to the denial of services based on sexual orientation.

### Lithuania
2000
2005

Article 169 of the Criminal Code penalises discrimination on the ground of, inter alia, sexual orientation in political, economic, social, cultural, labour and other activities.

Articles 1 and 2 of the Equal Treatment Act (2005) ban direct and indirect discrimination because of sexual orientation (among other grounds). The law applies to education (articles 4 and 8), employment (articles 5 and 7), consumer protection (articles 6 and 9) and other spheres.

### Luxembourg
2006

Article 1 of the Equality Act (No. 28 of 2006) prohibits discrimination based on sexual orientation (among other grounds). Article 2 states that the protection applies to the public and private sectors with regard to, inter alia, employment, health, education and the access to and provision of goods and services.

### Malta
2012

The broad protection afforded by article 13(2) of the Constitution is complemented by the Equality for Men and Women Act which prohibits discrimination based on sexual orientation in employment and education, among others.

### Montenegro
2010

Article 2 of the Act on Prohibition of Discrimination proscribes discrimination based on, inter alia, sexual orientation. The law applies to public service delivery, education and labour, among others.

Article 19 states that everyone has the right to express their sexual orientation as well as the right not to declare it.

### Netherlands
1994

Section 1 of the Equal Treatment Act includes sexual orientation as a prohibited ground of direct and indirect discrimination (among others). Such protection concerns, inter alia, employment (5-6a) and goods and services (Section 7).

Section 137(f) of the Penal Code proscribes taking part or supporting activities aimed at discrimination against persons because of “their hetero or homosexual orientation”.

### Norway
2013
2018

The Sexual Orientation Anti-Discrimination Act (2013) prohibited direct and indirect discrimination based on sexual orientation under Chapter 2 in all sectors and fields of action (Section 2).

This law was repealed by the Equality and Anti-Discrimination Act (2018), which now proscribes any type of discriminatory act based on, inter alia, sexual orientation under Section 6. As per Section 2, the law applies to all sectors of society.

### Portugal
2005

Even though there is no national law prohibiting discrimination in broad terms, the protection afforded by article 13(2) the Constitution applies to all rights and duties.
### Broad Protections against Discrimination based on Sexual Orientation

<table>
<thead>
<tr>
<th>Country</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Relevant Law/Act</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Romania</strong></td>
<td>2000</td>
<td></td>
<td>Article 2(1) of the Ordinance on the Prevention and Punishment of All Forms of Discrimination (Law No. 137/2000) bans discrimination on the basis of sexual orientation (among other grounds). As per Article 1, such protection applies, <em>inter alia</em>, to employment, education and health.</td>
<td></td>
</tr>
<tr>
<td><strong>Serbia</strong></td>
<td>2010</td>
<td></td>
<td>Articles 1 and 2 of the Prohibition of Discrimination Act ban any discriminatory act, direct or indirect, on the basis of sexual orientation (among other grounds). Article 21 states that while “no one may be called to publicly declare his/her sexual orientation”. The law applies to employment, public services, and education, among others.</td>
<td></td>
</tr>
<tr>
<td><strong>Slovakia</strong></td>
<td>2008</td>
<td></td>
<td>Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination (as amended by Act No. 85 of 2008) prohibits sexual orientation discrimination. Section 3.1 determines that the law applies to everyone in the field of employment and similar legal relations, health, goods and services and education, among others.</td>
<td></td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>2016</td>
<td></td>
<td>Article 1 of the Protection against Discrimination Act (2016) prohibits discrimination on the basis of sexual orientation (among other grounds) in the public and private spheres concerning all activities in the political, economic, social, cultural, civil and other fields. As per Article 2, some of these are: employment, health, education and good and services.</td>
<td></td>
</tr>
<tr>
<td><strong>Sweden</strong></td>
<td>2003 2009</td>
<td></td>
<td>Sections 1 and 3 of the Prohibition of Discrimination Act (2003) included sexual orientation as one of the protected categories against discrimination in employment, provision of goods and services and health, among other contexts. That law was repealed by the Discrimination Act (2009), which also prohibits direct and indirect discrimination based on, <em>inter alia</em>, sexual orientation. This law applies to employment (sections 1-4 and 9), education (sections 5-8), provision of goods and services (section 12-12c), health (sections 13-13b), among others.</td>
<td></td>
</tr>
</tbody>
</table>
The Equality Act (Sexual Orientation) Regulations 2007 (No. 1263) and the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (No. 439), laid under Part 3 of the Equality Act 2006, protected against discrimination on the basis of sexual orientation with regard to goods, facilities and services and education, among other fields. This law was revoked by Equality Act 2010.

The Equality Act 2010 lists sexual orientation as a protected category (Section 4) and prohibits direct (Section 13) and indirect (Section 19) discrimination. Section 25(9) defines sexual orientation discrimination. Such protection applies to services and public functions, employment and education.

**Is there more in Europe?**

**Faeroe Islands (Denmark)** Ordinance no. 182 (2007) prohibits discrimination based on sexual orientation in the autonomous country of the Faeroe Islands.

**Switzerland** Even though there is no federal law explicitly proscribing discrimination based on sexual orientation, article 28 of the Swiss Civil Code provides the legal basis for the protection of “personality”. Civil suits against acts of discrimination based on sexual orientation can be brought under this article.5

---

**Oceania (3)**

1 **Australia**

There is no piece of legislation prohibiting discrimination on the basis of sexual orientation in broad terms at the federal level.


2 **Fiji**

1997

2013

Even though there is no law expressly prohibiting discrimination based on sexual orientation, the constitutional prohibition of discrimination based on sexual orientation enshrined in section 26(3)(a) of the Constitution of Fiji (2013) offers broad protection against discrimination.

3 **New Zealand**

1993

Section 21(1)(m) of the Human Rights Act 1993 includes sexual orientation (“heterosexual, homosexual, lesbian or bisexual”) among the prohibited grounds of discrimination. This law applies to employment, goods and services and education, among others.

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Protection against Discrimination based on Sexual Orientation in Employment

Highlights

74 UN Member States
38% UN Member States

<table>
<thead>
<tr>
<th>Region</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFRICA</td>
<td>7</td>
<td>13%</td>
</tr>
<tr>
<td>LAC</td>
<td>14</td>
<td>28%</td>
</tr>
<tr>
<td>NORTH AMERICA</td>
<td>1</td>
<td>2%</td>
</tr>
<tr>
<td>ASIA</td>
<td>5</td>
<td>10%</td>
</tr>
<tr>
<td>EUROPE</td>
<td>41</td>
<td>82%</td>
</tr>
<tr>
<td>OCEANIA</td>
<td>6</td>
<td>12%</td>
</tr>
</tbody>
</table>

Introduction

A person’s ability to earn a living, and the opportunity to flourish in one’s work life without discrimination based on a personal characteristic (sexual orientation), has increasingly been recognised as a fundamental right in States across the globe.

Notably, legal protections against unfair dismissal motivated by one’s sexual orientation (as well as other employment related protections) have been enacted even in countries where consensual same-sex sexual acts are still criminalised.

We also note where significant parts of a country have provincial ordinances that offer similar or partial protections, but where the law is not in force at the national or federal level.

Even though, progressive case law may have extended employment protections based on open equality clauses, in the following list, only those laws that spell out the term “sexual orientation” in an unambiguous way are listed.

What does International Human Rights Law say?

Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

States shall take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination in public and private employment, including in relation to vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;

Yogyakarta Principle 12.
Protection against Discrimination based on Sexual Orientation in Employment

**Africa (7)**

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legislation/Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>2019</td>
<td>Section 197 of the Penal Code criminalises acts of discrimination based on sexual orientation, including with regard to employment.¹</td>
</tr>
<tr>
<td>Botswana</td>
<td>2010</td>
<td>Section 23(d) of the Employment Act (2010) prevents employers from terminating contracts of employment on the basis of sexual orientation (among other grounds).</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>2008</td>
<td>Article 45(2) of the Labour Code forbids an employer from requesting information about the employee’s “sexual life”. Article 406(3) imposes sanctions on employers who dismiss employees based on their sexual orientation.</td>
</tr>
<tr>
<td>Mauritius</td>
<td>2008</td>
<td>Part III of the Equal Opportunities Act (2008) prohibits discrimination in employment and Section 2 refers to sexual orientation as one of the protected classes.</td>
</tr>
<tr>
<td>Mozambique</td>
<td>2007</td>
<td>Articles 4(1) and 108(3) of the Labour Act No. 23 of 2007 prohibit discrimination based on, <em>inter alia</em>, sexual orientation. Moreover, Article 5 establishes the employer’s obligation to respect the employee’s privacy, including their “sexual life”.</td>
</tr>
<tr>
<td>Seychelles</td>
<td>2006</td>
<td>Sections 2, 46(A)(1) and 46(B) of the Employment Act 1995 (as amended by Act No. 4 of 2006) prohibit discrimination based on sexual orientation (among other grounds).</td>
</tr>
</tbody>
</table>

**Latin American and the Caribbean (14)**

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legislation/Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bolivia</td>
<td>2010</td>
<td>Article 5 of the Law against Racism and All Forms of Discrimination (Law No. 45 of 2010) prohibits discrimination on the ground of sexual orientation (among others). Furthermore, article 281sexies of the Criminal Code (as amended by said Act) criminalises any act of discrimination based on, <em>inter alia</em>, sexual orientation. These laws ban sexual orientation discrimination in broad terms and therefore apply to employment.</td>
</tr>
<tr>
<td>Brazil</td>
<td></td>
<td>At the federal level, there is no piece of legislation prohibiting employment discrimination on the basis of sexual orientation. However, around 70% of the population reside in jurisdictions where local laws provide such protection. Several jurisdictions have enacted laws banning discrimination based on sexual orientation with varying levels of protection that explicitly specify they apply to employment: Amazonas (2006);</td>
</tr>
</tbody>
</table>

¹ The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed here.
<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Legal Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Brazil</td>
<td></td>
<td>Convention on the Elimination of All Forms of Intolerance and Discrimination</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>against Homophobia and Intolerance and Discrimination against People</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>of Sexual Orientation.</td>
</tr>
<tr>
<td>2</td>
<td>Brazil</td>
<td></td>
<td>Article 8 of the Regulation (Portaria) No. 41/2007 issued by the Ministry</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>of Labour and Employment prohibits employers to request documents or</td>
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<td></td>
<td></td>
<td></td>
<td>information related to the employee’s sexuality.</td>
</tr>
<tr>
<td>3</td>
<td>Chile</td>
<td>2017</td>
<td>Article 2 of the Labour Code (as amended by the Modernization of Labour</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Relations Act No. 20.940 of 2016) includes sexual orientation among the</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>prohibited grounds of discrimination.</td>
</tr>
<tr>
<td>4</td>
<td>Colombia</td>
<td>2011</td>
<td>Article 134A of the Criminal Code (as amended by Act No. 1.482 of 2011)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>criminalises acts of discrimination based on sexual orientation (among other</td>
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<tr>
<td></td>
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<td></td>
<td>grounds) while Article 136C(3) and (4) aggravates the penalty if such are</td>
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<td></td>
<td></td>
<td></td>
<td>committed by public servants or while providing public services. These</td>
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<td></td>
<td></td>
<td></td>
<td>provisions ban sexual orientation discrimination in broad terms and therefore</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>apply to employment. Article 136C(6) also includes the motive of denying or</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>restricting labour rights as an aggravating factor.</td>
</tr>
<tr>
<td>5</td>
<td>Cuba</td>
<td>2014</td>
<td>Article 2(b) of the Labour Code (Act No. 116) establishes the right of every</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>person to have a job, either in the private or the public sector, according</td>
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<td></td>
<td></td>
<td></td>
<td>to the needs of the economy and their personal choice without discrimination</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>based on sexual orientation (among other grounds).</td>
</tr>
<tr>
<td>6</td>
<td>Ecuador</td>
<td>2005</td>
<td>Article 79 of the Labour Code establishes the right to equal remuneration</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>without discrimination based on sexual orientation (among other grounds).</td>
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<td></td>
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<td></td>
<td>Article 195(3) (introduced by the Labour Justice and Recognition of Domestic</td>
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<td></td>
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<td></td>
<td>Work Organic Act No. 483 of 2015) provides for special compensation in cases of</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>discriminatory dismissal based on, inter alia, sexual orientation.</td>
</tr>
<tr>
<td>7</td>
<td>Honduras</td>
<td>2013</td>
<td>Article 321 of the Criminal Code (as amended by Act No. 23 of 2013) criminalises</td>
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<td></td>
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<td></td>
<td>acts of discrimination based on sexual orientation (among other grounds) and</td>
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<td>aggravates the penalty if they are committed by public servants. This provision</td>
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<td></td>
<td></td>
<td></td>
<td>bans sexual orientation discrimination in broad terms and therefore applies to</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>employment.</td>
</tr>
<tr>
<td>8</td>
<td>Mexico</td>
<td>2003</td>
<td>The Federal Act to Prevent and Eliminate Discrimination prohibits employment</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>discrimination in Article 9(IV) and lists “sexual preferences” as a protected</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>class in Article 1(III). Article 149ter(II) of the Federal Criminal Code</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>criminalises employment discrimination based on sexual orientation and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>aggravates penalties for employers and public servants.</td>
</tr>
<tr>
<td>9</td>
<td>Nicaragua</td>
<td>2008</td>
<td>Article 315 of the Criminal Code (Title 10, Crimes against Labour Rights)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>criminalises employment discrimination based on “sexual option”.</td>
</tr>
</tbody>
</table>
### Protection against Discrimination based on Sexual Orientation in Employment

<table>
<thead>
<tr>
<th>Country</th>
<th>Year(s)</th>
<th>Law/Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Peru</strong></td>
<td>2004-2017</td>
<td>Article 37(1) of the <em>Constitutional Procedural Code</em> establishes that the writ of <em>amparo</em> is the adequate remedy in cases of discrimination based on sexual orientation (among other grounds). This law provides a remedy for sexual orientation discrimination in broad terms and therefore applies to employment. Article 323 of the <em>Criminal Code</em> (as amended by Executive Order No. 1323 of 2017) criminalises discrimination on the basis of, <em>inter alia</em>, sexual orientation and aggravates the penalty if such acts are committed by public servants. This applies to employment.</td>
</tr>
<tr>
<td><strong>Saint Lucia</strong></td>
<td>2006</td>
<td>Section 131(1)(a) of the <em>Labour Code</em> prohibits unfair dismissal based on an employee’s sexual orientation (among other grounds).</td>
</tr>
<tr>
<td><strong>Suriname</strong></td>
<td>2015</td>
<td>Article 175 of the <em>Criminal Code</em> (as amended by S.B. 2015 No. 44) criminalises discrimination based on sexual orientation (among other grounds). This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.</td>
</tr>
<tr>
<td><strong>Uruguay</strong></td>
<td>2004-2013</td>
<td>Article 2 of the Act to combat Racism, Xenophobia and Discrimination (Law No. 17,817) includes “sexual orientation and identity” among the prohibited grounds of discrimination. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment. Article 2(A) of the <em>Promotion of Youth Employment Act</em> (Law No. 19,133) bans discrimination on the basis of sexual orientation (among other grounds) in employment.</td>
</tr>
<tr>
<td><strong>Venezuela</strong></td>
<td>2012</td>
<td>Article 21 of the <em>Organic Labour Act</em> prohibits employment discrimination based on sexual orientation (among other grounds).</td>
</tr>
</tbody>
</table>

**Is there more in Latin America and the Caribbean?**

**Argentina**

Articles 34(o) and 35(j), 37(h) and 121 of the *Executive Order No. 214 (2006)* which is applicable only within the National Administration Service, prohibit discrimination in employment on the basis of sexual orientation (limited scope ban). At the federal level, there is no piece of legislation prohibiting discrimination on the basis of sexual orientation in broad terms. The *Autonomous City of Buenos Aires* (2015), the *Province of Rio Negro* (2008) and the *City of Rosario* (1996) have enacted norms providing such protection, which applies to employment (among other contexts).

**Costa Rica**

Article 10 of the *General Law on HIV/AIDS* (Law No. 7.771 of 1998) deals with employment discrimination against people living with HIV/AIDS and article 48 incorporates “sexual option” as one of the prohibited grounds of discrimination.²

**El Salvador**

However, Article 1 of the *Executive Order No. 56 of 2010* prohibits discrimination based on sexual orientation within the Public Administration Service only (limited scope ban).³

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² In our 2017 edition, Costa Rica was erroneously listed in this section as having full protection against discrimination based on sexual orientation in employment.

³ In our 2017 edition, El Salvador was erroneously listed in this section as having full protection against discrimination based on sexual orientation in employment.
Protection against Discrimination based on Sexual Orientation in Employment

North America (1)

1 Canada 1996

Section 7 of the Canadian Human Rights Act proscribes direct and indirect discrimination in employment and Section 3(1) protects sexual orientation.

Is there more in North America?

United States of America

At the federal level, there is no piece of legislation prohibiting employment discrimination on the basis of sexual orientation. Several states have enacted laws that do so with varying levels of protection.4 Barely under 50% of the population of the USA lives in States which grant protection against discrimination in employment.

Furthermore, Executive Order No. 13087 of 1998 prohibits discrimination in employment by the federal government on the basis of sexual orientation (limited scope ban).

In March 2017, the US Court of Appeals for the 7th Circuit became the first federal appeals court to determine that the Civil Rights Act 1964 protects workers from discrimination based on sexual orientation.5 In February 2018, the US Court of Appeals for the 2nd Circuit followed suit.6

Asia (5) + Taiwan and Macau

1 Israel 1992

Section 2(a) of the Law on Employment (Equal Opportunities) (Law No. 5748-1988) as amended in 1992 provides that “an employer shall not discriminate among his employees or among persons seeking employment on account of their [...] sexual tendencies”.

2 Macau (China) 2008

Article 6(2) of Law No. 7/2008 prohibits discrimination based on sexual orientation in employment.

3 Mongolia 2017

Section 14(1)(1) of the Penal Code criminalises acts of discrimination based on sexual orientation. Section 14(1)(2)(3) aggravates penalties when such acts are committed by public officials. This provision bans sexual orientation discrimination in broad terms and therefore applies to employment.

4 Nepal 2015

Even though there is no law expressly prohibiting discrimination based on sexual orientation in employment, the constitutional prohibition enshrined in Section 18(3) of the Constitution of Nepal (proscribing discrimination against “sexual minorities”) necessarily applies to employment.

5 South Korea 2001

Article 30(2) of the National Human Rights Commission Act (2001) mandates the Commission to investigate acts of discrimination based on sexual orientation in employment.

5 United States Court of Appeals for the Seventh Circuit, Kimberly Hively v. Ivy Tech Community College of Indiana, 4 April 2017.
**Protection against Discrimination based on Sexual Orientation in Employment**

<table>
<thead>
<tr>
<th>Country</th>
<th>Year(s)</th>
<th>Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Taiwan (China)</strong></td>
<td>2004</td>
<td>Article 12 of the <em>Gender Equity Education Act</em> (2004) specifies that both private and public schools of all levels shall respect faculty and staff’s sexual orientation.</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>Article 5 of the <em>Employment Service Act</em> (as amended by Presidential Order No. 0960064151 of 2007) and Chapter 2 of the <em>Gender Equality in Employment Act</em> (as amended by Presidential Order No. 0970003951 of 2008) prohibit employment discrimination on the basis of sexual orientation.</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td></td>
</tr>
<tr>
<td><strong>Thailand</strong></td>
<td>2007</td>
<td>The Ministry of Labour’s Regulation on Thai Labour Standards and Social Responsibility of Thai Businesses B.E. 2547 (discussed here) prohibits discrimination against workers on numerous grounds, including “personal sexual attitude”.</td>
</tr>
</tbody>
</table>

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### Europe (41) + Kosovo

<table>
<thead>
<tr>
<th>Country</th>
<th>Year(s)</th>
<th>Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Albania</strong></td>
<td>2010</td>
<td>Articles 12-16 of the Law on Protection from Discrimination (<em>Law No. 10,221</em>) provide for protection from discrimination in employment. Article 5 includes “sexual orientation” as one of the prohibited grounds of discrimination. Additionally, Article 16 of the <em>Labour Code</em> prohibits discrimination in employment.</td>
</tr>
<tr>
<td><strong>Andorra</strong></td>
<td>2003</td>
<td>Section 3 of the <em>Employment Contract Act</em> (No. 8/2003) lists sexual orientation as one of the protected classes within labour relations. Sections 75 and 76 deal with the termination of the employment contract due to an act of discrimination on the basis of, <em>inter alia</em>, sexual orientation and establish particular consequences in terms of reparation. Article 95 considers any act of discrimination based on sexual orientation (among other grounds) by an employer a serious breach of the law that carries the most severe penalty.</td>
</tr>
<tr>
<td><strong>Austria</strong></td>
<td>2004</td>
<td>The <em>Equal Treatment Act</em> (as amended by Act No. 65 of 2004) bans sexual orientation discrimination in employment (Chapter 2).</td>
</tr>
<tr>
<td><strong>Belgium</strong></td>
<td>2003</td>
<td>Article 4 of the <em>Anti-Discrimination Law</em> (2003) proscribed discrimination and Article 2 included sexual orientation as one of the protected categories. This law was substituted by Anti-Discrimination Law (2007).</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>Articles 2 and 4 of the <em>Anti-Discrimination Law</em> (2007) ban discrimination based on “sexual orientation”. Articles 5(1)(5) and 5(2) refer to labour relations.</td>
</tr>
<tr>
<td><strong>Bosnia and Herzegovina</strong></td>
<td>2003</td>
<td>Article 2 of the <em>Gender Equality Act</em> prohibits sexual orientation discrimination. Chapter V deals with discrimination in employment.</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>Article 2 of the <em>Act on Prohibition of Discrimination</em> (2009) proscribes discrimination on the basis of “sexual expression or sexual orientation” within the private and public spheres. Article 6(1)(a) states that such prohibition applies to employment.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
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<tbody>
<tr>
<td>6</td>
<td>Bulgaria</td>
<td>2005</td>
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<td>2003</td>
<td>2009</td>
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<tr>
<td>8</td>
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<td>2009</td>
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<td></td>
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<td>9</td>
<td>Czechia</td>
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<td>2004</td>
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<td></td>
<td></td>
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<tr>
<td>10</td>
<td>Denmark</td>
<td>1996</td>
<td>2007</td>
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</tr>
<tr>
<td>12</td>
<td>Finland</td>
<td>1995</td>
<td>2004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

**Bulgaria**

Section 4(1) of the *Law on Protection Against Discrimination* (supplemented by SG No. 70 of 2004) bans direct and indirect discrimination based on sexual orientation (among others). Section I of Chapter II deals with such protection while exercising the right to work.

**Croatia**

Article 2 of the *Labour Act* (as amended by Act No. 1574 of 2003) names sexual orientation as a protected ground of discrimination in employment.

Article 9 of the *Anti-Discrimination Act* (2009) prohibits discrimination based on sexual orientation. Article 8(1) establishes that such prohibition applies to employment.

**Cyprus**

Article 6(1) of the *Combating Racism and Other Forms of Discrimination (Commissioner) Act* proscribes direct and indirect discrimination based on sexual orientation.

The *Equal Treatment in Employment and Occupation Act 2004* (as amended by Act No. 86(I) of 2009) protects sexual orientation against discrimination in employment (Articles 3 and 4).

**Czechia**

Section 316(4)(c) of the *Labour Code* (as amended in 1999) prevents employers from requiring employees information about their sexual orientation.

Section 4 of the *Employment Act* prohibits sexual orientation discrimination in employment. Section 12 reinforces such protection by stating that employers cannot request information about their employees’ sexual orientation.

Sections 2 and 3 of the *Anti-Discrimination Act* (2009) proscribes all types of sexual orientation discrimination.

**Denmark**

The *Act on prohibition against discrimination in respect of employment* (1996) bans both direct and indirect employment discrimination on the basis of, *inter alia*, sexual orientation.

*Ordinance No. 182* (2007) prohibits discrimination based on sexual orientation in the autonomous country of the Faeroe Islands. No such protection is available in Greenland.

**Estonia**

Article 19(2)(12) of the *Chancellor of Justice Act* includes “sexual orientation” among the protected grounds for which claims on discrimination can be brought before the Chancellor of Justice.

Articles 1(1) and 2 of the *Equal Treatment Act* prohibit employment discrimination based on sexual orientation.

Article 152(1) of the *Penal Code* proscribes the unlawful restriction of any right on the basis of sexual orientation.

**Finland**

Section 9 (Chapter 11) of the *Criminal Code* (as amended by Act No. 578 of 1995) protects, *inter alia*, “sexual preference” against discrimination in trade or profession. Section 3 (Chapter 47, on labour offences), criminalises work discrimination based on sexual orientation (among other grounds).

Section 8 of the *Non-Discrimination Act* (2004) prohibits any discriminatory act on the basis of sexual orientation (among other grounds) and Section 7 sets out a range of employment contexts to which such ban applies.
### Protection against Discrimination based on Sexual Orientation in Employment

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>2014</td>
<td>Act on the Elimination of All Forms of Discrimination</td>
<td>Articles 1 and 2(1) of the Act on the Elimination of All Forms of Discrimination prohibits discrimination based on sexual orientation. These provisions ban sexual orientation discrimination in broad terms and therefore apply to employment.</td>
</tr>
<tr>
<td>Germany</td>
<td>2006</td>
<td>General Act on Equal Treatment</td>
<td>Sections 1 and 2 of the General Act on Equal Treatment prohibit discrimination based on sexual orientation (among other grounds). Part 2 (Chapters 1-4) describes a range of employment contexts in which such ban applies.</td>
</tr>
<tr>
<td>Greece</td>
<td>2005</td>
<td>Act Against Discrimination</td>
<td>Articles 1, 4 and 8 of the Act Against Discrimination (Law No. 3304 of 2005) prohibit discrimination based on sexual orientation in employment.</td>
</tr>
<tr>
<td>Hungary</td>
<td>2004</td>
<td>Equal Treatment and Promotion of Equal Opportunities Act</td>
<td>Articles 7(1), 8(m) and 9 of the Equal Treatment and Promotion of Equal Opportunities Act (No. CXXV of 2003) define direct and indirect discrimination on the basis of sexual orientation as a violation of the equal treatment principle. Articles 21-23 deal with employment.</td>
</tr>
<tr>
<td>Iceland</td>
<td>2018</td>
<td>Act on Equal Treatment in the Workplace</td>
<td>Article 7 of the Act on Equal Treatment in the Workplace prohibits discrimination in the labour market on the basis of, inter alia, sexual orientation (Article 1). Articles 8 and 9 specify what constitutes discrimination in employment.</td>
</tr>
<tr>
<td>Italy</td>
<td>2003</td>
<td>Legislative Decree No. 216 of 2003</td>
<td>Legislative Decree No. 216 of 2003 instituted sexual orientation as a protected ground of discrimination (among others) within employment.</td>
</tr>
<tr>
<td>Kosovo</td>
<td>2004</td>
<td>Anti-Discrimination Act</td>
<td>Article 2 of the Anti-Discrimination Act prohibits direct and indirect discrimination based on sexual orientation (among other grounds). Article 2(1-4) defines employment in the public and private sectors as a sphere covered by such protection.</td>
</tr>
<tr>
<td>Latvia</td>
<td>2006</td>
<td>Labour Act</td>
<td>Article 7(1-2) of the Labour Act (as amended in 2006) establishes the right to work, to a fair, safe and healthy working environment and to a fair wage without any direct or indirect discrimination based on, inter alia, sexual orientation.</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>2016</td>
<td>Penal Code</td>
<td>Article 283(4) of the Penal Code proscribes acts of discrimination based on sexual orientation in broad terms and, therefore, applies to employment.</td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>Year(s)</td>
<td>Notes</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>24</td>
<td>Luxembourg</td>
<td>1997-2006</td>
<td>Articles 454 and 455(5-6) of the Criminal Code (as amended by Act No. 19 of 1997) criminalise sexual orientation discrimination within the exercise of an economic activity and employment. Article 456 aggrandizes the penalty if the acts are committed by public servants or individuals carrying out public functions. Article 1 of the Equality Act (No. 28 of 2006) bans discrimination based on sexual orientation (among other grounds). Article 2(1)(a-d) applies to employment. Title IV of the Labour Code also proscribes discrimination on the basis of, <em>inter alia</em>, sexual orientation.</td>
</tr>
<tr>
<td>25</td>
<td>Malta</td>
<td>2004</td>
<td>The Equal Treatment in Employment Regulations (Legal Notice 461 of 2004) prohibit discriminatory treatment based on, <em>inter alia</em>, sexual orientation in relation to employment (Sections 1(3), 2 (a), 3), both within the public and private sectors.</td>
</tr>
<tr>
<td>26</td>
<td>Moldova</td>
<td>2013</td>
<td>Article 7 of the Law on Equality (Act No. 121) specifies that discrimination on the basis of sexual orientation is banned in the employment sphere only.</td>
</tr>
<tr>
<td>27</td>
<td>Montenegro</td>
<td>2010</td>
<td>Article 16 of the Act on Prohibition of Discrimination refers to discrimination in employment, having set out in Articles 2 and 19 that sexual orientation is protected against it.</td>
</tr>
<tr>
<td>28</td>
<td>Netherlands</td>
<td>1994</td>
<td>While Section 1 of the Equal Treatment Act bans sexual orientation discrimination, Sections 5(1), 6 and 6a deal with discrimination in employment. Section 8(1) renders invalid a termination of employment if based on a prohibited ground.</td>
</tr>
<tr>
<td>30</td>
<td>Norway</td>
<td>1998-2018</td>
<td>Section 55(A) of the Act relating to Worker Protection and Working Environment (No. 4 of 1977) (as amended in 1998) protected employees from discrimination based on sexual orientation. This law was repealed by the Working Environment Act (2005), which prohibits sexual orientation discrimination in employment under Sections 13-1(7) and 13-4(3). The Sexual Orientation Anti-Discrimination Act, which aims to promote equality irrespective of sexual orientation, bans discrimination in employment in Chapter 4. This law was repealed by Equality and Anti-Discrimination Act. Section 6 of the Equality and Anti-Discrimination Act proscribes sexual orientation discrimination. Sections 25, 26 and 26a deal with employers’ and employer and employee organizations’ duties to promote equality. Chapter 5 contains provisions relating to employment relationships.</td>
</tr>
<tr>
<td>Country</td>
<td>Year 1</td>
<td>Year 2</td>
<td>Details</td>
</tr>
<tr>
<td>---------</td>
<td>--------</td>
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</tr>
<tr>
<td><strong>Poland</strong></td>
<td>1999</td>
<td>2010</td>
<td>Articles 11(3) and 18(3)(a) of the Labour Code prohibit direct or indirect discrimination on the basis of sexual orientation in employment. Article 94(2b) establishes the employer’s duty to act against such discrimination. According to Article 8(a), the prohibition on sexual orientation discrimination contained in the Act on Equal Treatment 2010 applies only to employment.</td>
</tr>
<tr>
<td><strong>Portugal</strong></td>
<td>2009</td>
<td></td>
<td>Article 24 (on the right to equal access to employment and work), and Article 16 (on the right to privacy) of the Labour Code explicitly protect the status of sexual orientation (among others).</td>
</tr>
<tr>
<td><strong>Serbia</strong></td>
<td>2010</td>
<td></td>
<td>Articles 1, 2, 13, and 21 of the Prohibition of Discrimination Act ban any discriminatory act, direct or indirect, on the basis of sexual orientation. Articles 16 and 51 deal with employment discrimination.</td>
</tr>
<tr>
<td><strong>Slovakia</strong></td>
<td>2008</td>
<td></td>
<td>Section 2.1 of the Act on Equal Treatment in Certain Areas and Protection against Discrimination (as amended by Act No. 85/2008) prohibits sexual orientation discrimination. Sections 6 and 13 deal with discrimination within labour relations.</td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
<td>2016</td>
<td></td>
<td>Articles 1 and 2(1) of the Protection against Discrimination Act 2016 set out sexual orientation protection from discrimination in employment.</td>
</tr>
<tr>
<td><strong>Spain</strong></td>
<td>1996</td>
<td>2004</td>
<td>Article 314 of the Criminal Code criminalises employment discrimination in the public and private spheres. Articles 27 and 28 of the Law No. 62 of 2003 deal with the principle of equal treatment and the prohibition of discrimination on the ground of sexual orientation (among others). Article 34 establishes that such protection applies to employment.</td>
</tr>
<tr>
<td><strong>Sweden</strong></td>
<td>1987</td>
<td>1999 2003 2009</td>
<td>Chapter 16, Section 9 of the Criminal Code (as amended in 1987) criminalises sexual orientation discrimination in employment. The Prohibition of Discrimination in Working Life because of Sexual Orientation Act combated direct and indirect discrimination due to sexual orientation in employment. This law was repealed by the Discrimination Act. Sections 1 and 3 of the Prohibition of Discrimination Act included sexual orientation (defined in Section 4 as &quot;homosexual, bisexual or heterosexual&quot;) as one of the categories protected against discrimination. This law was repealed by the Discrimination Act. Chapter 1, Sections 1 and 4 of the Discrimination Act include sexual orientation (defined in Section 5 as &quot;homosexual, bisexual or heterosexual&quot;) as a protected ground of discrimination (among others). Chapter 2, Sections 1-4 prohibit discrimination in employment.</td>
</tr>
</tbody>
</table>
Protection against Discrimination based on Sexual Orientation in Employment

39 Switzerland

Since registered partnerships became a possibility, there are various employment protections based on sexual orientation in the amendments to the 1911 Code of Obligations. It is understood that sexual orientation has been read into numerous laws because of the protections afforded to that status in the country’s Constitution, where the words “way of life” at Article 8 have been interpreted to include SOGI.

40 Ukraine

Article 2(1) of the Labour Code (as amended by Act No. 785-VIII of 2015) includes sexual orientation as one of the prohibited grounds for employment discrimination.

41 United Kingdom

The Employment Equality (Sexual Orientation) Regulations 2003 (No. 1661) and The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (No. 497), were introduced to protect against sexual orientation discrimination in the sphere of employment. Revoked by Equality Act 2010.


Part 5 of the Equality Act 2010 deals with employment discrimination. Sections 4, 13, 19, 25(9) and 26 define sexual orientation as one of the prohibited grounds.

In Gibraltar, Part III of the Equal Opportunities Act 2006 refers to discrimination in employment. Sections 3 and 10 protect sexual orientation against any act of discrimination.

Oceania (6) + Cook Islands

1 Australia

Section 3(m) of the Workplace Relations Act 1996 includes “sexual preference” among the grounds of discrimination that the law intends to prevent and eliminate. Furthermore, Section 659(f) prohibits termination of employment based on the employee’s sexual orientation (among other grounds).

Section 351 of the Fair Work Act 2009 bans any act of discrimination against an employee on the basis of sexual orientation (among other grounds).

<table>
<thead>
<tr>
<th>Country</th>
<th>Year (Range)</th>
<th>Law or Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiji</td>
<td>2007-2011</td>
<td>Section 6(2) of the Employment Relations Promulgation 2007 (Promulgation No. 36 of 2007) proscribes discrimination based on sexual orientation (among other grounds) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship. Section 75 also includes sexual orientation as a prohibited ground (among others) for discrimination in employment. Articles 10(b)(2) and 10(c) of the Public Service (Amendment) Decree 2011 (Decree No. 36 of 2011) prohibit discrimination based on sexual orientation (among other grounds) within public service.</td>
</tr>
<tr>
<td>Kiribati</td>
<td>2015</td>
<td>Article 107(2)(b) of the Employment and Industrial Relations Code 2015 bans discrimination based on sexual orientation (among other grounds) in employment.</td>
</tr>
<tr>
<td>Cook Islands</td>
<td>2012</td>
<td>Article 55(e) of the Employment Relations Act (2012) prohibits employment discrimination based on &quot;sexual preference&quot; (among other grounds).</td>
</tr>
<tr>
<td>Samoa</td>
<td>2013</td>
<td>Section 20(2) of the Labour and Employment Relations Act (2013) proscribes discrimination against an employee or an applicant for employment in any employment policies, procedures or practices based on sexual orientation (among other grounds).</td>
</tr>
<tr>
<td>Tuvalu</td>
<td>2017</td>
<td>Section 5 of the Labour and Employment Relations Act (2017) prohibits discrimination at the workplace, including on the basis of sexual orientation.</td>
</tr>
</tbody>
</table>

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8 The online version of the text could not be located.
Criminal Liability for Offences Committed on the Basis of Sexual Orientation

Highlights

42 UN Member States

<table>
<thead>
<tr>
<th>Region</th>
<th>Count</th>
<th>Percentage</th>
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</thead>
<tbody>
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<td>Africa</td>
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<tr>
<td>LAC</td>
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<td>22%</td>
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<tr>
<td>North America</td>
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<td>4%</td>
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<tr>
<td>Asia</td>
<td>24</td>
<td>54%</td>
</tr>
<tr>
<td>Europe</td>
<td>23</td>
<td>50%</td>
</tr>
<tr>
<td>Oceania</td>
<td>2</td>
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</tr>
</tbody>
</table>

Introduction

Popularly known as “hate crimes”, some states have introduced two legal vehicles to address the violence motivated by sexual orientation.

The first is the enactment of a stand-alone criminal offence that criminalises the infliction of violence or harm on a victim motivated by their sexual orientation (real or perceived).

The second is the introduction of a legal provision that confers on the judiciary the power to enhance the criminal punishment where the offence was committed motivated by the victim’s sexual orientation. These legal provisions are often referred to as “aggravating circumstances”. The scope of these provisions can extend to specific types of crimes, such as murder and assault, or apply generally to all criminal offences.

The UN Human Rights Committee has recommended States to specifically criminalise acts of violence that are based on sexual orientation or gender identity, for example, by enacting hate crimes legislation concerning sexual orientation and gender identity.¹

What does International Human Rights Law say?

Everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.

States shall: [...] Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 5

¹ Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Poland, CCPR/C/POL/CO/6, 15 November 2010, para. 8.
### Africa (3)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
</table>
| 1 | Angola           | 2019 | Section 71(1)(c) of the Penal Code includes “discrimination based on sexual orientation” among the aggravating circumstances for all crimes established in the code.  

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Cape Verde</td>
<td>2015</td>
<td>Article 123 of the Penal Code aggravates the penalty for homicides committed on the basis of the victim’s sexual orientation.</td>
</tr>
<tr>
<td>3</td>
<td>Sao Tomé e Principe</td>
<td>2012</td>
<td>Article 130(2)(d) of the Penal Code aggravates the crime of homicide when motivated by hatred towards the sexual orientation of the victim.</td>
</tr>
</tbody>
</table>

### Latin American and the Caribbean (10)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Argentina</td>
<td>2012</td>
<td>Article 80(4) of the Penal Code aggravates the penalty for homicides motivated by the victim’s sexual orientation. Article 90 aggravates the crime of assault in the same terms.</td>
</tr>
<tr>
<td>2</td>
<td>Bolivia</td>
<td>2010</td>
<td>Article 40 Bis of the Penal Code aggravates the penalties of crimes motivated by any of the discriminatory grounds included in Article 281 <em>quinquies</em> and <em>sexies</em> (the latter includes sexual orientation).</td>
</tr>
<tr>
<td>3</td>
<td>Chile</td>
<td>2012</td>
<td>Article 12(21) of the Penal Code (as amended by Article 17 of Law No. 20,609) includes “sexual orientation” among the aggravating circumstances that trigger harsher penalties.</td>
</tr>
<tr>
<td>4</td>
<td>Colombia</td>
<td>2000</td>
<td>Article 58(3) of the Penal Code states that motivation based on the victim’s sexual orientation constitutes an aggravating circumstance. Furthermore, Article 134A (introduced by Law 1,482 of 30 November 2011) criminalises acts of racism and discrimination, including those based on sexual orientation.</td>
</tr>
<tr>
<td>5</td>
<td>Ecuador</td>
<td>2009</td>
<td>Article 177 of the Penal Code criminalises acts of hate, whether physical or psychological, based on sexual orientation. This provision also establishes aggravated penalties for physical harm and death caused by acts of hate based on sexual orientation (among other grounds).</td>
</tr>
<tr>
<td>6</td>
<td>El Salvador</td>
<td>2015</td>
<td>Article 129(11) of the Penal Code (as amended by D.L. No. 106/2015) aggravates the crime of homicide when it is perpetrated based on the victim’s sexual orientation.</td>
</tr>
<tr>
<td>7</td>
<td>Honduras</td>
<td>2013</td>
<td>Article 27(27) of the Penal Code (as amended by Decree No. 23-2013) establishes that motivation based on the victim’s sexual orientation (among other grounds) operates as an aggravating circumstance.</td>
</tr>
</tbody>
</table>

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2 The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed here.

3 In our 2017 edition, Brazil was included in this section with regard to various local laws supposedly establishing criminal liability for acts of violence based on sexual orientation. As criminal liability is a matter reserved for federal law, such laws only establish administrative/civil responsibilities for, *inter alia*, acts of discrimination and, therefore, do not strictly fit in this category.
<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Nicaragua</td>
<td>2008</td>
<td>Article 36(5) of the Penal Code establishes aggravated penalties for crimes motivated by the victim’s sexual orientation.</td>
</tr>
<tr>
<td>9</td>
<td>Peru</td>
<td>2017</td>
<td>Article 46(d) of the Penal Code (as amended by Legislative Order No. 1,323) aggravates penalties for crimes motivated by the victim’s sexual orientation.</td>
</tr>
<tr>
<td>10</td>
<td>Uruguay</td>
<td>2003</td>
<td>Article 149ter of the Penal Code (as amended by Law 17.677 of 2003) provides for enhanced penalties for crimes motivated by “sexual orientation” or “sexual identity”.</td>
</tr>
</tbody>
</table>

## Is there more in Latin America and the Caribbean?

**Mexico**

There are no provisions aggravating penalties for crimes motivated by the victim’s sexual orientation at the federal level. However, some jurisdictions have included such provisions in their local Penal Codes, such as Coahuila (Art. 103(A)(5), 2005), Colima [homicide only] (Art. 123bis, 2015); Federal District (Art. 138(8), 2009); Michoacán [homicide only] (Art. 121, 2014); Puebla (Art. 330bis, 2012); and Querétaro (Art. 131(4), 2015).

## North America (2)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Canada</td>
<td>1996</td>
<td>Article 718.2(a)(i) of the Canadian Criminal Code establishes that a sentence should be increased if there is evidence that the offence was motivated by bias, prejudice or hate based on sexual orientation (among other grounds).</td>
</tr>
<tr>
<td>2</td>
<td>United States of America</td>
<td>2008</td>
<td>Section 249(a)(2) of the United States Code provides for enhanced penalties for crimes motivated by perceived or actual sexual orientation (also known as the <em>Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act</em>). Numerous States have enacted hate crimes laws that include sexual orientation (see full list here by MAP).</td>
</tr>
</tbody>
</table>

## Asia (2)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mongolia</td>
<td>2017</td>
<td>Section 10(1)(2)(14) of the Penal Code aggravates penalties for homicides motivated by hate towards the victim’s sexual orientation.</td>
</tr>
<tr>
<td>2</td>
<td>East Timor</td>
<td>2009</td>
<td>Article 52(2)(e) of the Penal Code 2009 includes motivation on discriminatory sentiment on grounds of, <em>inter alia</em>, sexual orientation as a general aggravating circumstance for all crimes.</td>
</tr>
<tr>
<td>Country</td>
<td>Year</td>
<td>Law/Article</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
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<td>----------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Albania</td>
<td>2013</td>
<td>Article 50(j) of the Criminal Code establishes that motivation related to</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>sexual orientation is an aggravating circumstance for all crimes.</td>
<td></td>
</tr>
<tr>
<td>Andorra</td>
<td>2005</td>
<td>Article 30 of the Criminal Code considers sexual orientation an aggravating</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>circumstance for crimes motivated by hate or bias.</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>2007</td>
<td>Various offences in the Criminal Code were amended by L 2007-05-10/35, art.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>33, 064 and now provide for enhanced punishments where the motive of the</td>
<td></td>
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<td></td>
<td></td>
<td>crime is hatred against, contempt for or hostility to a person on the</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>grounds of his so-called inter alia sexual orientation. This includes</td>
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<tr>
<td></td>
<td></td>
<td>indecent assault and rape (article 377bis) and manslaughter and</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>intentional injury (article 405 quarter).</td>
<td></td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>2006</td>
<td>All three constituent units of Bosnia and Herzegovina have enacted hate</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2013</td>
<td>crime legislation that is inclusive of sexual orientation: Federation of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>Bosnia and Herzegovina (2016), Republika Srpska (2013), Brcko District</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>2006</td>
<td>Article 151(a) of the Penal Code specifies a criminal offence (act</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>motivated by hatred) based on, inter alia, &quot;sexual preference&quot;.</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>2004</td>
<td>Section 81(6) of the Criminal Code recognises as an aggravating circumstance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>the situation where the offence stems from the victim's sexual orientation.</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>2011</td>
<td>Chapter 6, Section 5(1)(4) of the Criminal Code includes sexual</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>orientation as an aggravating circumstance in sentencing.</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>2001</td>
<td>Article 222-12 of the Criminal Code criminalises violence specifically on</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>the grounds of sexual orientation. Article 132-77 makes discrimination on</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>the grounds of sexual orientation an aggravating circumstance.</td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>2012</td>
<td>Article 53(3) of the Penal Code provides that the commission of a crime on</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>the grounds of, inter alia, sexual orientation constitutes an aggravating</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>circumstance for all crimes under the Code.</td>
<td></td>
</tr>
<tr>
<td>Greece</td>
<td>2013</td>
<td>Article 79 of the Penal Code includes &quot;sexual orientation&quot; as an</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>aggravating circumstance of an &quot;act of hatred&quot;, with up to three</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>years imprisonment.</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>2013</td>
<td>The Criminal Code of Hungary was amended to include Section 216 (&quot;Violence</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against a Member of the Community&quot;), which explicitly lists sexual</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>orientation. This law criminalises the display of apparently anti-social</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>behaviour as well as assault.</td>
<td></td>
</tr>
<tr>
<td>Kosovo</td>
<td>2012</td>
<td>Article 74(2)(12) and Article 333(4) of the Criminal Code penalise crimes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>motivated by animus towards, inter alia, sexual orientation, with up to</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>one year in prison.</td>
<td></td>
</tr>
</tbody>
</table>

4 In 2017 we erroneously listed The Netherlands in this list.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Year</th>
<th>Citing Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Lithuania</td>
<td>2009</td>
<td>Article 60(12) of the Criminal Code provides that where an act was committed in order to express hatred towards a group of persons or a person belonging thereto on grounds of sex or sexual orientation, it would be considered an aggravating circumstance.</td>
</tr>
<tr>
<td>13</td>
<td>Luxembourg</td>
<td>1997</td>
<td>Article 457(1)(1) of the Criminal Code penalises acts of hatred or violence motivated by, <em>inter alia</em>, sexual orientation with five to ten year’s imprisonment.</td>
</tr>
<tr>
<td>15</td>
<td>Montenegro</td>
<td>2013</td>
<td>Article 42(a) of the Criminal Code provides that where a criminal offence is committed from hate on the basis of a person’s sexual orientation (among other grounds), the court shall consider such circumstance as aggravating.</td>
</tr>
<tr>
<td>16</td>
<td>Norway</td>
<td>1994</td>
<td>Article 117(a) Penal Code defines torture as the infliction of harm or sever physical or mental pain on another person by a public official or another person at the instigation of or with the expressed or implied consent of a public official because of the victim’s “homosexual inclination, lifestyle or orientation”.</td>
</tr>
<tr>
<td>17</td>
<td>Portugal</td>
<td>2007</td>
<td>The Penal Code considers sexual orientation as an aggravating factor at article 132 (homicide) and articles 143, 144 and 145(1)(a), which concern assault.</td>
</tr>
<tr>
<td>18</td>
<td>Romania</td>
<td>2006</td>
<td>Article 77 of the Penal Code recognises a homophobic motive as an aggravating factor in the commission of a criminal offence of violence or hatred.</td>
</tr>
<tr>
<td>19</td>
<td>San Marino</td>
<td>2008</td>
<td>Law no. 66 introduced Article 179bis to the Penal Code of San Marino, which recognises circumstances of discrimination on the basis of sexual orientation as an aggravating factor in criminal sentencing.</td>
</tr>
<tr>
<td>20</td>
<td>Serbia</td>
<td>2012</td>
<td>Article 54a of the Criminal Code recognises the commission of an offence on the basis sexual orientation and gender identity, <em>inter alia</em>, as aggravating circumstances in relation to hate crimes.</td>
</tr>
<tr>
<td>21</td>
<td>Slovakia</td>
<td>2013</td>
<td>Article 140(f) of the 2006 Criminal Code was updated in 2013 to include the commission of an offence on the basis of sexual orientation as an aggravating factor.</td>
</tr>
<tr>
<td>22</td>
<td>Spain</td>
<td></td>
<td>Article 22(4) of the Penal Code establishes that “sexual orientation or identity” is an aggravating circumstance of criminal responsibility.</td>
</tr>
<tr>
<td>23</td>
<td>United Kingdom</td>
<td>2004</td>
<td>In England and Wales, Section 146 of the Criminal Justice Act 2003 empowers courts to impose enhanced sentences for offences motivated or aggravated by the victim’s sexual orientation. Section 2 of the Scottish Offences (Aggravation by Prejudice) (Scotland) Act 2009 (in force 2010) incorporates sexual orientation to the reasons that aggravates penalties.</td>
</tr>
</tbody>
</table>
**Is there more in Europe?**

**Sweden**  
Due to the constitutional protections afforded to sexual orientation in 2003, section 2(7) of chapter 29 of the Penal Code the open clause “other similar circumstance” is construed as including “sexual orientation”.

---

**Oceania (2)**

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>New Zealand</td>
<td>2002</td>
<td>Article 9 of the Sentencing Act 2002 provides that it is an aggravating factor where the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as sexual orientation (among other grounds).</td>
</tr>
<tr>
<td>2</td>
<td>Samoa</td>
<td>2016</td>
<td>Section 7(1)(h) of the Sentencing Act 2016 increases the penalties for crimes committed partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as sexual orientation (among other grounds).</td>
</tr>
</tbody>
</table>

---

**Is there more in Oceania?**

**Australia**  
There is no federal law establishing that motivation based on sexual orientation is an aggravating circumstance. New South Wales (Art. 21A(2)(h), 2002) appears to be the sole state with such provisions in force.
Prohibition of Incitement to Hatred, Violence or Discrimination Based on Sexual Orientation

Highlights

39 UN Member States
20% UN Member States

AFRICA
LAC
NORTH AMERICA
ASIA
EUROPE
OCEANIA

Introduction

In some states, it is an offence to incite to hatred, violence or discrimination on the basis of sexual orientation. In restricting the freedom of such forms of speech, these laws recognise the paramount importance of securing the safety and protection of marginalised communities.

The wording and scope of these laws vary greatly. Some statutes aim to prohibit “hate speech” or speech with the ability to directly incite people to commit “violence”, while others include a wide array of terms such as “hatred”, “harassment”, “discrimination”, “intolerance” or “segregation”.

A few states have enacted laws that proscribe debasing or humiliating a specific social group, either in broad terms or in statutes regulating broadcasting services.

As with many other laws, judicial interpretations may have widened the enumerated groups of people protected by statutes, especially when they have an open clause to that effect. However, the following list includes States that have enacted laws explicitly including sexual orientation among protected grounds.

What does International Human Rights Law say?

Everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group.

Yogyakarta Principle 30

States shall: [...] Take appropriate and effective measures to eradicate all forms of violence, discrimination and other harm, including any advocacy of hatred that constitutes incitement to discrimination, hostility, or violence on grounds of sexual orientation, gender identity, gender expression or sex characteristics, whether by public or private actors [...]..

Yogyakarta Principle 30(b)
### Africa (2)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Law/Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Angola</td>
<td>2019</td>
<td>Incitement to discrimination based on sexual orientation is criminalised under article 382 of the new Penal Code.¹</td>
</tr>
<tr>
<td>2</td>
<td>South Africa</td>
<td>2000</td>
<td>The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, prohibits unfair discrimination, hate speech and harassment. Section 1(22) includes “sexual orientation” within the definition of “prohibited grounds”.</td>
</tr>
</tbody>
</table>

### Latin American and the Caribbean (8)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Law/Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bolivia</td>
<td>2010</td>
<td>Article 281 septies of the Penal Code of Bolivia criminalises any act of dissemination or incitement to hatred based on sexual orientation (among other grounds). Sexual orientation is included by reference to Article 281 quinquies.</td>
</tr>
<tr>
<td>2</td>
<td>Colombia</td>
<td>2011</td>
<td>Article 134B of the Penal Code (as amended by Law 1,482 of 30 November 2011) criminalises any incitement to acts of harassment aimed at causing harm based on sexual orientation.</td>
</tr>
<tr>
<td>3</td>
<td>Ecuador</td>
<td>2009</td>
<td>Article 176 of the Penal Code criminalises the incitement to discrimination based on sexual orientation.</td>
</tr>
<tr>
<td>4</td>
<td>Honduras</td>
<td>2013</td>
<td>Article 321-A of the Penal Code (as amended by Decree No. 23-2013) criminalises incitement to hatred or discrimination based on sexual orientation.</td>
</tr>
<tr>
<td>5</td>
<td>Mexico</td>
<td>2014</td>
<td>Article 9(27) of the Federal Law to Prevent and Eliminate Discrimination was amended to outlaw incitement to hatred and violence. Article 1(3) of this law includes “sexual preferences” as one of the prohibited grounds.</td>
</tr>
<tr>
<td>6</td>
<td>Peru</td>
<td>2017</td>
<td>Article 323 of the Penal Code (as amended by Legislative Order No. 1.323) criminalises acts of discrimination based on sexual orientation either by the perpetrator or through another person.</td>
</tr>
<tr>
<td>7</td>
<td>Suriname</td>
<td>2015</td>
<td>Articles 175(a) and 176 of the Criminal Code (as amended by S.B. 2015 No. 44) criminalise incitement to hatred based on sexual orientation (by reference to Article 175 which includes the list of prohibited grounds).</td>
</tr>
<tr>
<td>8</td>
<td>Uruguay</td>
<td>2003</td>
<td>Article 149bis of the Penal Code (as amended by Law 17.677 of 2003) criminalises the incitement to hatred or any form of violence based on sexual orientation. Since 2015, article 28 of the Law on Audio Visual Communication Services (Law No. 19,307) prohibits the dissemination of content which promotes or incites to violence based on sexual orientation (among other grounds).</td>
</tr>
</tbody>
</table>

¹ The final version of the 2019 Penal Code has not yet been published. The number of the section may differ in the final version. The draft that was approved can be accessed here.
Is there more in Latin America and the Caribbean?

Brazil

Although there is no specific provision in the Penal Code of Brazil criminalizing incitement to hatred or violence based on sexual orientation, several jurisdictions have enacted local administrative (non-criminal) provisions that proscribe such conduct. These include: Amazonas (2006); Mato Grosso do Sul (2005); Pará (2011); Paraíba (2003); Rio de Janeiro (2015); and the city of Recife (Pernambuco).

North America (1)

1  Canada  1996  Section 319 of the Penal Code proscribes public incitement of hatred. By reference to section 318(4), section 319(7) includes “sexual orientation” among the “identifiable group” against which this crime can be committed. Under Section 320, publications deemed to be hate propaganda can be confiscated.

Europe (28)

1  Albania  2013  Section 265 of the Criminal Code (as amended by Law No. 44 of 2013) penalises those who incite hate or disputes on grounds of sexual orientation, as well as those who intentionally prepare, disseminate or preserve writings with such content for purposes of distributing by any means or forms.

2  Austria  2011  Section 283(1) of Criminal Code (as amended in 2011) lists “sexual orientation” as a protected ground against incitement to violence.

3  Belgium  2013  Article 22 of the Anti-Discrimination Law (as amended in 2013) prohibits the incitement to discrimination, hate, segregation or violence on the basis of a protected criteria. Article 4(4) includes “sexual orientation” among the list of protected criteria.

4  Bulgaria  2004  The Protection Against Discrimination Act states that “harassment” (which includes hate speech and incitement) applies to sexual orientation, according to Articles 1(1) and 5.

5  Croatia  2006  Article 151(a) of the Penal Code (amended 2006) criminalises incitement to hatred based on, inter alia, “sexual preference”.

6  Cyprus  2011  Prohibition of incitement to hatred based on sexual orientation was introduced through the Combating of Certain Forms and Expression of Racism and Xenophobia by means of Criminal Law in 2011.

7  Denmark  2004  Section 266(b) of the Criminal Code penalises any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their “sexual inclination”.
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law/Code Referenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estonia</td>
<td>2006</td>
<td>Section 151(1) of the Penal Code specifies sanctions for incitement to hatred on the basis of sexual orientation.</td>
</tr>
<tr>
<td>Finland</td>
<td>2011</td>
<td>Chapter 11, Section 10 of the Criminal Code criminalises the public expression of an opinion or message that threatens, defames or insults a certain group on the basis of, <em>inter alia</em>, sexual orientation. Section 10(a) provides for enhanced punishment where that speech involves incitement or enticement to genocide, murder or serious violence.</td>
</tr>
<tr>
<td>France</td>
<td>2005</td>
<td>Article 222(18)(1) of the Criminal Code criminalises a threat to commit an offence where the threat was made on the basis of the “victim’s true or supposed sexual orientation”.</td>
</tr>
<tr>
<td>Greece</td>
<td>2013</td>
<td>Article 79 of the Penal Code proscribes incitement to hatred based on sexual orientation.</td>
</tr>
<tr>
<td>Hungary</td>
<td>2013</td>
<td>Section 332 of the Criminal Code was amended to include “incitement against a community” which lists sexual orientation as a prohibited ground.</td>
</tr>
<tr>
<td>Iceland</td>
<td>2004</td>
<td>Article 233(a) of the Penal Code (2003) specifies “sexual inclination” as being protected from anyone who publicly mocks, defames, denigrates or threatens a person or group of persons by comments or expressions of another nature, for example by means of pictures or symbols.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1997</td>
<td>Article 457(1)(1) of the Criminal Code outlaws incitement to hatred or violence based on, <em>inter alia</em>, sexual orientation.</td>
</tr>
<tr>
<td>Malta</td>
<td>2012</td>
<td>Articles 82A and 82C of the Criminal Code of Malta (amended by Act No. VIII of 2012) set out the circumstances and penalties for incitement to hatred based on, <em>inter alia</em>, sexual orientation.</td>
</tr>
<tr>
<td>Monaco</td>
<td>2005</td>
<td>Article 16 of the Law on Public Freedom of Expression proscribes incitement to hatred or violence based on sexual orientation.</td>
</tr>
<tr>
<td>Montenegro</td>
<td>2013</td>
<td>Article 443 of the Criminal Code proscribes incitement to hatred based on sexual orientation.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>1994</td>
<td>Section 137(c) of the Penal Code prohibits the intentional making of an insulting statement about a group of persons based on, <em>inter alia</em>, their sexual orientation. Section 137(d) prohibits the incitement of hatred or discrimination about a group of persons based on, <em>inter alia</em>, their sexual orientation.</td>
</tr>
<tr>
<td>Norway</td>
<td>1981</td>
<td>Article 135(a) of the Penal Code criminalises the public utterance of a discriminatory or hateful expression, defined as speech that is “threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone” because of their “homosexuality, lifestyle or orientation”.</td>
</tr>
</tbody>
</table>
Prohibition of Incitement to Hatred, Violence or Discrimination based on Sexual Orientation

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law/Code Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portugal</td>
<td>2007</td>
<td>Article 240(1) and (2) of the Penal Code proscribes incitement to discrimination, hatred or violence based on sexual orientation.</td>
</tr>
<tr>
<td>San Marino</td>
<td>2008</td>
<td>Law No. 66 amended Article 179 of the Penal Code of San Marino to include sexual orientation as a protected ground from incitement to hatred and violence (Article 179bis).</td>
</tr>
<tr>
<td>Serbia</td>
<td>2010</td>
<td>Articles 13 of the Law on the Prohibition of Discrimination proscribes &quot;severe forms of discrimination&quot; consisting of incitement of inequality, hatred and enmity on the grounds of, inter alia, sexual orientation.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>2008</td>
<td>Article 297(1) of the Penal Code criminalises the public provocation or stirring up of hatred, strife or intolerance on the basis of sexual orientation.</td>
</tr>
<tr>
<td>Spain</td>
<td>2003</td>
<td>Articles 510, 511 and 515 of the Penal Code penalise those who &quot;provoke discrimination, hate or violence&quot; on the grounds of &quot;sexual preference&quot;.</td>
</tr>
<tr>
<td>Switzerland</td>
<td>2018</td>
<td>Article 261bis of the Criminal Code was updated to include &quot;sexual orientation&quot; in the provision that criminalises public incitement to hatred or discrimination, as well as the public dissemination of ideologies that systematically denigrate or defame members belong to a protected group.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2004</td>
<td>Section 74 and Schedule 16 of the Criminal Justice and Immigration Act (2008) prohibits the incitement to hatred on the ground of sexual orientation.</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>In 2004, Section 8 of the Public Order (Northern Ireland) Order 1987 was amended to comprehensively deal with incitement to hatred based on sexual orientation (Sections 9-13).</td>
</tr>
</tbody>
</table>

Is there more in Europe?

Sweden

Due to the constitutional protections afforded to sexual orientation in 2003, the text of the Penal Code is taken to automatically read in sexual orientation. Chapter 16, Section 8 states that those who “disseminate statement or communication, threatens or expresses contempt” may be subject to a fine or up to two years in jail.
## Oceania (0)

### Is there more in Oceania?

<table>
<thead>
<tr>
<th>Australia</th>
<th>There is no federal provision prohibiting incitement to hatred based on sexual orientation in Australia, and less than half (41%) the population live in areas where provincial laws specify such protection. Article 123(3)(e) of the Broadcasting Services Act 1992 stipulates that Codes of Practice should take into account “the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group” on the basis of sexual orientation (among other grounds). Several states have enacted laws which prohibit incitement based on sexual orientation: Australian Capital Territory (Art. 67A(1)(f), 2004); New South Wales (Sec 49ZT(1), 1993); Queensland (Sec. 124A(1), 2003); Tasmania (Sec. 19(c), 1999).</th>
</tr>
</thead>
</table>

Bans against “Conversion Therapy”

Highlights

3 UN Member States
1.5% UN Member States

AFRICA
LAC
NORTH AMERICA
ASIA
EUROPE
OCEANIA

Introduction

The number of States that prohibit the pseudo-scientific practices of so-called “conversion therapy” is strikingly low. Since our 2017 edition, there has been growing attention on this issue. Although we still have to report that only 3 UN Member States have nationwide bans, considerable progress has been made, especially at the subnational level.

Below we include the list of countries that have enacted bans against “conversion therapies” by means of a law (either civil or criminal) or other types of legal/official instruments. These do not include official position statements or directives issued by private professional associations or organisations.

Additionally, we map a few countries that have not enacted explicit bans on “conversion therapies” but have prohibited mental health diagnosis based exclusively on sexual orientation. Even though these laws do not ban these therapies explicitly, they may prevent licensed health professionals from administering some types of sexual orientation change efforts.

What does International Human Rights Law say?

Everyone has the right to the highest attainable standard of physical and mental health, regardless of sexual orientation, gender identity, gender expression or sex characteristics.

Yogyakarta Principle 17

States shall: Prohibit any practice [...] allowing intrusive and irreversible treatments [...] including [...] “reparative” or “conversion” therapies, when enforced or administered without the free, prior, and informed consent of the person concerned.

Yogyakarta Principle 10.e
### Latin American and the Caribbean (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>1999</td>
<td>Resolution 1/99 issued by the Federal Council of Psychology, prohibits the “pathologisation of homoerotic behaviours and practices” and orders all licenced psychologists to “refrain from coercive or unsolicited treatment to homosexuals”. It also prohibits their participation in events or services offering a “gay cure”. In 2013, the Commission for Human Rights of Brazil’s lower house of Congress approved a bill that would repeal Resolution 1/99. The proposal was later abandoned. In 2017, a federal judge first overruled then reaffirmed Resolution 1/99 in a case brought by an evangelical Christian and psychologist whose licence was revoked in 2016 after she offered “conversion therapy”.</td>
</tr>
<tr>
<td>Ecuador</td>
<td>2013</td>
<td>Section 20(a) of the Ministerial Order No. 767 prohibits conversion therapies in rehabilitation institutions. Article 151(3) of the Comprehensive Organic Penal Code of 2014 also criminalizes any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons’ sexual orientation.</td>
</tr>
</tbody>
</table>

**Is there more in Latin America and the Caribbean?**

**Argentina**

Section 3(c) of the Law on Mental Health (2010) establishes that a person cannot be diagnosed on their mental health exclusively on the basis of their “sexual choice or identity”. This law does not ban conversion therapies explicitly, but it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).

**Uruguay**

Article 4 of the Mental Health Law (2017) prohibits any mental health diagnosis on the exclusive basis of sexual orientation and gender identity. This law does not ban conversion therapies explicitly, but it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).

### North America (0)

**Is there more in North America?**

**Canada**

While there are no nationwide bans on conversion therapy in Canada, an increasing proportion of cities and provinces have adopted or are considering adopting such bans. This includes the provinces of Manitoba (2015), Ontario (2015), Nova Scotia (2018) and the city Vancouver (2018). Therefore, around 46% of the Canadian population lives in areas with legal bans in force. The Respect for Sexual Orientation and Gender Identity Bill was introduced in Nova Scotia in September 2018. A petition to ban conversion therapy nationally will be presented to the Canadian House of Commons in January 2019.1

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3 Katie Dangerfield, ‘Petition to ban conversion therapy across Canada gains steam, survivor says it’s ‘long overdue’, Global News, 9 October 2018.
**United States of America**

There is no federal law banning conversion therapy at the federal level. However, by January 2019, a total of 15 states and the District of Columbia had local laws proscribing these practises: California (2012); Connecticut (2017); Delaware (2018); District of Columbia (2014); Hawaii (2018); Illinois (2015); Maryland (2018); Nevada (2017); New Hampshire (2018); New Jersey (2013); New Mexico (2017); New York (2019); Oregon (2015); Rhode Island (2017); Vermont (2016); Washington (2018). A number of counties and cities have also enacted local bans. This means that around 40% of the population lives in jurisdictions where these “therapies” are banned. Several states have also tried to introduce such bans but have not been successful, including includes Massachusetts, Maine and Colorado.

In California, AB-2943, which considered advertising, offering to engage in, engaging in for sale, or selling services constituting sexual orientation change efforts an unlawful practice prohibited under the Consumer Legal Remedies Act, was withdrawn after being brought before its state assembly.4

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**Asia (0)**

Is there more in Asia?

**China**

Several court decisions have ruled in favour of victims of conversion therapy though there has not been a legislative ban against such practices. In December 2014, a Beijing court ruled that the electronic shock therapy the claimant received was not necessary because homosexuality did not require treatment and ordered the psychiatric clinic to pay 3,500 yuan in compensation and post an apology to its website.5 In December 2017, a court in Henan province ordered a city psychiatric hospital to publish an apology in local newspapers and pay the 38-year old male claimant 5,000 yuan in compensation on the basis that he was forcibly treated.6

**Israel**

A bill which would have banned conversion therapy performed on minors was rejected by the legislature in 2016.8 However, the Israel Medical Association (which represents around 90% of the country’s doctors) issued a ban on “conversion therapy” that would result in the expulsion of any doctor who performs such practices.9

**India**

In December 2018, a doctor was summoned by the Delhi High Court for allegedly violating the Indian Medical Council Act, after he was banned by the Delhi Medical Council for engaging in “conversion therapy”.10

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4 According to Movement Advancement Project (MAP), these are the counties and cities with local bans in force. (1) Counties: Albany County, NY (2018); Broward County, FL (2018); Erie County, NY (2018); Palm Beach County, FL (2017); Pima County, AZ (2017); Ulster County, NY (2017); Westchester County, NY (2018); (2) Cities: Albany, NY (2018); Allentown, PA (2017); Athens, OH (2017); Bay Harbor Islands, FL (2016); Bellefonte, PA (2018); Bethlehem, PA (2018); Boca Raton, FL (2017); Boynton Beach, FL (2017); Cincinnati, OH (2015); Columbus, OH (2017); Dayton, OH (2017); Delray Beach, FL (2017); Doylestown, PA (2017); Eau Claire, WI (2018); El Portal, FL (2017); Gainesville, FL (2018); Greensacres, FL (2017); Key West, FL (2017); Lake Worth, FL (2017); Lakewood, OH (2018); Madison, WI (2018); Miami, FL (2016); Miami Beach, FL (2016); Milwaukee, WI (2018); New York City, NY (2017); North Bay Village, FL (2016); Oakland Park, FL (2017); Philadelphia, PA (2017); Pittsburgh, PA (2016); Reading, PA (2017); Riviera Beach, FL (2017); Rochester, NY (2018); Seattle, WA (2016); State College, PA (2018); Tampa, FL (2017); Toledo, OH (2017); Wellington Village, FL (2017); West Palm Beach, FL (2016); Wilton Manors, FL (2016); Yardley, PA (2018).


Bans against “Conversion Therapy”

**Taiwan (China)**
On February 22, 2018, the Ministry of Health and Welfare issued a public announcement (Yi-Zih No. 1071660970) stating that while legislative amendments to the Physicians Act to include “conversion therapy” as prohibited treatment were being debated, individuals and organisations carrying out such practices could be liable for an offence under the Children and Youth Welfare Act or the Criminal Code of the Republic of China.

**Malaysia**
Negative development
In 2017, the federal government’s Islamic Development Department endorsed and promoted “conversion therapy”. According to local sources, State officials have been organising “conversion therapy” courses aimed at transgender women.

**Indonesia**
Negative development
In 2016, the Indonesian Psychiatrists Association (PDSKJI) classified “homosexuality”, “bisexuality” and “transsexualism” as mental disorders, which “can be cured through proper treatment”.

**Europe (1)**

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malta</td>
<td>2016</td>
<td>The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act (an act to prohibit conversion therapy, as a deceptive and harmful act or interventions against a person’s sexual orientation, gender identity and, or gender expression, and to affirm such characteristics) prohibits the performance of conversion therapy both by professionals (Section 3.b) and by non-professionals (Section 3.a).</td>
</tr>
</tbody>
</table>

Is there more in Europe?

**European Union**
In March 2018, the European Parliament of the European Union approved a resolution that “welcomes initiatives prohibiting LGBTI ‘conversion therapies’” and called on member states to outlaw such practices.

**Spain**
Even though there is no nationwide ban, several jurisdictions within Spain have prohibited conversion therapy, including Madrid (2016), Murcia (2016), Valencia (2017) and Andalusia (2017).

**United Kingdom**
While the Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19 is still making its way through the UK Parliament, a Memorandum of Understanding was signed by both NHS England and NHS Scotland to commit to ending the practice of conversion therapy.

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11 A free English translation of the official document can be accessed [here](#). This translation was offered to ILGA World by Marriage Equality Coalition Taiwan.
13 ‘Sexual orientation can be changed, Jakim says in new LGBT video’, MalayMail, 13 February 2017.
14 ‘Malaysian transgender conversion plan sparks alarm’, MalayMail, 30 December 2017.
16 ‘European Parliament takes a stance against LGBTI conversion therapies for the first time’, Integroup on LGBT Rights (web page), 1 March 2018.
### Oceania (0)

**Is there more in Oceania?**

<table>
<thead>
<tr>
<th>Country</th>
<th>Regulations and Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australia</strong></td>
<td>Though there is no federal ban on conversion therapy in Australia, in September 2018, the Australian Senate passed a motion seeking to ban conversion therapy across the country. Though not legally binding, the motion urges the federal government to pressure states to ban the practice. In Victoria, under the Health Complaints Act, the Health Complaints Commissioner has the power to investigate and issue temporary or permanent bans on unregistered health providers, including those providing “conversion therapy”. In May 2018, the state government also launched an inquiry into such practices.</td>
</tr>
<tr>
<td><strong>Fiji</strong></td>
<td>Section 3(1)(d) of the Mental Health Decree 2010 (Decree No. 54 of 2010) provides that a person is not to be considered mentally ill because they express or refuse or fail to express a particular sexual preference or sexual orientation. While this does not explicitly prohibit the practice of “conversion therapy”, it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).</td>
</tr>
<tr>
<td><strong>Nauru</strong></td>
<td>Nauru’s Mentally Disordered Persons Act was amended in 2016 to introduce Section 4A(1)(d) under which a person cannot be regarded as mentally disordered if they express, exhibits or refuses or fails to express a particular sexual preference or sexual orientation. While this does not explicitly prohibit the practice of “conversion therapy”, it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).</td>
</tr>
<tr>
<td><strong>Samoa</strong></td>
<td>Section 2 of the Mental Health Act 2007 provides that a person is not to be considered mentally ill because they express or refuse or fail to express a particular sexual preference or sexual orientation. While this does not explicitly prohibit the practice of “conversion therapy”, it prevents health professionals, particularly psychiatrists, from legally engaging in sexual orientation change efforts (SOCE).</td>
</tr>
</tbody>
</table>

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18 Gay conversion therapy, fake doctors to be banned in Victoria, ABC News, 9 February 2016.
19 Danny Tran, Gay conversion therapy to be investigated by Victoria’s health watchdog, ABC News, 17 May 2018.
GLOBAL OVERVIEW

RECOGNITION

STATE-SPONSORED HOMOPHOBIA 2019
Same-Sex Marriage

Highlights

26 UN Member States
13% UN Member States

AFRICA | LAC | NORTH AMERICA | ASIA | EUROPE | OCEANIA
--- | --- | --- | --- | --- | ---
1 / 54 | 5 / 33 | 2 / 2 | 0 / 42 | 16 / 48 | 2 / 14

Introduction

Since 2001, an ever-increasing number of States have extended the definition of marriage to include same-sex couples. These amendments have been the result of the organised advocacy efforts carried out by civil society organisations in each country, regionally and internationally.

In most legal frameworks, the institution of marriage remains the most comprehensive legal vehicle for the official recognition of a loving relationship and the one that affords the largest number of benefits, rights and duties.

Therefore, the possibility of having access to such protection on an equal footing offers same-sex couples the stability and the protection traditionally afforded to heterosexual people only.

What does International Human Rights Law say?

States shall ensure that laws and policies recognise the diversity of family forms [...] and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination [...].

Everyone has the right to found a family, regardless of sexual orientation, gender identity, gender expression or sex characteristics.[...].

Yogyakarta Principle 24
### Africa (1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>2006</td>
<td>Despite the title of the law, the <strong>Civil Union Act</strong> (2006) confers the right to marriage to persons of the same-sex. In December 2018, the <strong>Civil Union Amendment Act</strong> (2018) repealed Section 6, which allowed a marriage officer to inform the Minister that they objected on the ground of conscience, religion, and belief to solemnising a civil union between persons of the same sex.</td>
</tr>
</tbody>
</table>

### Latin American and the Caribbean (5)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>2010</td>
<td>The Law on Marriage Equality (<strong>Law No. 26,618</strong>) is the federal law that provides for same-sex marriage nationwide.</td>
</tr>
<tr>
<td>Brazil</td>
<td>2013</td>
<td><strong>Resolution No. 175</strong> (2013) issued by the National Council of Justice states that notaries can no longer refuse to register same-sex marriage. Previously in May 2011, the Supreme Federal Court of Brazil had issued a decision indicating that same-sex “stable unions” should be converted to marriage and recommended the Congress to do so though no legislative action has been taken so far. Another decision recognised same-sex couples living in “stable unions” as “family units” and entitled to the same rights as heterosexual couples living in that kind of unions.</td>
</tr>
<tr>
<td>Colombia</td>
<td>2016</td>
<td>After several years of legal uncertainty, in 2016, Colombia’s Constitutional Court issued <strong>Decision SU214/16</strong>, establishing that notaries could no longer refuse to register same-sex marriages. In 2011, the Court had issued <strong>Decision C-577/11</strong> recognising same-sex couples as “family entities” and ordered the Congress to legislate on the matter. To date, no law has been adopted.</td>
</tr>
<tr>
<td>Mexico</td>
<td></td>
<td>There is no federal law on same-sex marriage. Some jurisdictions have enacted local laws providing for this right, including <strong>Campeche</strong> (2016); <strong>Coahuila</strong> (2014), <strong>Colima</strong> (2016), <strong>Mexico City</strong> (2009); <strong>Michoacán</strong> (2016); <strong>Morelos</strong> (2016) [constitutional amendment]; and <strong>Nayarit</strong> (2015). In Quintana Roo (2012), same-sex marriages were allowed by local authorities through a progressive construction of local regulations. Similarly, in Baja California (2018), Chihuahua (2017) and Oaxaca (2018), local authorities have administratively allowed same-sex marriages to be performed. In several other States, judicial decisions have ordered the recognition of same-sex marriages: <strong>Chiapas</strong> (2017); <strong>Jalisco</strong> (2016); <strong>Puebla</strong> (2017).</td>
</tr>
<tr>
<td>Uruguay</td>
<td>2013</td>
<td><strong>Law on Marriage Equality</strong> (<strong>Law No. 19,075</strong>) redefined marriage as the union of two persons “of different or same-sex”.</td>
</tr>
</tbody>
</table>

---

1. In June 2015, the Supreme Court of Mexico declared that bans on marriage equality were unconstitutional and states must recognise the marriage of same-sex couples conducted in other states. However, the lack of **erga omnes** effect of these decisions (they do not repeal legislation) means that same-sex marriages have been celebrated on a case-by-case basis in States where legislation still does not provide for such unions.


### Is there more in Latin America and the Caribbean?

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Costa Rica</strong></td>
<td>Following the Advisory Opinion issued by the Inter-American Court of Human Rights, the Supreme Court of Costa Rica held in August 2018 that sections of the Family Code prohibiting same-sex marriage are unconstitutional and ordered the Legislative Assembly to reform the law, failing which the ban would be abolished automatically by May 2020.5</td>
</tr>
<tr>
<td><strong>Chile</strong></td>
<td>A marriage equality bill has been pending in Congress since 2017 despite the government’s commitment to introduce marriage equality under a 2016 settlement agreement before the Inter-American Commission on Human Rights (IACHR). Following a Supreme Court ruling that affirmed the right to marry and found a family, a same-sex couple filed an appeal in January 2019 to be granted marriage by the Civil Registry.7</td>
</tr>
<tr>
<td><strong>Cuba</strong></td>
<td>The government had initially planned to include a constitutional amendment that would introduce a gender-neutral definition of marriage but such text was removed from the final draft.8</td>
</tr>
<tr>
<td><strong>Ecuador</strong></td>
<td>Judges in two cases ruled in favour of same-sex couples after the Civil Registry office had rejected the couples’ marriage license applications.4 The judges ruled that the Civil registry must immediately allow the women to wed, following the Advisory Opinion issued by the Inter-American Court of Human Rights. However, in September 2018, the Labour Chamber of the Provincial Court of Justice overturned one of the cases and held that marriage equality should be decided by the National Assembly or the Constitutional Court.10</td>
</tr>
<tr>
<td><strong>El Salvador</strong></td>
<td>The Constitutional Chamber of the Supreme Court of Justice rejected a marriage equality case in January 2019 on technical grounds.11 This followed the Supreme Court’s ruling that blocked lawmakers from ratifying a constitutional change that would bar same-sex marriage and prohibit same-sex couples from adopting children in early 2018, similarly due to procedural issues.12</td>
</tr>
<tr>
<td><strong>Honduras</strong></td>
<td>Local activists filed two lawsuits with the Supreme Court to legalise same-sex marriage on the authority of the Advisory Opinion issued by the Inter-American Court of Human Rights. One was dismissed due to technical errors and the other case remains pending before the court.13</td>
</tr>
<tr>
<td><strong>Peru</strong></td>
<td>In 2016, the seventh Constitutional Court of Peru ordered the National Registry of Identification and Civil Status (RENIEC) to recognize and register a same-sex marriage celebrated abroad.14</td>
</tr>
</tbody>
</table>

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7 Rosario Gallardo, “Homosexual couple will file an appeal for protection for rejection of the Civil Registry to grant time for marriage”, Latercera, 15 January 2019.

8 “Cuba decides to scrap same-sex marriage law in new constitution despite majority support”, The Telegraph, 19 December 2018.


13 “Justicia de Honduras rechazó recurso por matrimonio igualitario”, Agencia Presentes, 13 November 2018.

## North America (2)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Canada</td>
<td>2005</td>
<td>The Civil Marriage Act 2005 is the federal law by which same-sex marriage was recognised nation-wide. Starting with Ontario in 2003, most jurisdictions (provinces and territories) allowed for same-sex marriage before the federal law was enacted. The provinces of Alberta and Prince Edward Island, and the territories of Nunavut and the Northwest Territories were the only jurisdictions without such laws before 2005.</td>
</tr>
</tbody>
</table>

## Asia (0)

*Is there more in Asia?*

### Taiwan (China)

The Constitutional Court of Taiwan ruled in May 2017 that same-sex couples have the right to marry under the Constitution and ordered the Legislative Yuan to amend the marriage laws within two years by May 2019. However, legislative reform was stalled by a referendum in November 2018 that voted against amending the Civil Code to legalise marriage equality. According to the secretary-general of the Judicial Yuan, a separate law needs to be drafted to provide for same-sex marriage though it remains unclear how this issue will develop following the referendum.

## Europe (16)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Austria</td>
<td>2019</td>
<td>Following a decision by the Constitutional Court, same-sex marriage came into effect from 1 January 2019. The court had held that the distinction between marriage and a registered partnership constituted discrimination against same-sex couples.</td>
</tr>
<tr>
<td>2</td>
<td>Belgium</td>
<td>2003</td>
<td>Article 143 of the Belgian Civil Code was, by act of Parliament, amended to read; “Marriage is contracted by two persons of different-sex or of the same-sex” in 2003.</td>
</tr>
<tr>
<td>3</td>
<td>Denmark</td>
<td>2012</td>
<td>Section 2 of Law No.532 (2012) incorporates marriage between “two people of the same sex” into existing marriage laws. Same-sex marriage came into force in Greenland in early April 2016 and in the Faroe Islands in 2017.</td>
</tr>
</tbody>
</table>

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16 “Marriage law ‘cannot contradict’ ruling”, *Taipei Times*, 30 November 2018.
17 “Distinction between marriage and registered partnership violates ban on discrimination”, Constitutional Court of Austria (website), 5 December 2017.
<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Finland</td>
<td>2017</td>
<td>In February 2015, the Finnish government signed a gender-neutral marriage law that amends the text of the law through Act 156/2015 to the marriage of “two persons” and which came into force on 1 March 2017.</td>
</tr>
<tr>
<td>5</td>
<td>France</td>
<td>2013</td>
<td>Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) establishes marriage as available to persons of the same or different sex. The law also applies to the overseas regions of Guadeloupe and Martinique.</td>
</tr>
<tr>
<td>6</td>
<td>Germany</td>
<td>2017</td>
<td>The German parliament, adopted a marriage equality bill in July 2017, with the first marriages solemnized in October of that year. This occurred after the Chancellor Angela Merkel allowed a conscience vote, and gives same-sex couples the same rights as heterosexual couples, including the right to joint adoption.</td>
</tr>
<tr>
<td>7</td>
<td>Iceland</td>
<td>2010</td>
<td>In 2010, the parliament passed Bill 138 on changes to the Marriage Act, of which Article 3.1 establishes the right to marry regardless of gender, thereby repealing the 1996 registered partnership law.</td>
</tr>
<tr>
<td>8</td>
<td>Ireland</td>
<td>2015</td>
<td>In October 2015, the Marriage Act 2015 was signed into law specifying its application to same-sex couples. The law replaced the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Interestingly, the 2015 law was enacted six months after the success of a legally binding Constitutional referendum to alter Article 41(4) to reframe marriage as gender-neutral.</td>
</tr>
<tr>
<td>9</td>
<td>Luxembourg</td>
<td>2015</td>
<td>Article 143 of the Civil Code was amended in 2014 (in force 1 January 2015) to simply say that two people of the same-sex can marry.</td>
</tr>
<tr>
<td>10</td>
<td>Malta</td>
<td>2017</td>
<td>The Marriage Act and other Laws (Amendment) Act was signed into law on 1 August 2017 and entered into operation on 1 September 2017. Amendments included eliminating any reference to “husband and wife.” In the term’s place is the gender-neutral “spouse” to cover all situations such that same-sex marriage is made equal to heterosexual marriage.</td>
</tr>
<tr>
<td>11</td>
<td>Netherlands</td>
<td>2001</td>
<td>Article 30 of the Act on the Opening up of Marriage states “[a] marriage can be contracted by two persons of different-sex or of the same-sex”, thereby making the Netherlands the first country in the world to enact same-sex marriage laws.</td>
</tr>
<tr>
<td>12</td>
<td>Norway</td>
<td>2009</td>
<td>Chapter 1, Section 1 of the 1993 Marriage Act (amended 2009) states “[t]wo persons of opposite sex or of the same-sex may contract marriage”.</td>
</tr>
<tr>
<td>13</td>
<td>Portugal</td>
<td>2010</td>
<td>Article 1 of Law No 9/2010 of 31 May states that the law allows for marriage of persons of the same-sex.</td>
</tr>
<tr>
<td>14</td>
<td>Spain</td>
<td>2005</td>
<td>The 2005 amendments made to Article 44(2) of the Civil Code state that marriage confers the same rights and responsibilities on same-sex couples as it does on spouses of different-sex.</td>
</tr>
</tbody>
</table>

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20 “German president signs gay marriage bill into law”, DW.com, 21 July 2017.
Same-Sex Marriage

15 **Sweden** 2009  
In 2009 the 1987 Swedish Marriage Code was revised to be gender-neutral.

16 **United Kingdom** 2014  
Section 1(1) of the Marriage (Same-sex Couples) Act 2013 (in force 2014) simply states that “marriage of same-sex couples is lawful”. This Act is only applicable in England and Wales, where it repealed the Civil Partnership Act 2004. The Scottish Marriage and Civil Partnership (Scotland) Act of 2014 defines ‘spouse’ as being both different as well as same-sex. Northern Ireland does not enjoy marriage equality. Same-sex marriage is also available in several British Overseas Territories.21

Is there more in Europe?

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Armenia</strong></td>
<td>The Ministry of Justice stated in July 2017 that all marriages performed abroad are valid in Armenia, including marriages between people of the same sex pursuant to Article 143 of the Family Code of Armenia.</td>
</tr>
<tr>
<td><strong>Romania</strong></td>
<td>A referendum to change the constitution to ban same-sex couples from marriage equality failed due to poor turnout in October 2018.22 However, in July 2018, the Constitutional Court ruled that the state must grant residency rights to same-sex spouses of European Union citizens following the decision of the European Court of Justice on the matter.23</td>
</tr>
</tbody>
</table>

Oceania (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australia</strong></td>
<td>2017</td>
<td>The Marriage Amendment (Definition and Religious Freedoms) Act 2017 legalized marriage between two persons of marriageable age, regardless of their gender.</td>
</tr>
<tr>
<td><strong>New Zealand</strong></td>
<td>2013</td>
<td>Marriage (Definition of Marriage) Amendment Act of 2013 amended the Marriage Act 1955 to allow for marriage between 2 people &quot;regardless of their sex, sexual orientation, or gender identity&quot;. This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau).</td>
</tr>
</tbody>
</table>

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21 Pitcairn Islands (2015), Ascension Island (2016), Isle of Man (2016), British Antarctic Territory (2016), Gibraltar (2016), Guernsey (2017), Falkland/Malvinas Islands (2017), Tristan da Cunha (2017), Saint Helena (2017), Jersey (2018) and Alderney (2018). In Bermuda, same-sex marriage was legalized by the Bermuda Supreme Court in May 2017 but the legislature passed the Domestic Partnership Act in December 2017 to limit marriage to between a man and a woman. However, the Supreme Court struck down the prohibition in June 2018 and dismissed the government’s appeal in November 2018. In December 2018, the government mounted a last-ditch legal attempt to appeal to the Privy Council. Note: ILGA is aware of the sovereignty dispute between Argentina and the United Kingdom over the Falkland Islands/Islas Malvinas. Under Argentine law, same-sex marriage is legal since 2010. The British administration of the Islands, with effective control over that territory, legalised same-sex marriage in 2017.

22 “Romanian referendum to ban same sex marriage fails on low turnout”, CBC News, 7 October 2018.

23 "Romania must give residency rights to same-sex spouses, court rules", Reuters, 18 July 2018.
Partnership Recognition for Same-Sex Couples

Highlights

**27 UN Member States**

14% UN Member States

<table>
<thead>
<tr>
<th>Region</th>
<th>Country Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFRICA</td>
<td>1/54</td>
<td>2%</td>
</tr>
<tr>
<td>LAC</td>
<td>5/33</td>
<td>15%</td>
</tr>
<tr>
<td>NORTH AMERICA</td>
<td>0/2</td>
<td>0%</td>
</tr>
<tr>
<td>ASIA</td>
<td>1/42</td>
<td>2%</td>
</tr>
<tr>
<td>EUROPE</td>
<td>18/48</td>
<td>63%</td>
</tr>
<tr>
<td>OCEANIA</td>
<td>2/14</td>
<td>14%</td>
</tr>
</tbody>
</table>

Introduction

Several states have progressively recognised legal effects to stable relationships of two people of the same gender. Advocacy efforts by local organisations have led to various forms of recognition around the world. Legal recognition of rights and duties for same-sex couples was achieved through different legal vehicles, with different names and varying levels of recognition of rights.

Historically, partnership recognition for same-sex couples was achieved before same-sex marriage. Starting in Denmark in 1989 with the first “registered partnership” entered into by same-sex couples, an ever-increasing number of jurisdictions have made these unions available.

Prior to the 12th edition, this publication had differentiated between forms of relationship recognition between those that offer a minimum protection and those conferring many of the rights enshrined in marriage between different sex couples. However, we find that this distinction is no longer as relevant as it used to be, as the status of those relationships have generally been strengthened.

What does International Human Rights Law say?

States shall ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination [...].

Yogyakarta Principle 24(b)

States shall take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege, obligation or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners.

Yogyakarta Principle 24(f)

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Partnership Recognition for Same-Sex Couples

### Africa (1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law/Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>2006</td>
<td>The Civil Union Act, 2006 confers the right to civil unions to persons of the same-sex. This is the same piece of legislation that allows for same-sex marriage.</td>
</tr>
</tbody>
</table>

**Is there more in Africa?**

**Namibia**

In January 2018, the Namibian government agreed to allow the same-sex partner of a Namibian man to remain in the country on a visitor’s permit just before his temporary work visa expired. The couple had applied to the High Court to issue a certificate of identity that would recognise the non-citizen partner as the spouse. No decision has been released yet.

### Latin American and the Caribbean (5)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law/Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>2011</td>
<td>Supreme Federal Court of Brazil recognised same-sex civil unions with <em>erga omnes</em> effects in two joint decisions (Ação Direta de Inconstitucionalidade 4,277 and Arguição de Descumprimento de Preceito Fundamental 132).</td>
</tr>
<tr>
<td>Chile</td>
<td>2015</td>
<td>The Law on Civil Union Agreement (Law 20,830) provides for civil unions, open to all couples (same-sex or not) that share a home, with the purpose of regulating the legal effects derived from their common affective life, and with a stable and permanent nature.</td>
</tr>
<tr>
<td>Colombia</td>
<td>2011</td>
<td>In C-577/11, the Constitutional Court held that while marriage may be defined as between a man and a woman under the Constitution, same-sex couples cannot be prohibited from legal recognition of their relationship. This <em>de facto</em> led to the judicial recognition of civil partnerships though no legislative reform has been introduced.</td>
</tr>
<tr>
<td>Ecuador</td>
<td>2008</td>
<td>Article 68 of the Constitution of Ecuador provides for civil unions regardless of the gender of spouses and establishes that these unions will be granted the same rights afforded to married couples, with the exception of adoption. On 22 August 2014, the Civil Registry issued Resolution No. 174 to allow same-sex couples to register their unions. On 21 April 2015, the National Assembly approved the Civil Code Amendment Law, which amends the Civil Code to incorporate the regulation of civil unions.</td>
</tr>
<tr>
<td>Uruguay</td>
<td>2008</td>
<td>Law 18,246 affords same-sex couples the right to have their union recognized (locally referred to as “union concubinaria”).</td>
</tr>
</tbody>
</table>

---

Partnership Recognition for Same-Sex Couples

Is there more in Latin America and the Caribbean?

**Argentina**

Even though there is no federal law providing for civil unions, they are recognised in the Province of Río Negro (2003), and the cities of Buenos Aires (2002), Villa Carlos Paz (2007) and Rio Cuarto (2009).

**Costa Rica**

A 2013 amendment to the 2002 Law on Youth inserted a non-discrimination clause with respect to de facto unions which appeared to allow for same-sex civil unions (even though progressive caselaw used this clause as the legal basis to recognise same-sex de facto unions, Article 242 of the Family Code still restricts these unions to different-sex couples).

In recent years, considerable progress has been made: in 2014, Governmental Social Security Agency (CCSS) granted health insurance benefits for same-sex couples, and in 2015 the Executive Order No. 38,999 was issued, addressing agencies within the Executive Branch to regulate certain rights for same-sex de facto unions (sick leave, care-leave, etc). In 2016, survivor’s pensions were granted to same-sex couples. In May, the government submitted a request for an advisory opinion to the Inter-American Court of Human Rights on same-sex patrimonial rights under the ACHR, which prompted its Advisory Opinion No. 24.

**Mexico**

There is no federal law providing for civil unions. However, civil unions and other forms of registered partnerships are recognised in several jurisdictions within Mexico, such as Campeche (2013); Coahuila (2007); Colima (2013); Jalisco (2013); Federal District (2007); Morelos (2016); Nayarit (2015).

North America (0)

Is there more in North America?

**Canada**

Besides marriage (see previous section), civil unions, domestic partnerships and other forms of unions are available to same-sex couples in several jurisdictions: Alberta (2002); Manitoba (2001/2002); Nova Scotia (2001); and Quebec (2002).

**United States of America**

Even though there is no federal law providing for civil unions, they are locally recognised in several states.³

Asia (1)

<table>
<thead>
<tr>
<th>#</th>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
</table>
| 1 | Israel | 1994 | According to a submission by the State of Israel before the UN, two alternatives to the traditional institution of marriage exist for same-sex couples:  
1. Recognition of “Reputed Couples” (common-law partners), which enjoy similar legal rights and duties as legally married couples;  
2. Registration before the Israeli Population Registration of marriages celebrated abroad (according to a ruling of the Israeli High Court ruling in November 2006), which renders the civil (legal) status of reputed and/or same-sex couples equal to that of legally married couples.⁴ |


⁴
Partnership Recognition for Same-Sex Couples

Taiwan (China)

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>Over 80% of the population lives in jurisdictions that allow same-sex couples to administratively register their relationships. The registration is archived in a partnership registry and some city governments have entered into agreements to share their registries so that partnerships recognized in one city or municipality would be recognized in the others. The registration confers on same-sex couples limited rights such as medical decision-making and other areas.</td>
</tr>
<tr>
<td>2016</td>
<td></td>
</tr>
</tbody>
</table>

Is there more in Asia?

Hong Kong

In June 2018, the Hong Kong Court of Appeal overturned a lower court’s decision that ruled that the government had to grant benefits to same-sex spouses of government employees married abroad. The applicant filed an appeal to the Court of Final Appeal, which was partially allowed by the Court of Appeal in September 2018. This case followed an earlier Court of Final Appeal’s decision that held that the denial of a spousal visa to a lesbian spouse in a civil partnership with a Hong Kong native amounted to unlawful discrimination.

Japan

Various cities and city wards have recognized civil partnerships by issuing partnership certificates, including Sapporo (2017), Fukuoka (2018) and Osaka (2018).

Europe (18)

1. Andorra
   - 2014
   - In November 2014, the General Council of Andorra introduced Law 34/2014 that recognised same-sex civil unions as holding equivalence to marriage in terms of most rights and the basis on which family can be founded.

2. Austria
   - 2010
   - The Registered Partnership Act (Text No. 135/2009) has strong contractual and financial securities enshrined, but offers no recognition of family life, including family name.

3. Croatia
   - 2014
   - The Same-sex Life Partnership Act of July 2014 provides comprehensive civil union protections regarding recognition and maintenance, but the law has been criticized for being weak in relation to parenting rights.

4. Cyprus
   - 2015
   - The Civil Partnership Law (L184(1)/2015) applies to same-sex and different-sex couples regarding financial and accommodation issues, but with limited familial protection.

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4 Combined second, third and fourth periodic reports of States parties due in 2008: Israel, CRC/C/ISR/2-4, 28 August 2012, paras. 324-325. For more information, see: Talia Einhorn, “Same-sex family unions in Israeli law” Utrecht Law Review 4 no. 2 (2008), 222.


7 “LGBT Parenting” (webpage), životno Parnerstvo (website).
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Legislation and Key Provisions</th>
</tr>
</thead>
</table>
| Czechia  | 2006  | The Registered Partnership Act (Law No. 115/2006) confers comprehensive civil union protections to same-sex partners only but same-sex couples were not allowed to adopt children. In 2016, the Czech Constitutional Court struck down the ban and ruled that individuals in a same-sex partnership may adopt individually, but not as a couple.  
Article 3020 of the 2012 Civil Code makes the provision that "the rights and responsibilities of spouses shall apply mutatis mutandis to registered partnership and the rights and obligations of partners" (referring to the first, third and fourth part of the section on Marriage at Section 655). |
| Estonia  | 2016  | The Registered Partnership Act (2014) that entered into force on 1 January 2016 is open to same-sex and different-sex couples and contains limited adoption rights - second parent adoption (or joint adoption), but 'marriage' in Estonian law requires a union between a man and a woman. |
| Germany  | 2001-2018 | The Act on Registered Life Partners provides significant protections for same-sex partners (to whom the Act is limited), and some familial scope regarding adoption (Section 9). This law was repealed when same-sex marriage was legalised. Therefore, no new registered partnerships can be formalised. |
| Hungary  | 2009  | Section 6:514 of the 2009 Civil Code sets out quite limited provisions pertaining to gender-neutral civil partnership in Hungary. |
| Italy    | 2016  | Article 1 of Law May 20 n. 76 regarding civil partnership and cohabitation establishes it is limited to same-sex couples. This legislation provides for equality in matters of tax, social security and inheritance. In 2012, the Court of Cassation denied a petition to recognise a same-sex marriage, but with a reasoning that represented a fundamental change in approach to the issue. |
| Liechtenstein | 2011 | The Act on Registered Life Partnership confers limited protections to same-sex partners, but overtly denies joint parental rights at Section 9. |
| Malta    | 2014  | Section 4(1) of the Civil Unions Act confers "the corresponding effects and consequences in law of civil marriage" and, as per Section 3(2), applies to same-sex and different couples equally. |

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8 Pl. ÚS 7/15.  
10 "Italy, Corte di Cassazione, Rights of same-sex couples, judgment n. 4184/12" (webpage), Centre for Judicial Cooperation (website), accessed January 22, 2019.  
### Partnership Recognition for Same-Sex Couples

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Overview</th>
</tr>
</thead>
</table>
| **Netherlands** | 1998 | Co-existing with same-sex marriage, Article 1:80(a)-(e), Book 1 of the Civil Code confers comprehensive protections to both same-sex and of different-sex civil partners, analysed as virtually equivalent to marriage. The Netherlands’ constituent country, Aruba, does not allow same-sex marriage, but in September 2016 voted to allow civil partnerships.  
| **San Marino** | 2018 | On 5 December 2018, the Law on the Regulation of Civil Unions (Law No. 147 of 20 November 2018) came into effect, allowing same-sex and opposite-sex couples to enter into a union and enjoy certain rights with regard to residency, social security, pension, healthcare and survivorship. |
| **Slovenia** | 2017 | Article 8(1) of the Civil Partnership Registration Act (into force February 2017) confers the rights to subsistence and maintenance, jointly owned property, occupancy, inheritance and partner healthcare, but is silent on joint or second parent adoption provisions (see second parent adoption below). |
| **Switzerland** | 2004 | The Federal Law on Registered Partnership Between Persons of the Same-sex (RS 211.231) contains protective financial and property provisions. |
| **United Kingdom** | 2005 | The UK’s Civil Partnership Act 2004 was adopted in Northern Ireland in 2005, but not rescinded when marriage equality emerged in all other parts of the UK in 2013. In 2012, the Crown Dependency of Jersey introduced Civil Partner (Jersey) Law. |

### Oceania (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Overview</th>
</tr>
</thead>
</table>
| **Australia** | 2002-2016 | In 2008, the Australian Government introduced reforms to remove the discriminations between de facto same-sex and different-sex de facto couples under the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008 and Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008.  
Civil unions are available (only to same-sex couples) in the Australian Capital Territory (2012) [domestic partnerships had been available in the ACT since 1994].  
Registered partnerships are available in New South Wales (2010); Queensland (2012); South Australia (2016); Tasmania (2003); Victoria (2008).  
Domestic partnerships are available in South Australia (2007).  
De facto relationships are also recognized in Western Australia (2002) and in the Northern Territory (2004). |
| **New Zealand** | 2008 | The Civil Union Act (2004) provides for civil unions, available to same-sex or different-sex couples. |
Joint Adoption by Same-Sex Couples

Highlights

28 UN Member States
15% UN Member States

AFRICA
LAC
NORTH AMERICA
ASIA
EUROPE
OCEANIA

1 /5.4
4 /33
2 /2
0 /42
18 /48
2 /14

Introduction

An ever-increasing number of States and jurisdictions have fully recognised the right to found a family and the possibility to jointly adopt children to same-sex couples.

Depending on the legal requirements of joint adoption in each country, marriage (or even a formalised union) may not be a requirement. In countries where joint adoption is only possible for married couples, the enactment of same-sex marriage laws automatically extended adoption rights, while in others specific amendments were subsequently made.

What does International Human Rights Law say?

States shall take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption [...].

Yogyakarta Principle 24(a)

Africa (1)

1 South Africa 2002

In the 2002 Constitutional Court case Du Toit & Or, it was ordered that the words “or by a person whose permanent same-sex life partner is the parent of the child” be adjoined to bring Section 17(c) of the 1983 Child Care Act in line with the Constitution.
### Latin American and the Caribbean (4)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>2010</td>
<td>The Law on Marriage Equality (Law No. 26,618) grants same-sex couples all rights derived from marriage, including joint adoption.</td>
</tr>
<tr>
<td>Brazil</td>
<td>2010</td>
<td>The Superior Court of Justice of Brazil (STJ) ruled in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010.</td>
</tr>
<tr>
<td>Colombia</td>
<td>2015</td>
<td>In November 2015, the Constitutional Court issued Decision C-683/15 that same-sex couples in Colombia can jointly adopt children.¹</td>
</tr>
<tr>
<td>Uruguay</td>
<td>2013</td>
<td>Law on Marriage Equality (Law No. 19,075) grants same-sex couples all rights derived from marriage, including joint adoption.</td>
</tr>
</tbody>
</table>

**Is there more in Latin America and the Caribbean?**

**Mexico**

There is no federal law allowing for joint adoption by same-sex couples. In some jurisdictions, which cover over 15% of the nation’s population, legislation provides for joint adoption of married couples: Campeche (Art. 407, 2016); Coahuila (Art. 253, 2014); Chihuahua (2015); Colima (Art. 391(b), 2016); Mexico City (2010); Michoacán (2016) Morelos (2016); Nayarit (Art. 385, 2016); Veracruz (2011).

### North America (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States of America</td>
<td>2015</td>
<td>As a result of the Supreme Court decision in in <em>Obergefell v. Hodges</em>, joint adoption by same-sex married couples in now available in all 50 states. However, there are several states that have laws permitting state-licensed child welfare agencies to discriminate against LGBT people, including married couples.² Mississippi was the last state in the USA to remove blocks to joint adoption.³</td>
</tr>
</tbody>
</table>

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¹ For more information, see: “Adopción igualitaria”, Colombia Diversa (Website) (in Spanish only).
² "Joint Adoption", Movement Advancement Project (website), accessed 22 January 2019.
³ Neal Broverman, "Nation’s Last Gay Adoption Ban Falls", The Advocate, 3 May 2016.
Joint Adoption by Same-Sex Couples

Asia (1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Israel</td>
<td>2008</td>
<td>2018</td>
<td>Although revisions to the 1981 Adoption Law make no reference to ‘reputed spouses’, in 2008 the Attorney General declared it should nonetheless be interpreted as also relating to them. The right to joint adoption was affirmed in a 2018 decision by the High Court of Justice that ordered the Interior Ministry to list the names of a same-sex couple as the legal parents on the birth certificate of their adopted child.</td>
</tr>
</tbody>
</table>

Europe (17)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andorra</td>
<td>2014</td>
<td>Law 34/2014 recognises same-sex civil unions as holding direct equivalence to marriage, and Article 24 applies this to adoption rights of same-sex couples.</td>
</tr>
<tr>
<td>Austria</td>
<td>2016</td>
<td>In late 2014, the Constitutional Court in Austria ruled that provisions barring joint adoption by same-sex couples contravened the right to equality, and not in the best interest of the child. As such, Articles 178-185 of Civil Code are applicable to same-sex couples as of early 2016. The legalization of same-sex marriage in 2019 reaffirms the status of same-sex families as well.</td>
</tr>
<tr>
<td>Belgium</td>
<td>2006</td>
<td>Articles 4 and 5 of the &quot;Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex&quot; primarily concern Article 353 of the Civil Code and ensures full joint-parental rights.</td>
</tr>
<tr>
<td>Denmark</td>
<td>2010</td>
<td>Section 5.1 of 2010 Adoption Act (updated Adoption (Consolidation) Act 2014) sets out that a partner or spouse can jointly adopt. Greenland enacted such legislation in 2016.</td>
</tr>
<tr>
<td>Finland</td>
<td>2017</td>
<td>Section 9 of the 2012 Adoption Act stipulates that only persons who are married may adopt. On 1 March 2017, amendments to the Marriage Act that allow for gender-neutral marriage came into force.</td>
</tr>
<tr>
<td>France</td>
<td>2013</td>
<td>Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) updates at Articles 345(1), 360 and 371(4) in the Civil Code regarding joint adoption.</td>
</tr>
<tr>
<td>Germany</td>
<td>2017</td>
<td>The passage of marriage equality allows same-sex couples to adopt children who are not biologically related to them.</td>
</tr>
<tr>
<td>Greece</td>
<td>2018</td>
<td>Article 8 of the Child Adoption Law (2018) allows same-sex couples to adopt and become foster parents.</td>
</tr>
<tr>
<td>Iceland</td>
<td>2010</td>
<td>Articles 2, 8 and 29 of the 2010 Marriage Act stipulate the joint parental responsibilities of spouses: these apply to adoption.</td>
</tr>
</tbody>
</table>

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5 Roberto Igual, "Israel | Gay dads must both be named on birth certificate", Mamba Online, 16 December 2018.
6 "Constitutional Court Struck Down Joint Adoption Ban | Austria", European Commission on Sexual Orientation Law (webpage), 15 January 2015.
<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law/Act and Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>2015</td>
<td>Part 11 of the <em>Children and Family Relationships Act 2015</em> (introduced a month before a Constitutional referendum on same-sex marriage) amends prior legislation to allow for joint adoption by same-sex couples.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2015</td>
<td>With the introduction of full marriage equality in force in January 2015, Article 203 of the <em>Civil Code</em> was amended in 2014 (in force 1 January 2015) to assert the obligation of parents to their children, including those jointly adopted.</td>
</tr>
<tr>
<td>Malta</td>
<td>2014</td>
<td>As reflected in Section 12 the <em>Civil Unions Act 2014</em>, Article 100B(1) of the <em>Civil Code</em> was amended to guarantee full joint adoption rights to same-sex partners, with the first same-sex adoption approved by the Maltese Family Court in July 2016. The legalization of same-sex marriage reaffirms the status of same-sex families as well.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2001</td>
<td>Article 1 of the <em>Dutch law on adoption by persons of the same-sex</em> amends Article 227(1) of the <em>Civil Code</em> to allow for joint adoption by same-sex couples.</td>
</tr>
<tr>
<td>Norway</td>
<td>2009</td>
<td>In line with recent marriage provisions, Section 5 of the <em>Adoption Act</em> was amended to include same-sex partners as eligible to jointly adopt.</td>
</tr>
<tr>
<td>Portugal</td>
<td>2016</td>
<td>Articles 1-7 of the <em>Law No.2/2016</em> establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the appropriate areas of the <em>Civil Code</em>.</td>
</tr>
<tr>
<td>Spain</td>
<td>2005</td>
<td>Article 67(7) of the <em>Law 13/2005</em> amends Article 175 of the Civil Code to specify spouses can jointly adopt.</td>
</tr>
<tr>
<td>Sweden</td>
<td>2009</td>
<td>Articles 4-8 of the 2003 <em>Act on Parenting</em> lay out the conditions for joint adoption for married couples, same-sex and different-sex.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2014</td>
<td>Sections 144 and 150 of the <em>Adoption and Children Act 2002</em> that entered into force in England and Wales in 2005, establish that joint adoption applies to same-sex couples. Section 2 of the <em>Adoption Agencies (Scotland) Regulations 2009</em> in Scotland defines civil partners as subject to the law, and in 2013 in Northern Ireland, the Court of Appeal mandated that civil partners can jointly adopt. Several British Overseas Territories recognise joint adoption by same-sex couples.</td>
</tr>
</tbody>
</table>

**Is there more in Europe?**

**Poland**

In 2018, the Supreme Administrative Court ruled in favour of a lesbian couple who sought to register their child under both their names after local administrators rejected their request.7

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7 "Malta's first child adopted by a gay couple; parents appeal the public to educate others", *The Malta Independent*, 15 July 2016.
8 Section 3(3) of the Adoption of Infants Ordinance 2015 of Pitcairn Islands, and the *Civil Partnership Act 2014* (converted to marriage in 2016) in Gibraltar both allow joint adoption, as does the law in Bermuda following a 2015 decision. The Crown Dependencies of the Isle of Man introduced joint adoption in 2011 to civil partners, and Jersey legislated for joint adoption in 2012 through the *Civil Partner (Jersey) Law*. 
9 "Lesbian Couple Granted The Right To Register Child As Their Own In Poland", *The Huffington Post*, 12 October 2018.
## Oceania (2)

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Year</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Australia</td>
<td>2002-2018</td>
<td>Joint adoption by same-sex couples is currently possible in all Australian states and Territories: Australian Capital Territory (2004); New South Wales (2010); Queensland (2016); South Australia (2017); Tasmania (2013); Victoria (2016); Western Australia (2002); Northern Territory (2018).</td>
</tr>
<tr>
<td>2</td>
<td>New Zealand</td>
<td>2013</td>
<td>Schedule 2 of the <em>Marriage (Definition of Marriage) Amendment Act of 2013</em> amended the <em>Adoption Act 1955</em> to allow for joint adoption by same-sex married couples. This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau).</td>
</tr>
</tbody>
</table>
Second Parent Adoption by Same-Sex Couples

Highlights

30 UN Member States
16% UN Member States

<table>
<thead>
<tr>
<th>AFRICA</th>
<th>LAC</th>
<th>NORTH AMERICA</th>
<th>ASIA</th>
<th>EUROPE</th>
<th>OCEANIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/54</td>
<td>4/33</td>
<td>2/2</td>
<td>1/42</td>
<td>20/48</td>
<td>2/14</td>
</tr>
</tbody>
</table>

Introduction

Second parent adoption is an important legal vehicle by means of which a person adopts the child of their partner.

For children of people who are in a same-sex stable relationship being adopted by the partner of their parent may have multiple beneficial effects, such as increasing their protection, as well as their economic security and support.

Furthermore, the recognition of the link between the child and the second parent protects their respective rights and duties towards each other on an equal footing.

What does International Human Rights Law say?

States shall take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption [...].

Yogyakarta Principle 24

Africa (1)

<table>
<thead>
<tr>
<th>1</th>
<th>South Africa</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Section 231(1)(c) of the Children’s Act (2005) stipulates that married persons or those in life partnerships are eligible to adopt, and the Civil Union Act (2006) confers those status to persons of the same-sex.
### Latin American and the Caribbean (4)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>2010</td>
<td>Law 26,618 (Law of Marriage Equality) grants same-sex couples all rights derived from marriage, including adoption. Article 631 of the Civil Code lays out the conditions by which the spouse of the biological parent may adopt their child. As per Article 621, courts may decide on the subsistence of links with other parents.</td>
</tr>
<tr>
<td>Brazil</td>
<td>2010</td>
<td>The Superior Court of Justice of Brazil (STJ) ruled in April 2010 that same-sex couples may adopt children. This judgment was upheld in the Supreme Federal Court of Brazil in August 2010.</td>
</tr>
<tr>
<td>Colombia</td>
<td>2014</td>
<td>The Constitutional Court of Colombia determined in its Decision SU-167 of 2014 that same-sex couples have the right to adopt the biological child of their partner.</td>
</tr>
<tr>
<td>Uruguay</td>
<td>2013</td>
<td>Law on Marriage Equality (Law No. 19,075) grants same-sex couples adoption rights. Article 139 of Law 17,823 (as amended by Law 18,590) establishes that adoption by the spouse of the biological parent is possible only if the link with the child and the other parent is terminated.</td>
</tr>
</tbody>
</table>

**Is there more in Latin America and the Caribbean?**

**Mexico**

Second parent adoption for same-sex couples is not available in all states. Some jurisdictions have local regulations on the matter, among them: Campeche (Art. 408B, 2016); Federal District (Art. 391(5), 2010); Coahuila (Art. 377, 2015); Colima (Art. 391(b), 2016); Nayarit (Art. 389(2), 2016).

**Venezuela**

In 2016, the Supreme Tribunal of Justice (TSJ) of Venezuela ordered a child be registered with the last names of his two mothers.

### North America (2)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States of America</td>
<td>2015</td>
<td>The availability and conditions for second parent adoption vary by state. An NGO report states that about 29 states permit second parent adoption while 10 have limited or prohibited adoption. ¹</td>
</tr>
</tbody>
</table>

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### Asia (1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Israel</td>
<td>2005</td>
<td>In <em>Yaros-Hakak v. Attorney General</em> two women had each given birth via ART and were raising their children together. The Supreme Court of Israel judged that the State’s adoption law permitted second-parent adoption (without curtailing the first parent’s rights), according to the “supreme principle” that the best interests of the child should prevail.(^2)</td>
</tr>
</tbody>
</table>

### Europe (20)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andorra</td>
<td>2014</td>
<td>Law 34/2014 recognises same-sex civil unions as holding direct equivalence to marriage, and Article 24 applies this to adoption rights of same-sex couples.</td>
</tr>
<tr>
<td>Austria</td>
<td>2013</td>
<td>Following the return of <em>X. and others v. Austria</em> to the European Court of Human Rights in early 2013, Article 182 of the Civil Code was amended to allow same-sex second parent adoption. The legalization of same-sex marriage in 2019 reaffirms the status of same-sex families as well.</td>
</tr>
<tr>
<td>Belgium</td>
<td>2006</td>
<td>Articles 8 of the Law amending certain provisions of the Civil Code with a view to enabling adoption by persons of the same-sex primarily concern Article 353 of the Civil Code and ensures second-parent adoption rights.</td>
</tr>
<tr>
<td>Denmark</td>
<td>1999</td>
<td>Section (4)1 of the Law amending the law on Registered Partnership expressly sets out that a registered partner may adopt their partner’s child. Greenland enacted second parent adoption to same-sex couples in 2009. The Faroe Islands passed second parent adoption legislation which comes into force later in 2017. Section 4a(2) of 2010 Adoption Act (updated Adoption (Consolidation) Act 2014) sets out that a partner or spouse can adopt the other’s child.</td>
</tr>
<tr>
<td>Estonia</td>
<td>2016</td>
<td>Section 15(1-4) of the Registered Partner Act offer second-parent adoption rights to same-sex couples, where an individual may adopt the natural or adopted child of their partner.</td>
</tr>
<tr>
<td>Finland</td>
<td>2009</td>
<td>Section 9 of the 2001 Registered Partnership Act was amended in 2001 to clarify that civil partners could adopt, but not as constructed in adoption legislation. However, since coming into force in March 2017 Act 156/2015 confers full joint adoption rights to same-sex couples in Finland.</td>
</tr>
<tr>
<td>France</td>
<td>2013</td>
<td>Article 1 of the Law Opening Marriage to Same-Sex Couples (Law No. 2013-404 of 17 May 2013) inserted a paragraph (345(1)(a) to the existing Civil Code that establishes second parent adoption. The law also applies to the overseas regions of Guadeloupe and Martinique.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Law or Act</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>2017</td>
<td>Federal Court of Justice</td>
<td>Held that being in a same-sex marriage does not automatically make the wife of the mother of a child the co-parent. The wife would have to apply to adopt the child, a process which has been described as “difficult and bureaucratic”, and can take up to 18 months.³</td>
</tr>
<tr>
<td>Iceland</td>
<td>2000</td>
<td>Section 6 of Law amending the Registered Partnership Act (1996)</td>
<td>Specifies that civil partners can adopt one another’s children.</td>
</tr>
<tr>
<td>Ireland</td>
<td>2015</td>
<td>Article 5 of the Children and Family Relationships Act 2015</td>
<td>Defines the civil partner and spouse under ‘parentage’.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2015</td>
<td>With the introduction of full marriage equality in force in January 2015, Article 203 of the Civil Code was amended to assert the obligation of parents to their children, including those in second parent adoption.</td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td>2014</td>
<td>As reflected in Section 12 the Civil Unions Act 2014, Article 100B(1) of the Civil Code was amended to guarantee full joint adoption rights to same-sex partners. The legalization of same-sex marriage reaffirmed the status of same-sex families as well.</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>2001</td>
<td>Article 1 of the Dutch law on adoption by persons of the same-sex</td>
<td>Amends Article 228(f) of the Civil Code to allow for second parent adoption by same-sex couples, but only through a court application procedure which was eased in 2014.</td>
</tr>
<tr>
<td>Norway</td>
<td>2009</td>
<td>Section 5 of the Adoption Act</td>
<td>Was amended to include same-sex partners as eligible to adopt. Section 13 regulates the adoption of the children of the spouse or cohabitant (stepchild adoption) and specifies that current or former same-sex spouses or cohabitants may not adopt a stepchild if the child has been adopted from a country that does not permit persons of the same sex to adopt together.</td>
</tr>
<tr>
<td>Portugal</td>
<td>2016</td>
<td>Articles 1-7 of the Law No.2/2016</td>
<td>Establish that same-sex couples enjoy all the adoption rights of different-sex couples, and amends the appropriate areas of the Civil Code.</td>
</tr>
<tr>
<td>San Marino</td>
<td>2018</td>
<td>Article 10 of the Law no. 147 of 20/11/2018 on civil unions passed in November 2018 allows partners in a civil union to adopt their partner’s children.</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>2011</td>
<td>The right to step-parent adoption for same-sex couples was recognized by the Ministry of Labour, Family, Social Affairs and Equal Opportunities in 2011 on the basis of the 1976 Law on Marriage and Family Relations, despite the fact that Article 135 stipulates adopters must be married.⁴</td>
<td></td>
</tr>
</tbody>
</table>

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⁴ Ministry response in relation to the decision to adopt a biological child of a same-sex partner” [Odgovor ministrstva v zvezi z odločbo o posvojitvi biološkega otroka istosplošne partnerice], Ministry of Labour, Family, Social Affairs and Equal Opportunities (website), 19 July 2011.
### Second Parent Adoption by Same-Sex Couples

| **18** | **Spain** | 2005 | Article 67(7) of Law 13/2005 amends Article 175 of the Civil Code to allow for second parent adoption. |
| **19** | **Sweden** | 2009 | Article 8 of the Act on Parenting (2003) lay out the conditions for second parent adoption for married couples, same-sex and different-sex. |
| **20** | **United Kingdom** | 2005 | Sections 144 and 150 of the Adoption and Children Act 2002 that entered into force in England and Wales in 2005, establish that second parent adoption applies to same-sex couples. Section 2 of the Adoption Agencies (Scotland) Regulations 2009 in Scotland defines civil partners as subject to the law, and in 2013 in Northern Ireland, the Court of Appeal mandated that civil partners enjoy second parent adoption. Several British Overseas Territories also recognize second-parent adoption. |

Is there more in Europe?

| **Croatia** | Articles 45-49 of Same-sex Partnership Act (2014) falls short of providing second parent adoption rights, but the court can be petitioned to establish the right de facto. |
| **Italy** | No law allows for second parent adoption, but there has been important judicial activity in this regard. A high profile case involving the adoption of the birth daughter of a lesbian partner was resolved in the couple's favour in late-2016. The Court of Appeal of Naples ordered full recognition of second-parent adoption on 5 April 2016, and the Court of Appeal in Trento recognised the second father as a co-parent of twins through surrogacy. In September 2018, the Bologna Court of Appeal also affirmed an American adoption order on the basis that it was in the best interests of the child to do so. |

### Oceania (2)

| **1** | **Australia** | 2002-2018 | Second parent adoption by same-sex couples is currently possible in all Australian States and Territories: Australian Capital Territory (2004); New South Wales (2010); Queensland (2016); South Australia (2017); Tasmania (2013); Victoria (2016); Western Australia (2002); Northern Territory (2018). |
| **2** | **New Zealand** | 2013 | A step-parent in a same-sex couple is able to adopt their spouse's child under the Adoption Act 1955 (as amended by the Marriage [Definition of Marriage] Amendment Act of 2013). This law is not effective in any of New Zealand territories (Cook Islands, Niue or Tokelau). |

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5. Section 3(4) of the Adoption of Infants Ordinance 2015 of Pitcairn Islands, and the Civil Partnership Act 2014 (converted to marriage in 2016) in Gibraltar both accommodate second parent adoption. The Crown Dependencies of the Isle of Man introduced second parent adoption at Section 98 of the Civil Partnership Act 2011, Jersey legislated for second parent adoption in 2012 through the Civil Partner (Jersey) Law, and Guernsey approved second parent adoption coming into force in 2017 through the 2016 Same-Sex Marriage Law.


7. “In landmark ruling, Italy recognizes gay couple as dads to surrogate babies”, thelocal.it, 28 February 2017.

CRIMINALISING STATES UPDATES

STATE-SPONSORED HOMOPHOBIA 2019
Provisions in force

- Penal Code (Ordinance 66-156 of 8 June 1966).

<table>
<thead>
<tr>
<th>Act of homosexuality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 338. Any person who commits an act of homosexuality against a person of the same sex shall be punished by imprisonment from two months to two years and a fine of 500 to 2,000 dinars.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indecent Acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 333 (modified) [in 1982]. When the indecent exposure consisted of an act against nature with an individual of the same sex, the penalty is imprisonment for six months to three years and a fine of 1,000 to 10,000 dinars.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Breach of modesty - Barrier to SOGI expression</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 333. Reiterated.</td>
</tr>
<tr>
<td>The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from two months to two years and a fine of 500 to 2,000 dinars.</td>
</tr>
<tr>
<td>A breach of decency punished by two months to two years in prison and a fine of 500 to 2,000 Algerian dinars. The punishment for those convicted of “abnormal sexual acts” is six months to three years in prison and a fine of 1,000 to 10,000 Algerian dinars.</td>
</tr>
</tbody>
</table>

Human Rights Situation

An article from October 2015 points to a resilient LGBT community despite their vilification by some religious leaders.¹ In 2016, a gay Algerian man’s refugee asylum claim to the UK was rejected, in part based on the lack of prosecutions or arrests in recent years,² but the case did not account for the extremes of family and societal shame, threats and violence that pervades rural and urban Algeria regarding diverse sexual orientations in men and women. It has been claimed that sexual minorities in Algeria have been historically ridiculed, perceived and treated as a group of “second class citizens” who are constantly subjected to violence.³ Social rejection of sexual diversity is reported to be so radical that heterosexual marriage is often seen by gay and lesbian people as the only viable option to remain safe.⁴ According to Human Rights Watch, legislation that prohibits the registration of NGOs whose aims are inconsistent with “public morals” and prescribes criminal penalties for

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¹ “Homosexualité en Algérie : ils ont osé le coming out”, France 24, 9 October 2015.
² Upper Tribunal (Immigration and Asylum Chamber), OO (Gay Men) Algeria CG [2016] UKUT 00065 (IAC).
⁴ “Gay Algerians seek ‘rainbow marriages’ to elude rigid society”, France 24, 12 October 2017.
members of unregistered organisations, has resulted in no work being carried out on LGBTI issues in the country. Community LGBTI leaders have been allegedly forced to flee the country due to the harassment and violence caused by the anti-LGBT rhetoric and sentiment from politicians and the media.

In February 2017, a writer received threats and was interrogated by the police over “blasphemous” allegations made in his latest novel, which spoke in favour of LGBT communities. It has been reported that LGBTI people are repeatedly arrested for engaging in consensual same-sex sexual acts, suffer abuse by police officers, and are discriminated against in health and employment contexts.

UN voting record

In 2011, Algeria was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the first two SOGI resolutions. In 2016, Algeria voted against the adoption of Resolution 32/2 which created the mandate of the Independent Expert on protection against violence and discrimination based on SOGI. At the session of Third Committee of the UN General Assembly held in 2016, Algeria voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session in December 2016. Additionally, Algeria voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

There is no evidence that Algeria’s NHRI (Conseil National des Droits de l’Homme) addresses on SOGI issues.

International advocacy and supervision

Universal Periodic Review

In its second cycle UPR in May 2012, Algeria “noted” (rejected) two recommendations to decriminalise same-sex sexual acts and to ensure non-discrimination on all grounds.

In its third cycle UPR in May 2017, Algeria continued to reject recommendations based on the continuing discrimination of the LGBT community. Even though the State accepted one from France on protection against discrimination, it specifically excluded “discrimination based on SOGI”. Algeria expressed that “universality only makes sense if the diversity of the human family is respected” therefore arguing that respect of the religious beliefs of the majority of its population should be prioritised in regard to this issue. Moreover, the State manifested its understanding of sexual orientation being “a choice of persons”.

Treaty Bodies

In 2018, the Human Rights Committee urged Algeria to repeal Article 338 of the Penal Code and release all people arrested on its basis.

Special Procedures

In 2017, the Special Rapporteur on the right to health urged Algeria to decriminalise, noting that it was a barrier to the right to health of those at risk, driving them away from the services they need and increasing health-related risks for them and society as a whole.
Provisions in force

- **Penal Code** [Chapter 08:01], 1964 (amended by the Penal Code Amendment Act 14, 2005).

  **Carnal knowledge against the order of nature**

  **Section 164. Unnatural offences.**

  Any person who:
  
  (a) has carnal knowledge of any person against the order of nature;
  
  (b) [...] 
  
  (c) permits any other person to have carnal knowledge of him or her against the order of nature,

  is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

  **Attempted unnatural offence**

  **Section 165. Attempts to commit unnatural offences.**

  Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

  **Gross indecency**

  **Section 167. Indecent practices between persons.**

  Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.

Human rights situation

In recent years, LGBTI people have become more visible and numerous initiatives to celebrate diversity, share experiences and address issues pertaining to LGBT people have been developed. In July 2017, LeGaBiBo launched its Drop-in Center, aimed at providing support, HIV prevention, treatment and care, information on reproductive health right services and a safe space for LGBTI people.2

Co-hosted by LeGaBiBo, Pan Africa ILGA’s 4th Regional Conference, held under the theme “Empowering LGBTI youth: uniting for an inclusive future”, took place from 31 May to 4 June 2018 in Gaborone with the presence of the UN Independent Expert on SOGI, and more than 300

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2 LeGaBiBo, Facebook Page, 13 July 2017.
LGBTI activists and supporters from over 30 African countries.3

However, hostility towards sexual and gender diverse people still exists,4 as has been recognised by recently-elected President Mokgweetsi Masisi,5 and activists have described encountering some difficulties in advocating for their rights. According to its organisers, the Queer Shorts Showcase Festival 2018 in Gaborone had to be postponed after the Ministry of Youth Empowerment, Sports, and Culture Development refused to host queer events on government property.6

Statements by public officials

President Mokgweetsi Masisi: “There are many people in same sex relationships in this country who have been violated and have also suffered in silence for fear of being discriminated. [...] Just like other citizens, they deserve to have their rights protected”.7

Existing legal challenges

Consensual same-sex sexual acts

The case challenging articles 164 (a) and (c) and 167 of the Penal Code, which criminalises consensual same-sex activity between adults, was supposed to be heard in 2018, but was postponed to 15 March 2019.8

NGO registration

A case about the right of a SOGI-based organisation, LeGaBiBo, to register as an NGO dates back to 2012, with a decisive win in late 2014 where the High Court said not allowing it to register would be an unconstitutional violation of the applicants’ right to freedom of expression, freedom of association and free assembly. The State then appealed the decision on the grounds that its recognition would erode public morality, and that appeal was heard in mid-January 2016. In mid-March 2016, judgment from that appeal was unsuccessful and that NGO is now registered, thereby providing an example of positive jurisprudence regarding the reach of the State.9

Legal gender recognition

In 2017, Botswana’s High Court at Lobatse found the Civil and National Registration Office’s refusal to change a trans man’s gender marker on his ID card in accordance with his gender identity unreasonable and against his rights to dignity, privacy, equal protection of the law, freedom of expression and freedom from discrimination and inhumane and degrading treatment.10

On 12 December 2017, Botswana’s High Court at Gaborone ordered the Civil and National Registration Office to issue trans woman Tshepo Ricki Kgositau a card identifying her as a female (Tshepo is a prominent activist with South African-based Gender Dynamix).11

UN voting record

In 2011, Botswana was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.12 In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.13 In 2016, Botswana abstained during the vote to adopt Resolution 32/2 which created the mandate of the independent Expert on
protection against violence and discrimination based on sexual orientation and gender identity.\textsuperscript{14}

However, it is notable that Botswana’s ambassador to the UN led the second wave of opposition to the establishment of the SOGI Independent Expert to the UN in November 2016, saying “[n]o nation or group of nations should pretend to hold a monopoly over cultural norms and therefore seek to impose those values on others”.\textsuperscript{15} At the session of Third Committee of the UN General Assembly held in November 2016, Botswana voted against the LAC amendment to remove Operative Paragraph 2,\textsuperscript{16} and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Botswana voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Botswana does not currently have a National Human Rights Institution in accordance with the Paris Principles. Even though the Office of the Ombudsman is provisionally in charge of this role, the government and the United Nations are negotiating the establishment of a new NHRI.

International advocacy and supervision

Universal Periodic Review

In both its first and second UPR sessions Botswana rejected all recommendations for decriminalisation and non-discrimination based on SOGI.\textsuperscript{17} In its response to recommendations the delegation confirmed Botswana’s commitment to comply with its treaty obligations and “determined to undertake educational awareness campaigns”.\textsuperscript{18}

In the third cycle of the UPR in January 2018, Botswana insisted on “noting” (rejecting) all SOGIESC related recommendations (15 in total) proposed during the session. Argentina, Canada, France, Germany, Iceland, Spain, Sweden and the United States urged Botswana to decriminalise consensual same-sex sexual relations (in sum, by amending sections 164, 165 and 167 of the Penal Code). Moreover, Australia, Brazil, Canada, Finland, Germany, Iceland, Philippines, Spain and Uruguay called for taking legislative actions to fight against the discrimination suffered by the LGBTIQ community. France proposed authorising legal gender recognition. The Netherlands proposed adopting “specific legislation to protect victims of violence and other human rights violations committed against persons on the basis of their real or imputed sexual orientation or gender identity, in line with resolution 275 of the African Commission on Human and People’s Rights”.\textsuperscript{19}

The State recognised key issues which could undermine the enjoyment of equal human rights by the general populace. Included in those there were some involving the SOGIESC situation.\textsuperscript{20}

Treaty Bodies

In 2008, the Human Rights Committee (CCPR) noted with concern that Botswana criminalised same-sex sexual activities between consenting adults and urged the State to repeal said provisions.\textsuperscript{21}

Special Procedures

In 2013, a couple of mandates received a report regarding the alleged arbitrary denial to register a human rights association working for the rights of LGBTI people.\textsuperscript{23}


\textsuperscript{15} OutRight, ISHR, ILGA and ARC, Defending the Independent Expert on Protection Against Violence and Discrimination Based on SOGIE (2017), 19.

\textsuperscript{16} Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


\textsuperscript{18} “UPR- Botswana”, ILGA Website, 19 January 2018.

\textsuperscript{19} “UPR- Botswana”, ILGA Website, 19 January 2018, Section C.


\textsuperscript{21} Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders.

\textsuperscript{22} For more information, see: BWA 2/2013, 8 July 2013.
Provisions in force

- Law No. 1/05 of 22 April 2009 concerning the revision of the Penal Code.

**Sexual relations with someone of the same sex**

**Article 567.**
Whoever has sexual relations with someone of the same sex shall be punished with imprisonment for three months to two years and a fine of fifty thousand to one hundred thousand francs or one of those penalties.

Human rights situation

A 2014 shadow report to the Human Rights Committee that oversees the ICCPR describes the repressive conditions under which LGBT people live in Burundi. The legal and social situation of LGBT people in Burundi is also captured in a 2016 report produced by the East African Sexual Health and Rights Initiative. The day-to-day lives of Burundian lesbian women, who are reportedly forced to hide their true selves and use secret memes and code to connect with each other on social media platforms and chat apps for fear of social rejection, discrimination and violence, were documented in a 2019 article by Megha Mohan for the BBC.

The story of Jean-Daniel Ndikumana, a Burundian LGBT activist who claims he had to seek asylum in Belgium because of his sexual orientation, gives an insight into the life of gay men in the country: subjection to verbal and physical abuse from an early age, rejection by family members when coming out, and constant fear for their safety as adults.

In October 2017, several news portals reported that numerous people had been arrested for “engaging in homosexuality” and forced to pay exorbitant bribes for their release after a 'hunt' was announced by police that month.

UN voting record

In 2011 and 2014, Burundi was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the first two SOGI Resolutions. However, in 2016, Burundi voted against the adoption of Resolution 32/2 which created the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

At the session of Third Committee of the UN General Assembly held in November 2016, Burundi...
voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Burundi voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

**National Human Rights Institution**

Burundi’s National Human Rights Institution, the Comission Nationale Independante des Droits de l’Homme, does not appear to address SOGIESC issues in its work.

**International advocacy and supervision**

**Universal Periodic Review**

Burundi received 11 direct recommendations in its 2nd UPR in 2015 regarding sexual orientation, the majority regarding decriminalisation, to which the delegation is recorded as saying: “[w]ith regard to discrimination against homosexuals, the delegation acknowledged that the Criminal Code of 2009 still punished homosexuality. That situation was in line with the country’s customs and values, and the delegation asked for the international community’s understanding while Burundian society prepared for a change in mentality. The head of the delegation did emphasise, however, that he would raise the issue with the Government.”

In its 3rd cycle of the UPR carried out in January 2018, Burundi noted (functionally rejected) all 11 SOGIESC recommendations. Argentina, Australia, Ecuador, Iceland, New Zealand, Timor Leste and Uruguay asked for the decriminalisation of consensual same-sex sexual relations.

Burundi referred to the SOGIESC situation in its closing remarks, expressing that “once again, we’ve been asked about same-sex sexual intercourse. We reject calls for decriminalisation. This is because the mindset in Burundi hasn’t developed yet to allow for this. So, we’re going to reject that recommendation.”

**Treaty Bodies**

In November 2014, the Human Rights Committee (CCPR) unambiguously stated that Burundi should decriminalise consensual same-sex sexual acts and effectively protect LGBT people from threats to their physical integrity and from discrimination.

In December 2014, the Committee Against Torture (CAT) directly addressed discrimination based on SOGI, urging Burundi to decriminalise same-sex consensual acts and take all necessary measures to effectively protect LGBT from threats and any form of violence.

In October 2015, the Committee on Economic, Social and Cultural Rights (CESCR) recommended that the State party repeal all provisions that could lead to the discrimination, prosecution or punishment of individuals on the basis of their sexual orientation or gender identity and that it take all appropriate steps to ensure that lesbian, gay, bisexual and transgender individuals may exercise all their socio-economic rights.

**Special Procedures**

In December 2015, the Special Rapporteur on the situation of human rights defenders observed that those promoting and protecting the rights of LGBT people were particularly vulnerable, because of discrimination and violence. He also expressed his concern over the fact that no authorised associations were known to be working specifically on LGBTI issues.

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8 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


10 UPR-Burundi”, ILGA Website, 19 January 2018.

11 UPR-Burundi”, ILGA Website, 19 January 2018, Section C.

12 Concluding observations on the second periodic report of Burundi, CCPR/C/BDI/CO/2, 21 November 2014.

13 Id., para 23.

14 Concluding observations on the initial report of Burundi, E/C.12/BDI/CO/1, 16 October 2015.


16 Id., para 56.

17 Id., para. 90.
CAMEROON

Provisions in force

  
  Article 347-1.
  Whoever has sexual relations with a person of the same sex shall be punished with imprisonment from 6 months to 5 years and fine of from CFAF 20,000 to CFAF 200,000.

Cameroon’s first Penal Code, enacted in 1965, did not criminalise consensual same-sex sexual acts. An Ordinance issued in September of 1972 by President Ahmadou Ahidjo introduced Article 347bis (now 347-1). This amendment took place a few months after the advent of the unitary State under the new Constitution, when the National Assembly had not yet been elected.


  Article 83.
  1. Any person who makes sexual propositions to a person of their sex through electronic communications shall be punished with imprisonment of one to two years and a fine of 500,000 to 1,000,000 CFA francs or only one of these two penalties.
  2. The penalties provided in paragraph 1 above are doubled when the proposals have been followed by sexual intercourse.

Human Rights Situation

- Additional information on the situation in Cameroon is provided at the end of this entry in a “Local Perspective Essay” written by Joachim Ntetmen for ILGA World.

In 2013, Eric Ohena Lembembe who was a prominent gay human rights activist and who headed the AIDS advocacy group Camfaids, was found dead in his home with his limbs and face burnt after a slew of attacks on human rights defenders in the country.¹ No one has been arrested or convicted for his murder.² In 2014, a gay man who had been jailed for sending a text message saying “I’m very much in love with you” was also found dead in prison after his family had removed him from a hospital where he was receiving medical treatment.³ A 2016 Human Rights Watch report documented cases of forced anal examinations by the authorities conducted on men arrested on suspicion of engaging in same-sex sexual conduct.⁴ In 2018, five LGBTI human rights defenders were arrested at a youth centre run by the Avenir Jeune de l’Ouest (Youthful Future of the West) and ordered to undergo anal exams after

³ “Gay man jailed in Cameroon has died, says lawyer”, The Guardian, 13 January 2014.

ILGA World
they were released on bail. In 2017, a lawyer received death threats for defending LGBT people and he was told to stop doing so when he sought help from the Lawyers’ Association. The police similarly dismissed his case and told him not to “defend those faggots”.

In June 2018, it was reported that the family members of LGBT human rights activist Dominique Menega were also seeking asylum in France because of their association with him. Attacks on LGBT human rights defenders are frequently reported: in 2016, anti-gay Cameroonians threatened and harassed LGBTI rights advocates in Douala, driving some of them from their homes. In Yaoundé, Jules Eloundou, president of Humanity First, was the target of two homophobic attacks in the guise of burglaries.

A UN joint (12 CSOs) shadow report of October 2017, documented cases of extortion and blackmail by police officers based on perceived or actual sexual orientation, noting at least 67 cases in 2016. A media report in October 2018 highlighted cases of family violence against lesbian women who were chained and raped after their families found out about their sexuality. Four cases of “corrective rape” were documented in 2014, and seven cases in 2016. In December 2018, a list of persons accused of being “homosexuals” was disseminated through social media: this outed many individuals who had been hiding their identities.

In January 2019, it was reported that a female footballer was thrown off her team and banned from playing after she was outed as gay. In the same month, a group of anti-gay youths shut down a gay advocacy organisation after they set part of the group’s office on fire, and forced the cancellation of a planned gay pride celebration.  

Statements by public officials

In 2013, Jacques Doo Bell, member of the National Commission for Human Rights and Freedoms wrote in the Commission’s magazine that “homosexuals” were like “‘highway bandits and chicken thieves [who are] systematically lynched by the crowd’ and recommended that they remain “extremely careful and discreet”.

In July 2013, in response to the murder of activist Eric Ohena Lembembe, Issa Tchiroma Bakary, Minister of Communication and Government spokesperson, explained that between 95% and 99% of society are “against homosexuality because their religions are against homosexuality”. He added that “maybe in 50 years from now things will be different [but] it is the duty of the President of the Republic to respect the will of his people”.

National Human Rights Institution

The National Commission for Human Rights and Freedoms is Cameroon’s NHRI. The entity not only negates and ignores SOGIESC issues and requests, but, as evinced in its reports, denies discrimination and upholds the country’s criminalisation laws.

UN voting record

In 2011, Cameroon voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council. As its term of the HRC expired, it did not vote the 2014 and 2016 SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Cameroon voted against the LAC

5 "LGBT activists arrested in Cameroon get released but are ordered to take anal exams", The Rustin Times, 11 May 2018.
7 "In Cameroon, life is hell because I support my gay brother", Erasing 76 Crimes, 6 June 2018.
9 "Cameroon: Homophbic attacks disguised as burglary", Erasing 76 Crimes, October 2016.
10 Acodove et al, Torture and Other Cruel, Inhuman and Degrading Treatment of LGBT Individuals in Cameroon (2017), 17.
11 "Lesbian ‘witches’ chained and raped by families in Cameroon", Hindustan Times, 2 October 2018.
14 Roberto Igual, "Cameroon | Shattered dreams as lesbian footballer banned from playing", Mamba Online, 10 January 2019.
17 Ibid., 10.
18 Ibid., 15.
amendment to remove Operative Paragraph 2,\(^{20}\) and in favour of the African oral amendment to block the Independent Expert on SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Cameroon voted in favour of the amendment which tried to block financial resources allocated to the newly created mandate.

**International advocacy and supervision**

**Universal Periodic Review**

Cameroon rejected all seven SOGI recommendations in its 1st cycle UPR in April 2008. In its second UPR, other than accepting one recommendation to investigate police violence based on sexual orientation, it rejected 14 SOGI recommendations.

In its 3rd cycle of the UPR carried out in May 2018, Cameroon noted (functionally rejected) all 12 SOGIESC recommendations, including those referred to decriminalisation.\(^{21}\) The State provided no comments referring to the SOGIESC situation during the working group session.

**Treaty Bodies**

In 2010, the Human Rights Committee urged Cameroon to repeal article 347(1) of the Penal Code and to address "social prejudice and stigmatization of homosexuality"\(^{22}\)

In February 2014, the CEDAW Committee urged Cameroon to raise awareness among political, traditional and religious leaders, as well as members of civil society, about the possible withdrawal of article 347 of the Penal Code.\(^{23}\)

**Special Procedures**

In May 2012, several mandates collectively expressed concern regarding the authorities’ interference with a meeting discussing HIV and human rights of LGBT people.\(^{24}\) In November 2012, several mandates\(^{25}\) highlighted to the state the alleged death threats against Alice Nkom and Michel Togue, legal representatives of individuals charged on the basis of their real or perceived sexual orientation.\(^{26}\) In January 2013, the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern regarding the alleged murder and death threats against two individuals related to their sexual orientation, Jonas Singa Kumie and Franky Ndome.\(^{27}\) In August 2013, several mandates\(^{28}\) against reiterated their concerns regarding the murder of an LGBTI defender.\(^{29}\)

**A LOCAL PERSPECTIVE**

**The Question of Sexual Orientation and Gender Identity in Cameroon**

*By Joachim Ntetmen for ILGA World.*\(^{30}\)

Arrests and prosecutions on the basis of provisions which criminalise consensual same-sex sexual relations continue to take place in Cameroon today.

In addition to this state violence, there is a very high level of acts of physical and psychological violence in Cameroon motivated by hate of sexual orientation and gender identity.\(^{31}\) Blackmail and threats particularly are amongst the most common forms of aggression. In 2017, 578 cases of violence...

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20 Operative Paragraph 2 was an attempt by the Africa Group to defer action on Resolution 32/2 and block the IE SOGI mandate.
21 “UPR-Cameroon”, ILGA Website, 18 May 2018.
22 Concluding observations of the Human Rights Committee - Cameroon, CCPR/C/CMR/CO/4, 4 August 2010, para. 12.
23 Concluding observations on the combined fourth and fifth periodic reports of Cameroon, CEDAW/C/CMR/CO/4-5, 28 February 2014.
24 For more information, see CMR 1/2012.
25 These are the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.
26 For more information, see CMR 5/2012.
27 For more information, see CMR 7/2013.
28 These are the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on rights to freedom of peaceful assembly and of association; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.
29 For more information, see CMR 3/2013.
30 Joachim Ntetmen was trained as a psychologist and is currently Director of programs at Alternatives Cameroun, a human rights organisation in Cameroun created in 2006 which especially defends the rights of sexual minorities.
and violations of LGBTI rights were registered. Alarming in 2018, 1,134 of such cases were registered, which represents a vertiginous increase. Violence was the order of the day in multiple forms: waves of arrests - including the arrest of five LGBTI activists in the western region of the country - intimidation, aggression and murder. Particularly tragic was the case of a young man, Tobi Aubin Parfait Kenfack, who was murdered on the 12 August 2018 in the city of Douala; his older brother murdered him because of his sexual orientation. The 2017 annual report produced by Alternatives Cameroon exposed the consequences that violence and violations of rights have on the physical and psychological health of LGBTI persons. A community study carried out in 2017 showed that 57% of lesbian women in Douala consumed tobacco and 18% drugs; the same study revealed that more than 30% of gay men and lesbian women suffer severe depression, as opposed to 5% nationally amongst the general population of Cameroon (WHO figures). A 2016 IBBS study signalled that the prevalence of HIV is 20.3% between men who have sex with men (MSM), with HIV rates showing as up to twice as high in those who have been exposed to violence.

Discourses on issues of sexual orientation remain extremely hostile in Cameroon. In October 2018, a science text book of life and the Earth, destined for fifth grade classes caused a scandal. In it, "homosexuality" was characterised as "deviant", the same as "sodomy", "fellatio" and "cunnilingus". The rationale presented for this content was the protection of children. A local NGO made their own argument and denounced the book as a "criminal initiative" that pretended "to promote zoophilia and homosexuality" following the UN agenda, plunging Cameroonian society into sexual immorality. The scandal led to a petition to remove the book from the program, to which the government finally agreed. This example illustrates that talking about sexual or gender diversity to young people is never well received in Cameroon.

In terms of progress, although timid, the state response to HIV with men who have sex with men (MSM) has been included in the national HIV plans since 2011, and more recently, the 2018-2022 National HIV Plan also includes trans persons.

Issues related to gender identity are achieving more visibility and a number of trans organisations have consolidated: It was their efforts that ensured inclusion, and recognition of specific vulnerability to HIV exposure, of trans persons in National HIV Plan. Further, these strategies now include a human rights perspective, access to care is a battle far from being won. Lesbians and bisexual women, for example, remain ignored and invisible in health programs.

Issues related to intersex people have rarely been addressed officially and remain little-understood within and outside the LGBTI community. However, over the past two years intersex persons have started to organise in the city of Douala and already have at least 30 members, and their work in part is to draw attention (through documentation) to the discrimination and violence they experience. There are many cases of hastily-done and unnecessary surgeries that are often harmful to an individual’s wellbeing, and that have been carried out without consent.

The presidential elections of October 2018 were an opportunity to influence issues of diversity. Civil society organisations called on candidates to include issues of sexual and gender diversity in their policy agendas. For this purpose, a mapping of the candidates and their respective positions on the subject was carried out: of the nine candidates, three were classified as hostile, four had a "mixed" position and two had favourable approaches to these issues.

This latest data offers some hope for an eventual change in the future but the situation remains difficult.

Provisions in force


**Article 354.**
Anyone who has sexual relations with persons of the same sex is liable to imprisonment for three months to two years and a fine of between 50,000 and 500,000 francs.

Human rights situation

Prior to the enactment of the new Penal Code, Chad had never criminalised same-sex sexual intimacy. However, in 2017, Chad became the latest state to criminalize consensual same-sex sexual acts and, therefore, a worrying example of legal regression in the region.

An earlier draft of the legislation—introduced and debated in 2014—would have imposed severe penalties of up to 20 years imprisonment for consensual same-sex sexual conduct (pursuant to a proposed Article 361bis). In proposing the law, the cabinet had claimed that the criminalisation of same-sex sexual acts was intended to "protect the family and to comply with Chadian society." The issue re-emerged in parliament in December 2016, amidst the debate for the new Penal Code. The result: consensual same-sex acts were criminalised (with effect from 1 August 2017) as a 'misdemeanour' punishable by a significantly shorter imprisonment term and a fine.

A news report on situations pertaining to LGBT advocacy in East Africa suggested that this was partially the product of "attempts by Western governments to help in a way that some believe has backfired".

Even though criminalisation was formally crystallised in 2017, in September 2013, two gay men were arrested for celebrating their wedding in a bar and charged with indecent exposure. Religious groups, youth associations and women’s groups sought to petition the government to punish the couple for what they described as a "vile and anti-religious act". One of the men reportedly left the country after he was released.

A 2014 conference paper at the International AIDS Conference indicated that "homosexuality in Chad is considered as a taboo subject, an immoral practice, uncalled for. It is difficult to talk about it and to sense the realities bound to it." This view was echoed in the US State Department human rights report, which stated that there were no known LGBT organisations in the country because "most individuals were discreet about their sexual orientation due to social and cultural strictures against homosexuality."
**Statements by public officials**

Delwa Kassiré Coumakoye, a former-Prime Minister of Chad and current member of parliament, explained that the reduction in the punishment for same-sex sexual intimacy was a "fair balance between conservative public opinion and an uncompromising international community on the protection of minorities."8

He added that, "Homosexuality is condemned by all religions. We do not have to forgive something that God himself rejects, because Westerners have said this."

**National Human Rights Institution**

According to the OHCHR, the National Human Rights Commission of Chad, which is attached to the Prime Minister’s Office, was criticised for being “ineffective and not fully in compliance with the Paris Principles”.9 However, a recent update suggested that constitutional reforms relating to the establishment of the National Human Rights Commission as an independent body in line with the Paris Principles on national human rights institutions were being undertaken.10

Nevertheless, there is no evidence to suggest that the current Commission has done any work in relation to sexual orientation or gender identity.

**UN voting record**

Chad was not a member of the Human Rights Council between 2011 and 2016, and therefore did not vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly in 2016, Chad voted against the LAC amendment to remove Operative Paragraph 2,11 and in favour of the African amendment to block the IE SOGI. Additionally, it voted in favour of the amendment to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

There was no reference to SOGIESC issues in the country during Chad’s 1st or the 2nd UPR cycles in 2009 and 2013.

In its 3rd cycle of the UPR carried out in November 2018, Chad noted (functionally rejected) the only SOGIESC recommendation that it received during the session. Iceland had called for the repeal of “all laws that criminalize persons based on their sexual orientation and gender identity”.12 The State provided no comments referring to the SOGIESC situation during its participation in the working group session.13

**Special Procedures**

In 2018, the Working Group on the issue of discrimination against women in law and in practice on its mission to Chad expressed concern that “the culture of silence surrounding … lesbian women… makes them invisible and more likely to be victims of human rights violations.”14 It urged the State to “conduct in-depth studies on the situation of girls and women victims of multiple forms of discrimination, including… lesbian women, with a view to taking appropriate measures to better protect and empower members of these groups.”15

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9 "OHCHR in Chad (2010-2011)", OHCHR (website), accessed 6 March 2019.
11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
13 “UPR - Chad”, ILGA Website.
15 Ibid. A/HRC/38/46/Add.2, para. 75(o).
Provisions in force


**Article 318(3).**

Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 50,000 to 1,000,000 francs. If the act was committed with a minor, the maximum penalty will always be applied.

Human rights situation

Little is known on the situation of LGBTI people in Comoros. The few available reports indicate that people do not manifest their sexual orientation for fear of family and community rejection. Discrimination and violence are ever-present realities, especially after the creation of a police unit in charge of preventing "morality crimes". The media has allegedly adopted a hostile attitude towards sexual and gender diversity, and no Comorian LGBT CSOs are known to exist.

UN voting record

Comoros was not a member of the Human Rights Council between 2011 and 2016, and therefore did not vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly in 2016, Comoros voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African amendment to block the IE SOGI. Additionally, Comoros voted in favour of the amendment to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Comoros does not have a National Human Rights Institution.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle UPR in 2014, Comoros rejected recommendations to “review provisions of the criminal law penalizing consensual same-sex activity between adults” (Czechia) and to “initiate a debate on the decriminalization of homosexuality” (Spain). Brazil called for the country to “take steps to avoid discrimination and violation of the human rights of the LGBT population”.

The State responded that “there was not currently a political majority in the Assembly to amend the law.”

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2. Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.
Provisions in force


  **Article 310(1).**

  A person who performs with a person of the same sex an act corresponding to the sexual act, or any other indecent sexual act, is guilty of homosexual conduct, a Class 7 serious offence, punishable with a definite term of imprisonment of not less than 5 years and not more than 7 years.

Human rights situation

According to a 2010 text on Eritrea, "homosexuality is socially and legally not acceptable in Eritrean society. Homosexuals usually practice their sexual interactions in a highly covert atmosphere. They do not want to be openly identified by the public as homosexuals, and they make every possible effort to keep their lifestyle a secret".1

According to a 2013 UPR shadow report, no LGBTI organisations is known to exist publicly in Eritrea and it is reported that the authorities have carried out periodic round-ups of LGBTI people.2 In 2013, a gay Italian teacher was reportedly deported after he was accused of being a "dangerous individual who is potentially destabilizing to the moral order and public of the country".3

This echoed a 2004 incident, where three foreign employees of a luxury hotel were also expelled from the country for "immoral activities", which was allegedly a reference to "homosexual conduct".4 In 2016, a 26-year-old gay Eritrean man was granted asylum in Israel and his lawyer explained that asylum was granted because of the "danger to him due to his coming out of the closet".5

National Human Rights Institution

Eritrea does not have a National Human Rights Institution.

UN voting record

In 2011, Eritrea was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.6 Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),7 nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate.8

At the session of Third Committee of the UN General Assembly held in November 2016, Eritrea voted against the LAC amendment to remove

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3 "Insegnante espulso dall’Eritrea, la Farnesina contesta l’atto", Live Sicilia, 10 June 2013.
4 "Eritrea expels three hotel employees for ‘immorality’", Sudan Tribune, 8 October 2004.
Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Eritrea voted in favour of the amendment which tried to block financial resources allocated to the newly-mandated post of SOGI Independent Expert.

**International advocacy and supervision**

**Universal Periodic Review**

In its 1st cycle UPR in 2009, the Government of Eritrea rejected the recommendations made by Canada and the USA to repeal the above-mentioned article, arguing that repeal is “...in direct conflict with the values and traditions of the Eritrean people”.10

At their 2nd cycle UPR, the Eritrean delegation stated that “consensual same sexual conduct was against the values and culture of the Eritrean society” in answer to the only SOGI recommendation it received (Italy): “Launch a national dialogue, as well as a campaign through media and in the schools, to tackle all forms of discrimination against lesbian, gay, bisexual and transgender (LGBT) persons”.

Eritrea’s 3rd UPR commenced in January 2019. However, it appears that no mention is made of ‘LGBT’ or ‘sexual orientation’ in any of the civil society stakeholder reports (shadow reports), or in the State’s submission to date.

**Treaty Bodies**

In 2015, the Committee on the Rights of the Child (CRC) expressed concern that the criminalisation of consensual same-sex conduct encourages the stigmatisation of and discrimination against LGBT children and urged the State to repeal such laws and raise public awareness of equality and non-discrimination on the basis of sexual orientation.11

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9 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

10 “UPR Eritrea”, ILGA World Website.

Provisions in force

Consensual same-sex sexual acts are not codified, but a common law offence since 1907. There has been a considerable lack of clarity whether lesbian sexual activity is outlawed, and by analysis to date it appears not to be the case.

Human rights situation

There are currently no legal protections against discrimination and violence based on sexual orientation and gender identity and expression on the Eswatini statute books.1

Particularly within the health,2 housing and employment contexts such discrimination is systemic.3 Violence and deep stigmatisation is pervasive across family and social structures: there are reports of sexual and gender diverse people being ridiculed, threatened,4 beaten, reported to authorities and banished by family members.5

In June 2018, the NGO Rock of Hope successfully organised the first Pride festival and march in the country’s history,6 although thereafter, concerns over the safety of LGBTI people were raised.7

A week before the celebrations, the Swazi Observer—a newspaper owned by a company currently held by sub-Saharan Africa’s last absolute monarch King Mswati III—reported the event was not welcomed by the Swazi people, and divulged a letter against it supposedly written by “concerned parents”. The letter, which demonised LGBTI people, was published on the CitizenGo website, a platform closely linked to right-wing hate groups.8

Statements by public officials

Senator Princess Phumelele: “I am totally against these laws [that legalize abortion and relationships between gays and lesbians], which go against the teaching of the Bible”.9

National Human Rights Institution

Eswatini’s National Human Rights Institution, registered in accordance with the Paris Principles, is the Commission on Human Rights and Public Administration. It does not appear to address SOGIESC issues.

UN voting record

Eswatini was not a member of the Human Rights Council in 2011, 2014 and 2016 and, therefore, did not participate in any of the votes on the HRC SOGI Resolutions.10

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1 “Hope and defiance - Swaziland aims to hold its first LGBT Pride”, Mambonline, 5 April 2018.
2 Kennedy, Caitlin E. et al., “‘They are human beings, they are Swazi’: intersecting stigmas and the positive health, dignity and prevention needs of HIV-positive men who have sex with men in Swaziland” (2013), in Journal of the International AIDS Society, 16 (4 Suppl 3): 18749.
5 “Swazi gay men thrown out of village”, Mambonline, 19 August 2013.
7 “In Photos: Swaziland’s First Ever Pride March”, Okayafrica, 2 July 2018.
8 “Swaziland: King’s Newspaper Hates LGBTI People”, AllAfrica, 22 June 2018.
9 “Phumelele: No tolerance to abortion and LGBTI rights”, Times of Swaziland (printed version), 31 October 2018.
ESWATINI - CRIMINALISATION

At the session of Third Committee of the UN General Assembly held in November 2016, Eswatini voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Eswatini did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

Universal Periodic Review

In its 1st cycle UPR review in 2011, Eswatini stated that “as the world revolved, [Eswatini] would look into the possibility of adopting a policy on the issue of sexual orientation.” However, it later rejected all recommendations urging the state to decriminalise declaring that “the decriminalization of same-sex activity is not acceptable.” Eswatini did accept two further recommendations to, “implement measures to prevent violence against the LGBT community, through training and advocacy campaigns” (USA) and to ensure access to health without discrimination based on SOGI (Portugal).

There is no mention of sexual orientation or SOGI in the State’s report to its voluntary Mid-term Implementation Assessment (MIA) in early 2015. In their commentary on the Government’s activity in relation to recommendations they accepted at the UPR in 2011, Lawyers for Human Rights in Eswatini (LHRS) explain the State’s non-action as being based on the homophobia inherent in indigenous tradition in the country, and they observe “[h]omosexuality is not a priority for Eswatini at the moment it seems”.

In its 2nd cycle UPR review in May 2016, Eswatini received three recommendations, but accepted only two of them: “Prohibit discrimination on the basis of sexual orientation and gender identity, particularly concerning the enjoyment of the right to health” (Slovenia) and to “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” (Spain). However, it again rejected a recommendation to decriminalise “same sex relations”, also from Slovenia.

Treaty Bodies

Eswatini ratified the International Covenant on Civil and Political Rights (ICCPR) in 2004 but has since failed to submit reports in fulfilment of its obligations under the treaty. In July 2017, the Human Rights Committee (CCPR) nevertheless reviewed the implementation of civil and political rights in the country.

It then requested information on discrimination and violence on the basis of sexual orientation and gender identity, plans to remove the common law criminalization of same-sex relations and efforts to develop prevention, testing and treatment programmes specifically targeting LGBT people.

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11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
14 Ibid.
16 Ibid., 15.
19 List of issues in the absence of the initial report of Swaziland, CCPR/C/SWZ/Q/1, 13 April 2017, para. 5–6.
Provisions in force


**Homosexual act**

**Article 629. Homosexual and other Indecent Acts.**

Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.¹

**Aggravation**

**Article 630(1). General Aggravation to the Crime**

The punishment shall be simple imprisonment for not less than one year, or, in grave cases, rigorous imprisonment not exceeding ten years, where the criminal:

(b) makes a profession of such activities within the meaning of the law (article 92).

Human rights situation

According to Ethiopian human rights lawyer Abebe Hailu, no one has been charged or convicted under the new criminal provisions since they were introduced in 2004. This is because the criminal system is overloaded and there is little judicial appetite to prosecute homosexuality.¹

Nevertheless, the difficult legal and social situation of LGBT people in Ethiopia has been described in accounts given by individuals who have fled the country. For instance, a 2013 news report interviewed two individuals who explained that homosexuality is commonly viewed as a “Western disease”.² Another news report in 2014 interviewed several gay men who have been harassed and attacked in public.³

A 2016 research report also featured interviews with LGBT individuals in the closet who dare not reveal their sexual identities due to fears of backlash and social ostracisation.⁴ There is no visible LGBT community, though there are some informal groups that have emerged online, particularly on social media.⁵

In 2011, Christian, Catholic and Muslim religious leaders demanded the cancellation of the International Conference on AIDS and STIs in Africa organised by African Men for Sexual Health and Rights (AMSHeR) on the basis that it violated the country’s conservative culture.⁶ In fact, there is a strong religious counter-movement to SOGI human rights claims, and representatives from different religious groups and political parties...

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¹ According to Article 106, simple imprisonment may extend for a period of from ten days to three years. However, the court may increase this to five years where, owing to the gravity of the crime, it is prescribed in the Special Part of this Code, or where there are concurrent crimes punishable with simple imprisonment, or where the criminal has been punished repeatedly.


gather annually to discuss prevalent issues, including the “gay problem”. A researcher also described a “crusade against homosexuals” by various religious institutions in December 2008 that culminated in a resolution that referred to homosexuality as the “pinnacle of immorality” and urged Parliament to ban homosexuality in the Constitution, establish rehabilitation centres to “treat” homosexuals and censor the internet to prevent exposure to “homosexuality and other unwanted cultures”.

In 2014, the Council of Ministers had considered putting homosexuality on a list of “non-pardonable” offences under the Pardon and Amnesty Law, but stopped short of doing so. The legislative proposal was purportedly a result of the government’s attempt to emulate the anti-gay laws in Nigeria and Uganda. Nevertheless, a government spokesperson explained that the government decided against such an amendment because the existing penalties for homosexuality was sufficient, since it is “not a serious crime...[and] not as widespread as some people suggest”.

**Statements by public officials**

In 2008, the Patriarch of the Ethiopian Orthodox Church, Abuna Paulos, stated that gay people “have to be dumb, stupid like animals [to act in this manner]”, and “have to be given a lesson”.

**UN voting record**

Ethiopia was not a member of the Human Rights Council between 2011 and 2016 and, therefore, did not vote in any of the SOGI resolutions. However, at the session of Third Committee of the UN General Assembly held in November 2016, Ethiopia voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Ethiopia voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

At its 2nd cycle UPR in April 2014, Ethiopia ‘noted’ (did not accept) three recommendations from France, Portugal and Argentina to decriminalise same-sex sexual activity. Ethiopia made no responses to the decriminalisation issue in the UPR Interactive Dialogue or in its formal responses to recommendations in this regard.

**Treaty Bodies**

In 2011, the Human Rights Committee expressed concern about criminalisation of consensual same-sex acts and stated that its concerns were not allayed by the State’s claims that “the provision in question is not applied in practice”, or by its statement that “it is important to change mindsets before modifying the law in this regard”. It urged the State to take steps to decriminalise same-sex sexual acts between consenting adults and send a clear message that the State does not tolerate any form of violence based on sexual orientation.

In 2012, the Committee on Economic, Social and Cultural Rights expressed concern that the State had not adopted an anti-discrimination bill, as well as the fact that the Penal Code criminalises consensual same-sex sexual acts. It urged the state to address both issues as well as take steps to combat and prevent discrimination and societal stigma against LGBT people.

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12 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
15 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Ethiopia, CCPR/C/ETH/CO/1, 19 August 2011, para. 12.
16 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Ethiopia, CCPR/C/ETH/CO/1, 19 August 2011, para. 12.
Provisions in force

- **Criminal Code 1965** (as amended in 2005 and 2014).

### Article 144: Unnatural Offences

1. Any person who:
   1. has carnal knowledge of any person against the order of nature; or
   2. permits any person to have carnal knowledge of him or her against the order of nature;

   is guilty of a felony and is liable to imprisonment for a term of 14 years.

2. In this section "carnal knowledge of any person against the order of nature" includes:
   1. carnal knowledge of the person through the anus or the mouth of the person;
   2. inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and
   3. committing any other homosexual act with the person.

### Article 145: Attempts to Commit Unnatural Offences

Any person who attempts to commit any of the offences specified in the last preceding section is guilty of a felony and is liable to imprisonment for seven years.

### Article 147(2) (as amended by the Criminal Code (Amendment) Act, 2005)

Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and liable to imprisonment for a term of five years. Section 147(3) further specifies that act of indecency includes any homosexual act.

### 144A. Aggravated Homosexuality

1. A person commits the offence of aggravated homosexuality where the:
   1. offender is a person living with HIV; [...]
   2. offender is a serial offender; [...]

2. A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life.
Human rights situation

In 2014, the Parliament approved the Criminal Code (Amendment) Act 2014, which inserted the crime of “aggravated homosexuality” (cited above). In its 2016 report on The Gambia, Human Rights Watch observed that Section 144A of the Criminal Code “[was] taken literally verbatim from section three of Uganda’s Anti-Homosexuality Act, which was later overturned by Uganda’s Constitutional Court in August 2014 on technical grounds”.¹

Further, concern over The Gambia’s increasing embrace of Islamic law in its governance practices was raised with regard to the erasure of the rights of sexually diverse people in a context where they were already vilified, suspected and targeted.² In 2017, the United States Department of State also reported high levels of societal discrimination against LGBT people and observed the lack of LGBTI NGOs in the country.³

In February 2017, newly-elected President Adama Barrow made public references to LGBT people that contradicted with former President Yahya Jammeh’s repeatedly documented homophobic remarks.⁴ Other politicians affirmed that the crime of “aggravated homosexuality” should be taken out of the laws.⁵

Statements by public officials

President Adama Barrow: “Homosexuality is not an issue [in the country] [...] economic and other social issues […] are more of a priority”.⁶

Existing legal challenges

Torture and ill-treatment: on 31 May 2018, three survivors of Yahya Jammeh’s fake HIV/AIDS “treatment program” filed a complaint in the High Court of The Gambia, seeking compensation for the human rights abuses they reportedly suffered.⁷

This case is of key importance because of the documented high prevalence of HIV/AIDS among men who have sex with men (MSM) in the country.⁸

National Human Rights Institution

Gambia does not have a National Human Rights Institution.

UN voting record

Gambia was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three SOGI HRC resolutions in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Gambia voted against the LAC amendment to remove Operative Paragraph 2,⁹ and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Gambia did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Although the Gambia received and rejected (‘noted’) 12 recommendations regarding decriminalisation and non-discrimination based on SOGI at its 2nd cycle UPR process in October 2014, the State made no reference to this issue. Gambia’s 3rd UPR occurs in April 2019.¹⁰

⁵ “With tyrant deposed, a Gambian leader rejects anti-gay law”, 76crimes Website, 2 June 2017.
⁶ “Homosexuality not an issue in Gambia, says President Barrow”, The Point, 14 February 2017.
⁹ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Treaty Bodies

In February 2015, the Committee on the Rights of the Child (CRC) stated that the introduction of the “aggravated homosexuality” provision into the Criminal Code in 2014 encouraged the persecution, discrimination and stigmatisation of LGBTI people, including children and children from LGBTI families.11 Thus, it entreated the Gambia to “[e]nsure that children who belong to LGBTI groups and children from LGBTI families are not subjected to any form of discrimination, and repeal the legal provisions criminalizing homosexuality”.12

In March 2015, the Committee on Economic Social and Cultural Rights (CESCR), concerned about the criminalisation of same sex sexual relations and violence against LGBT people, recommended that The Gambia adopt non-discrimination legislation in line with its obligations under the treaty, and urged the State to repeal or amend all legislation that could result in the discrimination, prosecution and punishment of LGBTI people.13

In July 2015, the Committee on the Elimination of Discrimination against Women (CEDAW) noted that same-sex consensual acts between adults were criminalised and that “aggravated homosexuality” carried sentences of up to life imprisonment and expressed its concern over violent acts against lesbian, bisexual and transgender women.14 It urged the State to repeal the provisions of the Criminal Code on “unnatural offences” and “aggravated homosexuality”, end the arbitrary detention of lesbians and provide them with effective protection from violence and discrimination and provide appropriate training to law enforcement officials.15

In August 2018, the Human Rights Committee (CCPR) voiced its concern over the criminalisation of same sex sexual relations and arbitrary arrests and violence against LGBT people16 and demanded that The Gambia decriminalise same-sex relationships between consenting adults and take measures to change societal perception of LGBTI people and protect them from discrimination and violence.17

Special Procedures

In March 2015, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment received reports about individuals who were detained and tortured due to their actual or perceived sexual orientation. He expressed his concern on the 2014 amendment to the Criminal Code on “aggravated homosexuality” subjecting LGBTI people to a greater risk of torture and ill-treatment in an overall context of State-sponsored violence against LGBT people.18 He recommended, therefore, that the State repeal laws targeting and criminalising LGBTI people and take action to combat violence, threats and intimidation on the basis of sexual orientation and gender identity.19

In May 2015, the Special Rapporteur on extrajudicial, summary or arbitrary executions observed the alarming human rights situation in the country,20 and mentioned having received concerning reports about hate speech, persecution and violence against LGBTI people. He specifically referred to threatening and inflammatory public comments made by Yahya Jammeh, President of The Gambia at that time, against LGBT people.21

14 Concluding observations on the combined fourth and fifth periodic reports of the Gambia, CEDAW/C/GMB/CO/4-5, 28 July 2015, para. 44.
15 Concluding observations on the combined fourth and fifth periodic reports of the Gambia, CEDAW/C/GMB/CO/4-5, 28 July 2015, para. 45.
16 Concluding observations on the Gambia in the absence of its second periodic report, CCPR/C/GMB/CO/2, 30 August 2018, para 11.
17 Concluding observations on the Gambia in the absence of its second periodic report, CCPR/C/GMB/CO/2, 30 August 2018, para 12.
18 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to the Gambia, A/HRC/28/68/Add.4, 16 March 2015, para. 93.
GHANA - CRIMINALISATION

GHANA

Provisions in force

- **Criminal Code** (Act No. 29 of 1960, as amended up to 2003).

### Unnatural carnal knowledge

#### Section 104. Unnatural Carnal Knowledge.

1. Whoever has unnatural carnal knowledge:
   - (b) of any person of sixteen years or over with his consent is guilty of a misdemeanor;

2. Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with an animal.

#### Evidence of carnal knowledge

#### Section 99. Evidence of Carnal Knowledge.

Whenever, upon the trial of any person for an offence punishable under this Code, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal knowledge or unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration.

Human Rights Situation

According to Human Rights Watch’s 2018 No Choice But To Deny Who I Am report, the criminalisation of adult consensual same-sex acts in the country, although it rarely leads to prosecution, contributes to a climate of frequent discrimination and violence against LGBTI people, both in public and in family settings. In fact, incidents of violence and responses to that violence have been profusely recorded in Ghana in the last few years. Although Section 104 of the Criminal Code is understood to apply to males only, there have been media reports of mob attacks on lesbians as well.

Since the last edition of this report, numerous cases of discrimination and physical and psychological abuse against LGBTI people were further reported. In early 2017, media outlets reported that two men were outed on social media and arrested for “suspected homosexuality”. In February 2018, a mob tried to lynch two women perceived as lesbians but were stopped by the police. A couple of weeks before, two students had been allegedly arrested for engaging in same-sex activity and taken to hospital for genital examinations.

In March, the partner of a man lynched by a mob because of his perceived sexual orientation claimed he was forced to go on the run and remain hidden in...

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1. Under Article 296(4) of the Criminal Procedural Code, a misdemeanor “shall be liable to imprisonment for a term not exceeding three years.”
5. “2 arrested in Ghana; sensational news coverage”, 76crimes Website, 30 March 2017.
fear for his life. In May, it was reported that two high school students were expelled after a school investigation revealed that they had engaged in same-sex sexual acts and “initiating other students into homosexuality”. According to the Coalition’s leader, who revealed plans to propose a bill to make “conversion therapy” mandatory for gay men, the program will be run by psychiatrists, psychologists, medical doctors, religious leaders and experts in traditional medicine at a Holistic Sexual Therapy Unit of the Korle Bu Teaching Hospital in Accra.

Yet a different religious outlook on sexual orientation and gender identity is being promoted in the country by the Interfaith Diversity Network of West Africa (IDNOWA), a regional network of faith-based groups, LGBTI people and activists aimed at building bridges across all faiths to foster acceptance of all people.

**Statements by public officials**

_Nana Akufo-Addo_ (President of Ghana): “I don’t believe that in Ghana, so far, a sufficiently strong coalition has emerged which is having that impact on public opinion that will say ‘change it’ [the criminalisation of consensual same-sex activity among adults], ‘let’s then have a new paradigm in Ghana’ […] I think that it is something that is bound to happen […] like elsewhere in the world […] at the moment, I don’t feel, I don’t see that in Ghana there is that strong current of opinion that will say ‘this is something that we need you to deal with’, it is not so far a matter which is on the agenda.”

_Alhassan Suhuyini_ (Member of Parliament): “[The President] recounted how it happened in England, where he grew up, and says it will take the same process for it to become a topical issue in Ghana as well […] That’s giving free consultation to the gays on how to get their demands met.”

_Nana Akufo-Addo_ (President of Ghana): “I am not involved in any conspiracies [to promote the decriminalization of consensual same-sex activity...
among adults [...] I think these are matters that are in the public domain and people are entitled to their own views. There is no concerted synchronized attempt on my part to promote the advocacy of it.”

Aaron Mike Oquaye (Speaker of Parliament): “If anybody should bring such a thing [a proposal to decriminalize consensual same-sex activity among adults] to parliament and I have to preside over that, I’d rather resign than subscribe to this delusion.”

Aaron Mike Oquaye (Speaker of Parliament) [referring to sexual orientation]: “Deformity takes many forms. It can be mental deficiency, physical deficiency, psychological deficiency, whatever deficiency [...] if a person is found to be deficient, it cannot [be turned] into a human right, because psychotic inclinations are a deficiency, paedophile inclinations are a deficiency, kleptomaniac inclinations are a deficiency. In fact, there are people who are like that. A person, if all is well, why should he be a paedophile? [...] So we treat it in medical forms [...] if it is spiritual, then we deal with it by way of prayers and other things that will take you out of that situation which you need to be redeemed. Let us treat it but don’t turn it into a human right.”

Hajia Laadi Ayamba (Member of Parliament): “[Homosexuality] is horrible, not acceptable, and I think that we in this House should be the first people to come out to put it right to anybody that is coming out with whatever they want to call it that we will not take it, we represent the people of Ghana, we represent our constituents [and] we would not have been here if men were marrying men or women marrying women.”

Nana Akufo-Addo (President of Ghana): “[L]et me assure that this Government has no plans to change the law on same-sex marriage. We have no authority, and we will not seek any authority to do so.”

UN Voting Record

In 2011, Ghana voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.

In 2014, Ghana was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.

In 2016, Ghana abstained during the vote to adopt the Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

At the session of Third Committee of the UN General Assembly held in November 2016, Ghana voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Ghana voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

Ghana’s NHRI, the Commission on Human Rights and Administrative Justice, does not appear to address SOGIESC issues.

International advocacy and supervision

Universal Periodic Review

In December 2012, the Working Group on Ghana’s 2nd cycle UPR reported the State’s delegation as follows: “Concerning whether Ghana will end its...”

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23 “I am not part of conspiracy to promote homosexuality’ - Akufo-Addo”, Graphic Online, 17 January 2018.
24 “Stay away from us - MPs tell gay lobbyists”, GhanaWeb, 23 May 2018.
25 “You are deformed if you are ‘gay’ - Oquaye to homosexuals”, GhanaWeb, 12 May 2018.
26 “Stay away from us - MPs tell gay lobbyists”, GhanaWeb, 23 May 2018.
31 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
policy of non-equal treatment of homosexuals and transgender (LGBT) people in general (Germany) and how Ghana will apply the principle of non-discrimination in relation to the issue of homosexuality, the Netherlands, the delegation emphasised that Ghana does not have a policy of non-equal treatment of its citizens. The Constitution entrenches the fundamental principles of non-discrimination and equality. It also guarantees the freedom of religion and the rights of persons to practise that religion. The Constitution also provides for the legislature to enact laws that further the social cohesion and economic development of the people.32

In its 3rd cycle of the UPR in 2017, Ghana received 20 SOGIESC recommendations, of which it accepted three, partially accepted one, and noted (functionally rejected) sixteen.

Ghana accepted the recommendations from Czechi, asking to “ensure that victims of discrimination and violence based on sexual orientation and gender identity have access to rehabilitation and remedy and that all perpetrators are punished”; and from Ireland and Italy, urging the State to take steps to protect LGBTI persons from violence and discrimination.33 It partially accepted a recommendation from Colombia, proposing to “continue strengthening the application of the Discrimination Complaint System that allows to protect the rights of people because of their sexual orientation and gender identity, and encourage that the education system include guidelines to prevent discrimination against students”; saying that the second part of the recommendation “limits the scope of the government’s efforts at fighting discrimination at all levels to just the education system”.34

Ghana noted (functionally rejected) all remaining sixteen recommendations, which mainly focused on the need to decriminalize consensual same-sex sexual acts and to take actions to raise awareness on the SOGIESC situation in the country.

Treaty Bodies

In August 2016, the Human Rights Committee (CCPR) expressed concern at the “discrimination, intimidation and harassment” directed at LGBT people, as well as to the State’s laconic response that same sexual activity falls under Section 104 of the Criminal Code. The Committee thus recommended the law be revised and efforts to address discrimination be instituted.35

Special Procedures

In April 2012, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted that discrimination and stigmatisation of people living with HIV/AIDS in Ghana is reinforced through criminalisation of the conduct of populations at risk, namely female sex workers and men who have sex with men.36 He urged Ghana to decriminalise sex work and consensual same-sex sexual acts.37

In October 2018, the Special Rapporteur on extreme poverty and human rights pointed out that LGBT people face human rights violations because they are “perceived to be different”, and remarked that the absence of statistics on LGBTI population and recurrent homophobic statements by politicians and religious leaders are symptoms of the prevailing discriminatory attitudes in the country.38 He stated that the disclosure of their sexual orientation and/or gender identity is likely to lead to them being thrown out of their jobs, schools, homes and even their communities and affirmed that in such context, it is impossible for them to become productive members of the community and therefore they are vulnerable to extreme poverty.39 The Rapporteur recommended that the State decriminalise adult consensual same-sex acts and to provide legal remedies and social services for victims of discrimination based on SOGI.40

34 “UPR-Ghana”, ILGA Website, 17 November 2017, Section I.
35 Concluding observations on the initial reports of Ghana, CCPR/C/GHA/CO/1, 9 August 2016, para. 43-44.
36 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Ghana, A/HRC/20/15/Add.1, 10 April 2012, para. 21.
37 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Ghana, A/HRC/20/15/Add.1, 10 April 2012, para. 60.
Provisions in force

- Penal Code (2016).

**Indecent Acts / Acts against nature**

**Article 274.**

Any indecent act or act against nature committed with an individual of the same sex or an animal will be punished with 6 months to 3 years of imprisonment and a fine of 500,000 to 1,000,000 Guinean francs or with either of those penalties. [...] 

**Public outrage of modesty**

**Article 275.**

Constitutes a public outrage of modesty any intentional act committed in public and capable of offending the modesty or morality of those who involuntarily witness it.

**Article 276**

Any person who commits a public outrage of modesty will be punished with 3 months to 2 years of imprisonment and a fine of 500,000 to 1,000,000 Guinean francs or with either of those penalties. If the act was committed by a group of individuals, the double of the penalties described above must be imposed.

Human rights situation

The atmosphere within which nascent LGBT organising has been happening is both volatile and hostile. Two brief reports published in 2017 document the situation of LGBTI people in the country. Several arrests for alleged "homosexuality" and for "promoting homosexuality" have taken place in the country over the past years, especially in the Conakry area.

Not only have police officers reportedly shown a violent attitude towards those suspected of engaging in same-sex activity, but also and particularly, such violence is found in local communities, forcing members of sexual minorities to hide their sexual orientation. Guinea Muslim leaders such as the Grand Imam of Conakry, and the Imam of the Grand Mosque of ...

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2. Commissariat Général aux Réfugiés et aux Apatrides - Belgique, *L'homosexualité* (2017); Immigration and Refugee Board of Canada, *Guinea: The situation of sexual minorities, including legislation; the treatment of sexual minorities by society and the authorities; state protection and support services available to victims* (2017).
Koloma, Ratoma, have strongly condemned ‘homosexuality’ as well.

**UN voting record**

In 2011, Guinea was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI. Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report), nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate.

At the session of Third Committee of the UN General Assembly held in November 2016, Guinea voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Guinea voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In its 2nd cycle UPR in January 2015, Guinea noted two recommendations from Italy and Argentina to remove discriminatory measures based on SOGI, including criminalisation. The State’s delegation appeared not to have made any comment regarding SOGI. Guinea’s third UPR commences in may 2020.

**Treaty Bodies**

In December 2018, the Human Rights Committee (CCPR) regretted the retention of provisions in the Penal Code criminalising the behaviour of people on the grounds of their sexual orientation, underlined their discriminatory nature, and urged the State to repeal them and take all necessary measures to prevent and address discrimination.

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11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
13 Observations finales concernant le troisième rapport périodique de la Guinée, CCPR/C/GIN/CO/3, 7 December 2018, para. 17.
14 Observations finales concernant le troisième rapport périodique de la Guinée, CCPR/C/GIN/CO/3, 7 December 2018, para. 18.
KENYA

Provisions in force

- The Penal Code (as amended by Act No. 5 of 2003).

### Carnal knowledge against the order of nature

**Section 162.**

Any person who:

(a) has carnal knowledge of any person against the order of nature; or

(b) […] or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony and is liable to imprisonment for fourteen years.

### Attempted acts against the order of nature

**Section 163.**

Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.

### Gross indecency

**Section 165.**

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

Human rights situation

Kenya is one of the States in which forced anal examinations have been carried out to find “proof” of proscribed consensual same-sex sexual acts. Amidst the rise in threats of perpetuating such practices by police officers,¹ NGLHRRC launched an online petition calling on the Director of Public Prosecutions Office to stop involuntary anal and HIV testing as a means of gathering evidence for prosecuting “unnatural offences”.

In September 2017, the Kenya Medical Association resolved to “condemn and discourage any form of forced examination of clients, even in the guise of discovering crimes, and to advise practitioners to always conduct consenting procedures for all clients they examine”. It also vowed to “organise a forum to address the health needs and rights of members of the LGBTIQ community”.²

Cases of mob violence based on sexual orientation and subsequent arrest of the victims have been reported.³ Local media reported that George Barasa, an LGBTI activist who turned his home into a safe housing space for LGBTI people, was

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assaulted by an individual pretending to be homeless gay man.  

LGBTI refugees in Kenya have also been subject to mistreatment, most of which goes undocumented. In May 2017, 17 Ugandan asylum-seekers moved from Nairobi to the Kakuma Refugee Camp in the north of the country and, having complained about police brutality and homophobia, themselves ended up in prison.  

In May 2018, over 600 people attended the first Pride festival at the Kakuma Refugee Camp. However, after the event, threatening messages were delivered.  

In June 2018, the Refugee Coalition of East Africa (RefCEA) was launched in Kenya, serving as a “community-based organisation led for and by LGBTI migrants, refugees and asylum-seekers”. In December 2018, a group of LGBTI refugees and asylum-seekers were again victims of violence at Kakuma Refugee Camp.  

A recent report that revealed an alarmingly high incidence of HIV among men who have sex with men and trans women in Kenya.  

**Existing legal challenges**

**Consensual same-sex sexual acts**

A case (petitions 150 and 234 of 2016) seeking to decriminalise same-sex relations between consenting adults brought forward by NGLHRC, the Gay and Lesbian Coalition of Kenya (GALCK) and the Nyanza, Rift Valley and Western Kenya Network (NYARWEK) reached the Kenya High Court at Nairobi in January 2018 and will be decided on February 22, 2019. Petitioners are arguing that Sections 162 (a) and (c) and 165 of the Penal Code are in breach of the Kenyan Constitution and the African Charter on Human and Peoples’ Rights.  

According to Eric Gitari, Executive Director of NGLHRC, those provisions “are used to justify discrimination, violence, harassment and invasive intrusion on the private lives of [LGBTI people]”.  

**NGO registration**

In April 2015, the High Court of Kenya at Nairobi ruled in favour of the National Gay & Lesbian Human Rights Commission (NGLHRC) in a case concerning the rejection of its registration application on the basis that its name was “unacceptable”, as Kenya’s Penal Code “criminalises gay and lesbian liaisons”.  

**Forced anal examinations**

After a 2016 ruling of Kenya High Court at Mombasa upholding the use of involuntary anal examinations as evidence for prosecuting proscribed same sex sexual relations, in March 2018, the Kenya Court of Appeals at Mombasa ruled the practice unlawful. The case concerned two men subjected to the procedure after being charged of engaging in an “unnatural offence” in February 2015. The “arrests took place in the context of a weeks-long witch hunt [...] after photos and videos circulated on social media showing men [...] engaging in same-sex acts.”  

**Free speech**

In April 2018, the Kenya Film Classification Board banned the film “Rafiki” - about a lesbian relationship - claiming it promoted lesbianism. The ban was judicially lifted for seven days in September (in which the film sold-out in national cinemas), so that it could be submitted for international film awards [the Oscars].
The CEO of the Kenya Film Classification Board, Ezekiel Mutua, asked the NGO Coordination Board to investigate foreign NGOs suspected of “funding homosexuality”. He said, “I am willing and ready to lose my job of heading the moral board in a country where homosexuality is the order of the day. It will destroy even the future generations, which should not be the case. [...] It is high time we stopped this Westernised and good-for-nothing practice”.19

Legal gender recognition

In February 2017, a court ordered the Registrar of Persons to change the name of five trans people in accordance with their gender identity in their identification cards.20

National Human Rights Institution


UN voting record

In 2011, Kenya was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.22

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.23

In 2016, Kenya voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.24 At the session of Third Committee of the UN General Assembly held in November 2016, Kenya voted against the LAC amendment to remove Operative Paragraph 2,25 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Kenya voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its first cycle of the UPR in 2010, Kenya rejected all recommendations related to decriminalisation of same-sex sexual acts.

It is notable that Kenya’s first appearance at its 2nd cycle UPR was in January 2015, where according to the report of the Working Group, Chile and Poland recommended decriminalising “…consenting relationships between adults of the same sex”, and both Denmark and Chile referred to enacting legislation combating hatred, while France and Sweden referenced non-discrimination, and Brazil referenced freedom of association and expression “and rights of LGBT persons”.26

Kenya responded that “it had come through a long period of national dialogue on the new Constitution. Critical social issues were put to the various fora […] particularly the use of criminal law in these cases. These issues were really divisive and the requisite political and social consensus on these issues was a working [sic] progress […]. On the rights of LGBT, not a single individual could confirm the application of the criminal law on the basis of his/her sexual orientation”.27

18 “I’d rather lose my job than promote homosexuality’, says Ezekiel Mutua”, SDE, 5 May 2018.
19 Ibid.
20 “Court orders State to alter names in IDs for five transgender Kenyans”, Justicenow, 15 February 2017.
25 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
27 Id., para. 83.
Kenya’s 3rd UPR review will take place in January 2020.

Treaty Bodies

In March 2016, the Committee on Economic, Social and Cultural Rights (CESCR) expressed its concern over the discrimination, stigmatisation and marginalisation suffered by LGBTI people and called on the State to put an end to it and decriminalise sexual relations between consenting adults of the same sex.28

In 2012, the Human Rights Committee regretted the criminalisation of consensual same-sex sexual acts between adults and the acts of violence, harassment and abuse against LGBTI persons. Therefore, it recommended Kenya to decriminalise, to take the necessary steps to put an end to the social stigmatisation of homosexuality and to send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity.29 The Committee also recommended taking measures to raise awareness on HIV/AIDS with a view to combating prejudices and negative stereotypes against people living with HIV/AIDS, “including homosexuals”, and to ensure equal access to medical care and treatment.30

Special Procedures

In 2018, several mandates received information concerning alleged acts of violence, harassment and discrimination (arbitrary arrests, detention, verbal and physical attacks, lack of access to food, HIV/AIDS-related prevention and care and other basic necessities),31 against LGBT refugees living at Kakuma Camp in Kenya.32

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28 Concluding observations on the combined second to fifth periodic reports of Kenya, E/C.12/KEN/CO/2-5, 6 April 2016, para. 21-22.


31 Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment; Special Rapporteur on the human rights to safe drinking water and sanitation.

32 For more information, see: KEN/9/2018, 21 September 2018.
LIBERIA

Provisions in force


**Sodomy / Deviate sexual intercourse**

Section 14.74. Voluntary Sodomy.

A person who engages in deviate sexual intercourse under circumstance not stated in Section 14.72 or 14.73 has committed a first-degree misdemeanour.

**Relevant definitions**

Section 14.79. Definitions relating to sections on sexual crimes against the person.

In this subchapter:

- "sexual intercourse" occurs upon penetration, however slight; ejaculation in not required;
- "deviate sexual intercourse" means sexual contact between human beings who are not husband and wife or living together as man and wife though not legally married, consisting of contact between penis and anus, mouth and penis, or mouth and vulva.
- "sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying sexual desire.

Human rights situation

In 2012, Liberia proposed amendments to the Domestic Relations Act and the Penal Code respectively. The former sought to ban same-sex marriage and criminalise it as a second degree felony, with punishment of up to five years’ imprisonment. The latter would make same-sex sexual practices a first degree felony under a new Section 14.80 in Chapter 14 of the Penal Code, that is punishable by death or imprisonment for up to 10 years, up from the maximum of 1 year imprisonment.

Though both Bills failed to pass in the House of Representatives, they remained dormant in the upper house. In November 2018, the Committee on Judiciary and Gender revived the proposed introduction of Section 14.80 to the Penal Code.

According to an ICCPR shadow report by a coalition of Liberian LGBT groups in 2017, individuals suspected of engaging in same-sex sexual conduct have been subject to arbitrary arrest and detention. Those detained have complained of verbal and physical abuse, as well as prolonged detention. For instance, a man was...
allegedly detained without trial from 2010 to 2013 after he was “outed” in the media.

A significant source of anti-LGBT sentiment in Liberia is stirred by religious leaders. For instance, a Christian pastor publicly declared in 2018 that he would “not allow anyone or group of people to destroy our country” in response to calls for LGBT equality. During the Ebola crisis in 2014, the Liberian Council of Churches—consisting of over 100 Christian leaders—jointly endorsed a resolution that stated: “Liberians have to pray and seek God’s forgiveness over the corruption and immoral acts (such as “homosexualism”, etc.) that continue to penetrate our society.”

However, it was later reported that the reference to homosexuality was not approved, and Liberian Archbishop Jonathan Bau-Bau Bonaparte Hart published an open letter apologising to “anyone and everyone who was hurt by that statement”. Nevertheless, the claim that Ebola was divine punishment for “homosexuality” has resulted in increased violence towards LGBT people, according to Leroy Ponpon, an LGBT activist in Monrovia. The ICCPR shadow report of 2017 also detailed multiple incidents where LGBT human rights defenders have faced harassment and violence for advocating for rights as they pertain to LGBT people. In November 2016, the Trans Network of Liberia was refused registration as a legal entity by the Liberia Business Registry. The reason for rejection was that the group’s “articles of incorporation includes activity which is not allowed in Liberia”.

Statements by Public Officials

On 19 March 2012, President Ellen Johnson Sirleaf said that she would neither introduce new laws nor repeal existing laws on same-sex sexual intimacy: “We like ourselves just the way we are […] we’ve got certain traditional values in our society that we would like to preserve”. In an open letter of 12 January 2012, Jerome Verdier—former Chairman of Liberia’s Truth and Reconciliation Commission—wrote that “homosexuality” is “anti-Liberian and anti-God” and is “condemnable as an abomination for the nation”. He described a “conspiracy for gay rights” that promotes “legalizing carnality and exemplifying moral corruption and bribery”.

Senator Prince Johnson, during an announcement of his Presidential campaign in September 2016, declared “A government, under our watch, will never ever accept gay rights. Liberia is not Sodom or Gomorrah!”.

National Human Rights Institution

In April 2017, following the rejection of its application for registration the previous November, the Trans Network of Liberia submitted a complaint to the Independent National Human Rights Commission. However, there has reportedly been no response.

UN voting record

In 2011, Liberia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI. Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report), nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate.

At the session of Third Committee of the UN General Assembly held in November 2016, Liberia abstained during the vote to adopt the LAC
amendment to remove Operative Paragraph 2, and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Liberia abstained during the vote to adopt the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

Liberia received 12 recommendations, three of which they accepted, regarding SOGI in their 2nd UPR review in May 2015, concerning criminalisation, non-discrimination. Interestingly, Madagascar, another African Union (UN bloc) member State, made the recommendation to "condemn discrimination", and the US made a call to implement the terms of their new National Human Rights Action Plan, which is inclusive of LGBT people, while Italy’s call for Liberia to "combat all forms of discrimination and abuse against LGBTI persons" were all accepted.

**Treaty Bodies**

In August 2018, the Human Rights Committee (CCPR) expressed concern regarding the worsening situation facing LGBT people and urged the State to decriminalise same-sex sexual conduct between consenting adults, and explicitly reject any form of social stigmatization, discrimination or violence against persons based on their sexual orientation or gender identity. It also recommended the State to investigate and prosecute acts of violence motivated by the victim’s sexual orientation or gender identity, remove any barriers preventing LGBT people from enjoying their rights and guarantee those rights to LGBT individuals, defenders and organisations.

The Committee on the Elimination of Discrimination Against Women made an unusual call in its Concluding Observations in November 2015, recognising the existence of female same-sex couples in Liberia and urged the State to protect the economic rights of women in de facto unions.

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21 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.


23 Concluding observations on the initial report of Liberia, CCPR/C/LBR/CO/1, 27 August 2018, para. 19.

24 Concluding observations on the initial report of Liberia, CCPR/C/LBR/CO/1, 27 August 2018, para. 19.

25 Concluding observations on the combined seventh and eighth periodic reports of Liberia, CEDAW/C/LBR/CO/7-8, 24 November 2015, para. 43.
**LIBYA**

**Provisions in force**

- **Penal Code (1953)** as amended by **Law No. 70 of 1976.**

<table>
<thead>
<tr>
<th>Article</th>
<th>Provision</th>
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<tbody>
<tr>
<td>Article 407(4)</td>
<td>Whoever has [illicit] sexual intercourse with another person with their consent shall be punished along with their partner with imprisonment for a period not exceeding 5 years.</td>
</tr>
<tr>
<td>Article 408(4)</td>
<td>Whoever disgraced the honour of a person with his consent shall be punished along with his partner with imprisonment.</td>
</tr>
<tr>
<td>Article 421</td>
<td>Anyone who commits an act of indecency in a public place will be liable to detention for up to one year and a fine of up to 50 Dinars. The same penalty will apply to anyone who offends public decency by the distribution of writings, pictures or other articles of an indecent nature, or who publicly exposes the same for sale.</td>
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**Human rights situation**

The overthrow of Muammar Qaddafi in 2011 brought about political instability in Libya resulting in the granting of significant power to militias. Several of these militias reportedly conducted arbitrary arrests of men on suspicion of “homosexuality” and subjected them to ill-treatment. Further, in June 2016, ISIS reportedly killed three men for alleged sodomy. Consensual same-sex sexual acts and non-conforming gender expression are socially stigmatised in Libya, and the sparse number of LGBTI activists who are operating are trying to build community mostly online, which they consider “the safest place to do so.”

In May 2017, the media announced that Germany granted asylum to a Libyan LGBTI activist and his partner who are both from Benghazi: a city where people of diverse SOGI are considered an easy target for violent anti-gay militias.

**Statements by public officials**

Libyan delegate to the UN Human Rights Council: “[Homosexuality] affect[s] religion and the continuation and reproduction of the human race.”

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1. “Regarding the Establishment of the Hadd Penalty for Zina and Modifying Some of the Provisions of the Penal Law”. The law of 1976 added a fourth paragraph to Articles 407 and 408 respectively that criminalises consensual same-sex acts.
UN voting record

In 2011, Libya was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Libya voted against the LAC amendment to remove Operative Paragraph 2,7 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Libya voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

National Human Rights Institution

The National Human Rights Institution of Libya is the National Council of Civil Liberties and Human Rights. It was established in 2013 and received ICC accreditation. However, it appears no to be operative.

International advocacy and supervision

Universal Periodic Review

SOGI issues appear not to have been brought up in recommendations to Libya in either of their 1st or 2nd UPR cycles (November 2010 or May 2015).8 However, ARC International, IGLHRC and ILGA made a Joint Submission in 2010, and Amnesty International made mention of SOGI.9

Again in 2015, Amnesty repeated its earlier mention, and a recently-formed (2014) online organisation of LGBT Libyan activists, Quzah, submitted a report on the current SOGIESC situation in Libya, demonstrating how LGBTI Libyans are forced to hide their identities and go without protection from discrimination.10 Libya’s next UPR review will be in May 2020.

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7 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
8 “UPR - Libya”, ILGA Website.
9 ILGA et al., Submission in the UPR review of Libya (2010); Amnesty International, Libyan Arab Jamahiriya Amnesty International submission to the UN Universal Periodic Review (2010).
10 Amnesty International, Libya amnesty international submission for the UN universal periodic review (2015); Quzah Libya LGBT Rights, UPR Review Session of Libya Based on sexual orientation, gender identity or intersex issues (2014).
Provisions in force

- **Penal Code (Cap. 7:01)**

  **Section 153. Unnatural offences.**
  Anyone who:
  (a) has carnal knowledge of any person against the order of nature; or [...]
  (c) permits a male person to have carnal knowledge of him or her against the order of nature,
  shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.

  **Section 154. Attempt to commit unnatural offences.**
  Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.

  **Section 156. Indecent practices between males.**
  Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.

  **Section 137A. Indecent practices between females** (introduced in 2010).
  Any female person who, whether in public or private, commits any act of gross indecency with another female shall be guilty of an offence and liable to a prison term of five years.

Human rights situation

In December 2010, the Malawi Parliament passed a bill amending the Penal Code of Malawi by introducing Section 137A to expand the criminalisation of same-sex sexual acts to women as well.¹

This followed the sentencing of a gay couple to 14 years in prison with hard labour for holding an engagement ceremony in May 2010.² Though the couple was released and pardoned after a visit by the UN Secretary General, the case generated

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increased hostility towards the LGBT community in the country.3

In 2015, President Mutharika had reportedly announced plans to hold a referendum on same-sex marriage, but this was later clarified as “just an opinion”.4 The Marriage, Divorce and Family Relations Act (Marriage Act) of 2015 was also passed that year which states that marriage is a union between two adults of “opposite” gender or sex, and that sex is one’s status at birth.5

In February 2016, a man was attacked, and almost killed, by a mob.6 In December 2016, Christian protesters organised marches in two cities against proposals to decriminalise consensual same-sex sexual acts.7 A 2016 civil society report to the Committee on the Rights of the Child described the serious human rights violations suffered by intersex children as a result of a popular belief that they are malodza (a result of witchcraft), and would become witches or wizards when they grow up.8

A 2018 Human Rights Watch study found that LGBT people face “routine violence and discrimination in almost all aspects of their lives”, including police abuse and arbitrary detention.9

**Statements by public officials**

In 2012, President Joyce Banda, who had promised to repeal anti-sodomy laws after her predecessor passed away, rolled back on this pledge after taking office, noting that “Malawians are not ready to deal with that right now”.10

In 2014, the Secretary General of the Muslim Association of Malawi said that gay people “need to be handed death penalty as a way of making sure that the issue is curbed.”11

In January 2016, the People’s Party (PP) spokesperson and administrative secretary, Kenneth Msonda, wrote on his Facebook that “homosexuals” were worse than dogs and that gays and lesbians were “sons and daughters of the devil”.12 He added, “Arresting them won’t address this problem because sooner or later they are being released on bail. The best way to deal with this problem is to KILL them!” [sic].

**Existing legal challenges**

**Legal challenge against the moratorium on the enforcement of criminalising provisions**

In November 2012, the government announced a moratorium on its laws that criminalise consensual same-sex intimacy, awaiting a parliamentary debate on whether to decriminalise consensual same-sex sexual conduct.13 The moratorium was reaffirmed in 2015 after two men were charged with having sex “against the order of nature” and ordered to be released by Justice Minister Samuel Tembenu.14 However, in February 2016, the High Court in Mzuzu allowed an application by several religious leaders to quash Tembenu’s decision on the basis that it was an “abdication of his constitutional duty”, effectively allowing the police to arrest and prosecute people for consensual same-sex sexual acts again.15

**Constitutionality of anti-sodomy laws**

In November 2013, the Malawi High Court announced that it was planning to review the constitutionality of Section 153 by exercising its own jurisdiction under the Constitution and the Courts Act.16 However, there has not been any development following this announcement.

**Incitement to violence case**

In January 2016, the People’s Party (PP) spokesperson and administrative secretary Kenneth Msonda, was summoned to a magistrate court for a charge of inciting others to violence

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6 Wange Gwede, “Malawi gay man subjected to sickening homophobic attack”, *Nyasa Times*, 9 September 2016.

7 “Thousands march over Malawi’s plans to legalise homosexuality”, *The Journal*, 11 December 2016.

8 Centre for Human Rights and Rehabilitation et al, *The situation of Intersex Children in Malawi* (2016), p. 3


11 Zawadi Chilunga, “Kill the gays’ penalty proposed by Malawi Muslim Association”. *Nyasa Times*, 17 February 2014.

12 “Homosexuals should be killed - Malawi politician”, *news24*, 5 January 2016.


16 “Malawi High Court to review sodomy laws”, *Nyasa Times*, 5 November 2013.
after a complaint was filed in relation to his comments calling on Malawians "to kill gay people." The case was quickly discontinued though a judicial review was then filed by two civil society organisations, the Centre for the Development of People (Cedep) and Centre for Human Rights and Rehabilitation (CHRR). The case finally came to a close in July 2018 after the two groups’ application was dismissed.19

National Human Rights Institution

Malawi has a National Human Rights Institution in accordance with the Paris Principles: the Malawi Human Rights Commission. In 2011, the institution participated in a "Joint NHRI statement on ending acts of violence and related human rights violations based on sexual orientation and gender identity" delivered to the 16th Session of the Human Rights Council in 2011.20

In November 2016, Solicitor-General Janet Banda confirmed that the government had instructed the Malawi Human Rights Commission to conduct public inquiries on LGBT issues.21 However, this move was opposed by both conservative religious groups and LGBT advocacy organisations.22

UN voting record

In 2011, Malawi was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.23 Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),24 nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate.25

At the session of Third Committee of the UN General Assembly held in November 2016, Malawi voted against the LAC amendment to remove Operative Paragraph 2,26 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. However, Malawi did not vote on the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

Of the 18 recommendations concerning SOGI that Malawi received in its 2nd UPR in May 2015, the State accepted two: the first agreeing to "take effective measures to protect" LGBTI persons from violence and to prosecute perpetrators (Austria), and the second guaranteeing "effective access" to health services (Honduras).27

Malawi’s 3rd UPR commences in May 2020.

Treaty Bodies

In 2012, the Human Rights Committee urged the State to decriminalise consensual same-sex sexual acts and conduct awareness-raising campaigns to educate the population on this issue, as well as ensuring that public officials and public authorities refrain from using language that may encourage hatred and violence against them and prosecuting and punishing persons allegedly responsible for such acts of discrimination and violence.28

20 Joint NHRI statement on ending acts of violence and related human rights violations based on sexual orientation and gender identity, delivered during the 16th Regular Session of the UN Human Rights Council.
26 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
28 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Malawi, CCPR/C/MWI/CO/1, 18 June 2012, para. 7.
In 2014, after Malawi finally submitted its initial periodic report, the Human Rights Committee expressed concern that the Human Rights Commission was reluctant to engage in issues related to human rights as they relate to LGBT people. It also reiterated its recommendations for the State to decriminalise consensual same-sex sexual acts, include SOGI as prohibited grounds of discrimination, prevent and prosecute violence against LGBT persons, and guarantee “effective access” to health services for LGBTI people.²⁹

In November 2015, the Committee on the Elimination of Discrimination against Women (CEDAW) welcomed the adoption of the Gender Equality Act that prohibits discrimination. However, it expressed concern about the 2011 amendments to the Penal Code that “criminalizes same-sex relationships between women” and recommended that Malawi envisage decriminalizing same-sex sexual acts between adult women.³⁰

²⁹ Concluding observations on the initial periodic report of Malawi, CCPR/C/MWI/CO/1/Add.1, 19 August 2014.
³⁰ Concluding observations on the seventh periodic report of Malawi, CEDAW/C/MWI/CO/7, 24 November 2015, para. 10-11.
MAURITANIA

Provisions in force


Indecent acts / Acts against nature

Article 308.

Any adult Muslim man who commits an indecent act or an act against nature with an individual of his sex will face the penalty of death by public stoning. If it is a question of two women, they will be punished as prescribed in article 306, first paragraph [Three months to two years imprisonment and a fine of 5,000 to 60,000 UM].

Human rights situation

As stated above, Mauritania’s Penal Code criminalises same sex conduct for both sexes, but with different types of punishment. While adult Muslim men may receive a sentence of “death by public stoning”, women have a lower sentence of between three months to two years imprisonment, and a fine of 5,000 to 60,000 UM. However, the State has observed a “de facto moratorium since 1987” on the death penalty.1

In October 2011, a Mauritanian gay man won asylum in the United States: he reportedly had to hide his identity to “avoid suspicions, beatings, and death by his father, his tribe, and by the Mauritanian government for being gay, for being himself”.2 His legal team explained that a difficulty in the case was finding evidence of the homophobic climate in the country: “One of the difficulties in confronting Mauritania’s violently homophobic law is that reported instances of state or tribal execution are not published. The Mauritanian government and the country’s powerful tribal system often cover up their execution of GLBT individuals, recording other causes of death.”

In November 2011, 14 men were accused of being “homosexuals” and tortured while in custody. According to Amnesty International, they were sent to the police station of Tavragh Zeina in Nouakchott, where they were stripped naked and insulted.3 Some of them were blindfolded and were beaten with electric cables while their hands and feet were tied on their back.

According to a report from HRW, in May 2017 the regional ManiQina network coordinated a multi-country social media initiative, to mark the International Day Against Homophobia and Transphobia.4 Called “Our Colours Are the Crime”, the campaign addressed “persecution, violence in public spaces and on the streets just for existing” in Algeria, Egypt, Libya, Mauritania, Morocco, Sudan, and Tunisia. One of the organisations involved in the campaign was Nouakchott Solidarity Association (Mauritania).

UN voting record

In 2011, Mauritania voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.5 However, as Mauritania was no longer on the HRC in 2014, it did not have a vote in the 2014 Resolution 27/32 (on updating the 2011

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1 See for instance, most recently, Replies to the list of issues in relation to the second CAT periodic report, CAT/C/MRT/Q/2/Add.1, 13 June 2018.
report), nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate. At the session of Third Committee of the UN General Assembly held in November 2016, Mauritania voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Mauritania voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**National Human Rights Institution**

Mauritania has a National Human Rights Institution in accordance with the Paris Principles: the “Commission nationale des droits de l’homme”. It does not appear to address SOGIESC issues.

**International advocacy and supervision**

**Universal Periodic Review**

Both in its 1st UPR (November 2010) and in its 2nd UPR (November 2015) sessions, Mauritania was urged to remove criminalisation of same-sex sexual relations. Importantly, in both the interactive dialogue and in written recommendations in 2015, it received numerous calls to uncouple the death penalty from same-sex sexual behavior. The State addressed the issues of death penalty by mentioning (at para. 54) that the country “had observed a de facto moratorium” for the past 28 years, but did not commit to remove it from the statute. It appears that the issue of criminalising same sex sexual relations was not addressed despite various recommendations. However, the delegation indicated a wish to have the OHCHR work with them in-country (para.16), and: “[t]he delegation emphasised that the Government had cooperated with all partners in developing an action plan against racial discrimination, xenophobia and intolerance and in drafting a national strategy for promoting social cohesion”. Mauritania’s 3rd UPR commences in November 2020.

**Treaty Bodies**

In November 2013, the Human Rights Committee (CCPR) noted with concern that “homosexuality” was still considered to be a crime, punishable by the death penalty in Mauritania and urged the State party to decriminalise, and take the necessary measures to protect the freedom and privacy of the person.

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8 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
11 Concluding observations on the initial report of Mauritania, CCPR/C/MRT/CO/1, 21 November 2013, para. 8.
Provisions in force

- Criminal Code (1838).

Sodomy Section 250(1). Sodomy and bestiality.

Any person who is guilty of the crime of sodomy or bestiality shall be liable to penal servitude for a term not exceeding 5 years.

Human rights situation

In 2007, the Government introduced the Sexual Offences Bill, which would delete the crime of sodomy (see Section 24), and set an equal age limit of 16 years for sexual acts (Sections 11 to 14). However, the bill was never passed in the Parliament, and in 2013 the Government announced its decision to amend the Criminal Code instead, "in order to make better provisions for the criminalisation of various acts of sexual perversion". This was later clarified to refer to such acts as marital rape.

In that sense, currently the crime of sodomy is criminalised in Mauritius, among both same-sex and heterosexual couples. In fact, on 7 December 2016, a local newspaper reported that an individual of 17 years old was convicted for sodomy. In practice, the cases of sodomy that reach the judicial courts are almost all of heterosexual persons, especially as an aggravating factor in divorce cases.

In 2008, Mauritius passed the Equal Opportunities Act with the object to prevent differential treatment based on sexual orientation in the provision of goods, services, or facilities or differential access to opportunities by the State, private sector organisations and other service providers and organisations.

In the section "Personal and Professional Behaviour" of the 2015 "Code of Ethics for Public Officers", non-discrimination on grounds of sexual orientation is listed. Following a complaint to the Equal Opportunities Commission of Mauritius in 2012, the ban on men who have sex with men giving blood was lifted in 2013.

Despite this improvement, in relation to hate crimes, the definition of "racial hatred" adopted by section 282 of the Criminal Code Act 1838 of Mauritius does not mention "sexual orientation" or "sexual identity" as social group, and due to this lack of definition, LGBT victims of hate crimes do not report them at police stations, as reflected in a report by Youth Queer Alliance (YQA).

In 2018, threat of violence against LGBTIQ community in Mauritius caused the organisers of...
the annual Pride March to cancel the event: death threats had been directed at diverse personalities such as journalists, news agencies and even the Attorney General and Prime Minister. Furthermore, the police were not able to ensure the safety of the participants against all "the anti-LGBTI protesters gathering illegally along the parade route", some of them carrying weapons (which is technically forbidden by Mauritius’ law).9

**Statements by public officials**

The failure of the Sexual Offences Bill introduced in 2007, brought support statements, such as the one by Mr P. K. Jugnauth of the Mouvement Socialiste Militant (MSM) party, and current Prime Minister of the Republic of Mauritius, who said that he “opposed the depenalization of consensual sodomy, qualifying it as immoral and saying that Government’s move was a tell-tale sign of a society that was losing its values.”10

**National Human Rights Institution**

According to communications between the Ombudsman and the Research Directorate of the Immigration and Refugee Board of Canada, the Ombudsman of Mauritius said that they can receive complaints based on sexual orientation and gender identity, but they have not dealt with any complaints based on sexual orientation or gender identity since 2012.11

It also claimed that “LGBT people are free to declare their sexual orientation”, and that “no discrimination exists” against LGBT people in the country.

**UN voting record**

In 2011, Mauritius voted in favour of the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.12 In 2014, it was no longer a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/3 on updating the 2011 report),13 nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).14

At the session of Third Committee of the UN General Assembly held in November 2016, Mauritius voted against the LAC amendment to remove Operative Paragraph 2,15 and in favour of the African oral amendment to block the SOGIE Expert at the UNGA Plenary Session on 19 December 2016.

Additionally, Mauritius voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In its its 2nd cycle UPR cycle in 2013, the State of Mauritius received three recommendations (Ireland, Australia and Canada) to decriminalise sodomy, but responded that further consultations on the matter were necessary.16

In its its 3rd cycle of the UPR carried out in November 2018, Mauritius received 15 SOGIESC recommendations. Honduras, Italy, Algeria, Uruguay, Argentina, France, Brazil, Chile, The Netherlands, Australia, Belgium, Canada, Ireland and Iceland proposed, inter alia, to decriminalise consensual same-sex sexual relations, take steps to adapt the legislative framework to fight against the discrimination suffered by the LGBTIQ population, take positive actions for their advancement and to increase awareness of the SOGIESC situation in the country.17

Even though the Netherlands recommended Mauritius to implement policies and programmes to

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9 "Pride leader got hundreds of death threats in just one day in Mauritius. LGBTI advocates received threats of mutilation and execution", Gay Star News, 7 June 2018.
11 Research Directorate, Immigration and Refugee Board of Canada, Ottawa, Mauritius: Situation of sexual minorities, including treatment by society and authorities; state protection and services available, MUS104935.E, 15 August 2014.
15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
protect LGBTIQ from violence, in the summary of
the review process the Netherlands “welcomed the
constitutional provision on equality for all and the
increased tolerance for homosexuality”.\textsuperscript{18}

In an interactive session in Mauritius’ UPR (which is
ongoing at time of writing), Montenegro called on
the government to ensure legal protection for
LGBTIQ persons from all forms of discrimination
based on SOGI. However, there are some indicators
that might suggest that no relevant steps towards
an improvement of the SOGIESC situation will be
taken. Even though Mauritius expressed that “the
judgment of the five-judge bench of the Supreme
Court of India comes at an opportune time and will

go a long way to inspire countries such as Mauritius
to have a fresh assessment of their laws on this
subject matter”,\textsuperscript{19} the State has made no such
indication or announcement on this or any SOGI-
related issue in a concrete manner. In fact, both at
the beginning and the end of Session, the State
pointed out that a need for widespread acceptance
from its population was necessary before amending
its legislation for the decriminalisation of
consensual same-sex sexual relations and
expressed that consultations about this topic were
supposed to be held in early 2019.\textsuperscript{20}


\textsuperscript{19} “UPR-Mauritius”, ILGA Website, 9 November 2018.

MOROCCO - CRIMINALISATION

Provisions in force

- **Penal Code** (26 November 1962).

<table>
<thead>
<tr>
<th>Category</th>
<th>Article</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unnatural acts</strong></td>
<td>489</td>
<td>Any person who commits lewd or unnatural acts with an individual of the same sex shall be punished with a term of imprisonment of between six months and three years and a fine of 120 to 1,000 dirhams, unless the facts of the case constitute aggravating circumstances.</td>
</tr>
<tr>
<td><strong>Public indecency</strong></td>
<td>483</td>
<td>Whoever commits an act of public indecency, whether by nudity or obscenity in his actions, shall be punished by imprisonment of one month to two years and a fine of 200 to 500 dirhams.</td>
</tr>
</tbody>
</table>

Human Rights Situation

Numerous reports of arrests and police intimidation appeared in the recent period with a particularly alarming event recorded in Rabat in March 2016: two men perceived as gay, who had been thrown naked into a public road after a series of beatings and verbal abuse, were then arrested for “homosexuality”; one of them was ordered to pay a fine and sentenced to four months in jail.1

Less than a year later, two men were allegedly arrested after a video showing them having sex began circulating on Whatsapp without their consent, and they were sentenced to six months in prison for “engaging in homosexual acts”.2

LGBTI activists by contacting their families and asking them questions that may end up ‘outing’ them.3 People who are perceived as non-heterosexuals are met with general social hostility, legitimated by public officials’ anti-LGBTI rhetoric,4 and fuelled by negative media coverage of SOGIESC issues.5

Mob attacks have also been documented,6 and forced heterosexual marriage, confinement or eviction from the family home, as well as psychological abuse, have been cited as examples of family responses to LGBTI people coming out.7

Human Rights Watch has also reported that Moroccan authorities are known to intimidate LGBTI activists by contacting their families and asking them questions that may end up ‘outing’ them.5 People who are perceived as non-heterosexuals are met with general social hostility, legitimated by public officials’ anti-LGBTI rhetoric,4 and fuelled by negative media coverage of SOGIESC issues.5

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1 "Prison for victim of Morocco attack, not for attackers", 76crimes Website, 4 April 2016.
3 Human Rights Watch, Audacity in Adversity. LGBT Activism in the Middle East and North Africa (2018), 22.
4 See below: Statements by public officials.
Transgender people are reportedly viewed as mentally ill, and the lack of legal gender recognition restricts their access to services.8

In June 2017, an intersex person was allegedly deported to Morocco after France rejected his asylum application, even though lawyers claimed he was subjected to inhuman and degrading treatment while in detention, and that deportation would put his life at further risk considering the discrimination and violence suffered by LGBTI people in Morocco.9 The UK Home Office,10 and the Danish Immigration Service,11 have published asylum practice guides analysing the current situation of sexual and gender minorities in the country.

In June 2018, Union Feministe Libre (UFL) became the first NGO working on gender and sexuality to be officially recognised in Morocco after more than two years of advocating for the right to registration.12

**Statements by public officials**

Human Rights Minister Mustapha Ramid, 2017: “We are in Morocco, if we keep talking about [homosexuals] we will give them value, [They are] trash.”13

**National Human Rights Institutions**

Morocco has a National Human Rights Institution, in accordance with the Paris Principles: the National Human Rights Council. However, it does not seem to address SOGIESC issues.

**UN voting record**

In 2011, Morocco was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.14

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.15

In 2016, Morocco voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.16

At the session of Third Committee of the UN General Assembly held in November 2016, Morocco voted against the LAC amendment to remove Operative Paragraph 2,17 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Morocco voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

Although there were no direct references to SOGI in Morocco’s 2nd UPR sessions in October 2012, the USA made a recommendation to “Promptly approve the license applications for all civil society organisations that meet legal requirements, including those organisations advocating for minority populations” (para. 39).18

In its 3rd cycle of the UPR carried out in May 2017, Morocco received ten SOGIESC recommendations. The State accepted three of them, partially rejected

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12 “Pride in Morocco”, UFL Facebook Page, 21 June 2018.
17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.
one recommendation, and noted (functionally rejected) the six remaining ones. 

Morocco accepted recommendations by Canada, France and Argentina to take measures to tackle the discrimination suffered by the LGBTIQ community in the country. It partially rejected a recommendation from Spain, asking to “ensure the same rights to all citizens, including those of the LGBTI collective, decriminalizing same-sex relationships and eliminating all discriminatory legislation on the basis of sexual orientation”, arguing that the decriminalisation of same-sex relationships is inconsistent with the national framework.

Finally, it noted recommendations from Ireland, Uruguay, Belgium, Mexico, the Netherlands and Iceland urging the State to decriminalise consensual same-sex sexual relations (in particular, by repealing Art. 489 of the Penal Code).19

The State provided no remarks on these SOGIESC issue during the Session.

Treaty Bodies

In October 2015, the Committee on Economic, Social and Cultural Rights (CESCR) noted that Morocco criminalised consensual sexual relations between same-sex adults and that LGBTI people were subjected to discrimination, stigmatisation and violence.20 It recommended that the State repeal Article 489 of the Criminal Code, combat discrimination and violence on grounds of SOGI and punish the perpetrators of such acts.21

In December 2016, the Human Rights Committee (CCPR) expressed concern about the criminalisation of “homosexuality”, punishable by a term of imprisonment up to three years, the arrests made on that basis and the advocacy of hatred, discrimination and violence against people because of their sexual orientation or gender identity in the country.22 It therefore suggested abrogating Article 489 of the Criminal Code, freeing people in detention solely for having consensual same-sex relations and putting an end to the social stigmatisation of sexual and gender diversity, incitement to hatred, discrimination and violence based on actual or presumed sexual orientation or gender identity.23

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20 Concluding observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4, 22 October 2015, para. 15.
21 Id., para. 16.
22 Concluding observations on the sixth periodic report of Morocco, CCPR/C/MAR/CO/6, 1 December 2016, para. 11.
23 Id., para. 12.
In Namibia, there is no codified sodomy provision, but it remains a crime in the country under the Roman-Dutch common law in force. A report issued by the Ombudsman of Namibia in 2013 specifies that sodomy is defined as “unlawful and intentional sexual relations per annum between two human males.”\(^1\) The definition excludes sexual relations per annum between heterosexual couples, and sexual relations between lesbian women. This definition also does not take into account whether the sexual intercourse takes place in public or in private or whether it is consensual or non-consensual.\(^2\)

Section 299 of the Criminal Procedure Act (2004) makes reference to evidentiary issues on a charge of sodomy or attempted sodomy. Schedule 1 of the Act groups sodomy together with a list of other crimes for which police are authorised to make an arrest without a warrant or to use of deadly force in the course of that arrest, among other aspects (Sections 38, 42, 44, 63 and 112).

Public displays of affection between two men can be considered “immoral” behaviour, which punishable under the Combating of Immoral Practices Act, 1980.\(^3\)

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**Combating of Immoral Practices Act (1980).**

**Section 8.**

*Immoral act*

Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

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**Human rights situation**

Namibia is one of the rare cases in which a provision protecting people from discrimination based on sexual orientation was repealed by a legislative body. As early as 1992, local activists successfully lobbied to include “sexual orientation” among the prohibited grounds of discrimination in the Labour Act. In 2004, a new labour law was discussed in Parliament and the inclusion of the term was a topic of heated debates,\(^4\) resulting in the exclusion of the term from the final text. However, this law never came to force. The Labour Law currently in force was enacted in 2007 and does not include “sexual orientation” among the prohibited grounds of discrimination.

Related to violence and discrimination against LGBTIQ community, a leader of a local NGO claimed that Namibia is generally safe for them, but threats still exist, particularly with law enforcement officials.\(^5\) According to the Ombudsman report, Namibian police officers have been reported to ridicule LGBTI persons when they report cases of abuse, thereby dissuading victims from reporting abuses.\(^6\)

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\(^2\) Ibid.
\(^3\) Ibid.
\(^4\) “Justice Minister scorns homosexuality as ‘criminal’”, The Namibian, 7 May 2004.
\(^5\) “How Safe is the LGBTI Community in Namibia?”, The Namibian, 29 July 2016.
Namibia celebrates LGBTI+ Pride in Windhoek and Swakopmund (Pictures)

In July 2017, human rights organisations in Namibia organised a five-day advocacy event to "celebrate the rich tapestry of Namibian LGBTI lives, while addressing social and policy discriminatory laws, policies and practices", called '#WeAreOne'. On 30 July 2017, the first Pride parade was organised in Windhoek, the country's capital, and advocates urged the government to provide legal protection to couples that live together. On 1 December 2018, the biggest Pride event to date was held. Another event held on 8 December 2018, in the coastal city of Swakopmund, in western Namibia, however received little support from the municipality and the police who hampered the event, although it was still a success.

Statements by public officials

Shortly after he was elected, Dr. Hage Geingob, the President of Namibia, responded aggressively to a question on rights pertaining to LGBT people, asking "Are gays oppressed here? Is there any gay who has been arrested here for being gay?... Why do you create a problem where there is no problem?"

In 2016, Justice minister Albert Kawana said that Namibia would not reform its law on sodomy since 2016, John Walters, the Ombudsman of Namibia, while referring to anti-sodomy legislation said 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?"

He highlighted that the decision to marry is a human rights issue and as an Ombudsman, "I have been appointed to protect people’s human rights, despite people’s choices. If people of the same sex would like to get married, it is their choice, whether the country, the community, churches and government acknowledge that [is something else]".

Existing legal challenges

Though Namibia does not recognise same-sex unions, a same-sex couple (a Namibian and a non-Namibian spouse) was granted permission to enter the country with their son. The couple had applied to the court to issue an interdict that would forbid the Ministry of Home Affairs and Immigration from treating Digashu and the couple’s son as prohibited immigrants under the Immigration Control Act.

The High Court of Namibia ruled that Digashu and their son would not be stopped from entering the
country on a visitor’s visa while the court reviewed their case.20

UN voting record

In 2011, Namibia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.21 However, in both the 2014 Resolution 27/32 (on updating the 2011 report),22 and on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate,23 Namibia abstained (it sat on the HRC in these years).

At the session of Third Committee of the UN General Assembly held in November 2016, Namibia voted against the LAC amendment to remove Operative Paragraph 2,24 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Namibia voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd UPR session in January 2016 the Namibian government rejected five recommendations for decriminalisation and accepted two to do with strengthening of institutional capacities to address violence, and the adoption of measures to combat violence.25

The Namibian delegation stated that, “LGBT persons were not victimized or persecuted for practicing their preferred sexual orientation. Article 13 of the Constitution protects the right to privacy. No person is requested to disclose his or her preferred sexual orientation in any official Government form or document and no person can be refused access to public or private services based on their preference. The laws do not make provision for marriage between same sex adults.”26

Treaty Bodies

In 2016, the Human Rights Committee made substantial recommendations regarding non-discrimination policy and law in key areas, awareness-raising, police ill-treatment, and refoulement of refugees regarding SOGI.27

In 2016, the Committee on Economic, Social and Cultural Rights (CESCR) recommended the Constitutional provision against discrimination be extended to enumerate sexual orientation. Comprehensive anti-discrimination legislation is also called for, as is the call for decriminalisation of sexual relations between consenting individuals of the same sex.28

In November 2016, the Committee Against Torture (CAT) spoke of severe issues regarding detention, harassment, police brutality, sexual violence, stigmatisation, violence, access to justice, and criminalisation.29

Special Procedures

In May 2013, the Special Rapporteur on extreme poverty and human rights urged Namibia to guarantee LGBTIQ individuals’ enjoyment of the right to health, because they were having obstacles to access to condoms.30

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20 “Namibia lets gay man into the country to be with his husband and son”, Gay Star News, 11 January 2018.
24 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
27 Concluding observations on the second report of Namibia,CCPR/C/NAM/CO/2, 22 April 2016.
28 Concluding observations on the initial report of Namibia, E/C.12/NAM/CO/1, 23 March 2016.
29 Concluding observations on the second periodic report of Namibia, CAT/C/NAM/CO/2, 1 February 2017.
Provisions in force


  **Section 214.**
  Any person who-
  (1) has carnal knowledge of any person against the order of nature; or […]
  (3) permits a male person to have carnal knowledge of him or her against the order of nature;

  is guilty of a felony, and is liable to imprisonment for fourteen years.

  **Section 215.**
  Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony and is liable to imprisonment for seven years. The offender cannot be arrested without warrant.

  **Section 217.**
  Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without warrant.

- **Same-Sex Marriage (Prohibition) Act.**
  Passed on 17 December 2013, by the Senate and the House of Representatives and signed by the President on 7 January 2014.

  **Section 1.**
  (1) A marriage contract or civil union entered into between persons of same sex:

  (a) is prohibited in Nigeria; and
  (b) shall not be recognised as entitled to the benefits of a valid marriage.

  (2) A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country is void in Nigeria, and any benefit accruing there-from by virtue of the certificate shall not be enforced by any court of law.
Section 2.

(1) A marriage contract or civil union entered into between persons of same sex shall not be solemnised in a church, mosque or any other place of worship of Nigeria.

(2) No certificate issued to persons of same sex in a marriage or civil union shall be valid in Nigeria.

Section 3.

Only a marriage contracted between a man and a woman shall be recognised as valid in Nigeria.

Section 4.

(1) The registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.

(2) The public show of same sex amorous relationship directly or indirectly is prohibited.

Section 5.

(1) A person who enter into a same-sex marriage contract or civil union commit an offence and are each liable on conviction to a term of 14 years in prison.

(2) A person who registers, operates or participates in gay clubs, societies and organisations or directly or indirectly makes public show of same-sex amorous relationship in Nigeria commits an offence and shall each be liable on conviction to a term of 10 years in prison.

(3) A person or group of persons who administers, witnesses, abets or aids the solemnisation of same-sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations, processions or meetings in Nigeria commits and offence and is liable on conviction to a term of 10 years of imprisonment.

Shariah Law and the Death Penalty in Nigeria

Several Northern Nigerian states have adopted Islamic Sharia laws, criminalising sexual activities between persons of the same sex. The maximum penalty for such acts between men is death penalty, while the maximum penalty for such acts between women is a whipping and/or imprisonment.

Human rights situation

The harsh laws in force in Nigeria and its effects on LGBT people have been widely documented. In fact, Nigeria has been cited as one of the most homophobic countries in the world, not only due to the severity and comprehensiveness of its legislation that criminalises same-sex relations, but also for the discriminatory and violent treatment given to LGBTI people in the form of arbitrary arrests, blackmail, physical and psychological abuse by the police and kidnapping, extortion, harassment, sexual attacks, subjection to conversion therapies, pressure to marry and involuntary outing by family and society members.

LGBTI activism has reportedly grown over the past years and lately there has been room for a couple of initiatives aimed at visibilising the human rights situation of LGBT people in the country through the sharing of personal experiences, such as The Initiative for Equal Rights (TIERs) photo documentary Human, not number, and the collection of first-hand stories from Nigerian queer women entitled She Called Me Woman.

TIERs 2018 report on human rights violations based on SOGIE in Nigeria documented a total of 247 victims and 210 violations. In January, the organisation issued another report showing the results of a survey on social perception of LGBTI people in the country. It revealed that the vast majority of Nigerians (91%) do not believe that people are born "homosexual"; 83% would not be willing to accept a family member who is "homosexual"; 90% support the Same-Sex Marriage Prohibition Act, and think that Nigeria would be a better country without "homosexual"; and 56% say "homosexual" should be denied access to public services.

In March, the High Court in Badagry issued an arrest warrant for a man accused of running an alleged private-members only gay bar. In July, a man was detained on account of his sexual orientation, but later released after being forced to pay a sum of money: an act that human rights activists have identified as extortive. Mass arrests based on people’s real or perceived SOGI have also reportedly taken place throughout the year. LGBTI people also have reputedly been victims of hate crimes.

In September, TIERs, in partnership with the University of Lagos, held what has been recognised as the first national conference on diversity, inclusivity and equality in Nigeria.

The Initiative for Equal Rights (TIERs) 2018 report on human rights violations based on SOGIE in Nigeria documented a total of 286 victims and 213 violations, higher than in the previous year.

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2 “Where are the most difficult places in the world to be gay or transgender?”, The Guardian, 1 March 2017; “Here’s why Nigeria remains one of the most homophobic countries”, NoStringsNG, 4 December 2018.
4 The Bisi Alimi Foundation, Not dancing to their music (2017).
5 “Bisi Alimi on LGBT rights in Nigeria: It may take 60 years, but we have to start now”, The Guardian, 9 February 2016.
6 The Initiative for Equal Rights, Human, not number (2019).
7 “Queer in Nigeria: ‘People don’t think we exist’” (video), BBC, 11 June 2018.
In January, Edo State’s traditional institutions claimed to be helping police on anti-LGBT raids. Mass arrests on the ground of real or perceived SOGI were reported to continue and same-sex prohibition legislation was allegedly passed in Benue and Yobe States.

The risk of blackmail and extortion continues to be high for Nigerian SOGI communities. Hence, the police commissioner and a traditional chief in Delta State pledged to support the efforts of human rights defenders to tackle crimes against men who have sex with men.

Existing legal challenges

NGO registration

On 18 November 2018, the Abuja Division of the Federal High Court dismissed a suit that challenged the Corporate Affairs Commission’s refusal to register the NGO Lesbian Equality and Empowerment Initiatives. The decision was based on Section 30(1)(c) of the Companies and Allied Matters Act which prohibits the registration of an entity whose name is “undesirable, offensive or otherwise contrary to public policy.”

National Human Rights Institution

Nigeria’s National Human Rights Institution, established in accordance with the Paris Principles, is the National Human Rights Commission of Nigeria. It does not appear to address SOGIESC issues.

UN voting record

In 2011, Nigeria voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.

In 2014, it was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.

In 2016, Nigeria voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

At the session of Third Committee of the UN General Assembly held in November 2016, Nigeria voted against the LAC amendment to remove Operative Paragraph 2 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Nigeria voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Regarding Nigeria’s responses to its international human rights law obligations in United Nations fora in relation to SOGI, the country offered ‘no response’ to its 1st cycle Universal Periodic Review recommendations in 2009 to decriminalise and to withdraw its prohibition of same-sex marriage.

In its 2nd cycle in October 2013, the Government rejected all 12 SOGI related recommendations to do with decriminalisation, discrimination, international law obligations and the release of

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16 “Nigeria: Traditional chiefs curse gays, help anti-gay police”, 76crimes Website, 30 January 2018.
18 “Benue Assembly passes Same Sex Prohibition law”, The Sun, 30 May 2018.
20 “Blackmailers force Nigerian student to come out to family”, NoStringsNG, 28 November 2018.
21 “Police and Nigerian chief vow action against anti-gay blackmail”, 76crimes Website, 12 March 2018.
22 “Court throws out suit seeking registration of lesbian group”, Vanguard, 18 November 2018.
26 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
individuals imprisoned because of their sexual practice.28

During its 3rd cycle UPR carried out in November 2018, Nigeria received 13 SOGIESC recommendations. It is due to provide State response prior to or during the 40th Session of the Human Rights Council in March 2019.

Recommendations with regards to decriminalising consensual same-sex sexual acts, fighting against violence suffered by the LGBTIQ community and ending the arrests of people under the provisions of the Same-Sex Marriage Prohibition Act of 2013 were proposed by Italy, France, Uruguay, Austria, Iceland, New Zealand, Belgium, Mexico, Argentina, Chile, Germany and Australia.29

The State alleged that “all attempts to integrate sexual orientation into existing universally recognised human rights have so far failed” and that, “the overwhelming majority of Nigerians objects to same sex relationships based on their deep religious, cultural and moral orientation, against which no government could successful legislate”30. Therefore, it seems unlikely that Nigeria will accept any of the mentioned SOGIESC recommendations.

Treaty Bodies

In July 2017, the Committee on the Elimination of Discrimination against Women (CEDAW) noted with concern the reports of intersecting discrimination and violence against women and girls caused by homophobia31 and recommended that the State take measures to address it.32

Special Procedures

In December 2011, many mandates were provided with information on the passage by the Senate of the Same-Sex Marriage Prohibition Bill,33 a piece of legislation that overtly places obstacles to the exercise of LGBTI people’s human rights.34

Reports voicing concern over its alleged adoption in May 2013 by the House of Representatives35 were received by a handful of mandates.36

In January 2014, several mandates37 were again presented with concerns about the signing of the Same-Sex Marriage Prohibition Bill.38

Approximately two months after that, two mandates39 received information on alleged physical attacks against a group of men on grounds of their actual or perceived sexual orientation and consequent police inaction.40

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29 "UPR-Nigeria", ILGA Website, 9 November 2018.
30 "UPR-Nigeria", ILGA Website, 9 November 2018, Section C.
31 Concluding observations on the combined seventh and eighth periodic reports of Nigeria, CEDAW/C/NGA/CO/7-8, 24 July 2017, para. 43.
32 Concluding observations on the combined seventh and eighth periodic reports of Nigeria, CEDAW/C/NGA/CO/7-8, 24 July 2017, para. 44.
33 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.
34 For more information see: NGA 5/2011, 20 December 2011.
35 For more information see: NGA 4/2013, 13 June 2013.
36 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.
37 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.
38 For more information see: NGA 1/2014, 13 January 2014.
39 Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
40 For more information see: NGA 2/2014, 28 March 2014.
Provisions in force

- Penal Code (1965).

**Improper/Unnatural acts**

**Article 319(3).**

Without prejudice to the more serious penalties provided for in the preceding paragraphs or by articles 320 and 321 of this Code, whoever will have committed an improper or unnatural act with a person of the same sex will be punished by imprisonment of between one and five years and by a fine of 100,000 to 1,500,000 francs. If the act was committed with a person below the age of 21, the maximum penalty will always be applied.

Human rights situation

Hostility against LGBT people is reported to be very strong in Senegalese society, violence appears to be widespread,¹ and the media contributes to stigmatisation and discrimination.²

On 24 December 2015, 11 men were arrested on suspicion of offenses under Section 319. The court released them four days later, but their faces and identities had been shared on social media, stirring huge public homophobia.³ The backlash to their release was led by the Islamic organisation Jamra, a co-founder of the “No to Homosexuality” collective.⁴

In early March 2016, in the context of discussions around Constitutional reform, the President of Senegal was unequivocal that the law penalising same sex sexual relations would never be repealed under his tenure.⁵ Later that month, campus violence broke out concerning a young gay man. Djamil Bangoura, President of LGBTI NGO Prudence, claimed nine similar cases had taken place at Cheikh Anta Diop University in the past four years. He also reported that many gay students have dropped out of school because of these events, and that others have been forced to hide their sexuality to protect themselves.⁶ In September 2018, activists reported the arrest of two men and two women in Dakar for committing “unnatural acts” after videos portraying the couples having sex came into circulation,⁷ and the later imprisonment of two of them.⁸

In early 2018, LGBTI group Arc-en-Ciel Senegal pointed out that the “hunt” for LGBT people in the country had increased as presidential elections approached.⁹ In November 2018, the government spoke once more against the legalisation of same-sex consensual relations between adults.¹⁰

**Statements by public officials**

President Macky Sall: “Never during my tenure will homosexuality be legalized on Senegalese soil”.¹¹

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¹ “I Don’t Go Out During the Day: Inside Senegal’s LGBT Crackdown”, The Daily Beast, 2 June 2018.
⁵ “Macky Sall: ‘Jamais, sous mon magistère, l’homosexualité ne sera légalisée sur le sol sénégalais’” (in French), Senego, 1 March 2016.
¹⁰ “Homosexualité: ‘Le Sénégal rejette toute idée de légalisation’” (in French), SeneWeb, 6 November 2018.
¹¹ “Macky Sall: ‘Jamais, sous mon magistère, l’homosexualité ne sera légalisée sur le sol sénégalais’” (in French), Senego, 1 March 2016.
UN voting record

In 2011, Senegal voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.15 In 2014 and in 2016, Senegal was not a member of Council and, therefore, did not participate in the vote for the adoption of the SOGI Resolutions adopted in those years.13

At the session of Third Committee of the UN General Assembly held in November 2016, Senegal voted against the LAC amendment to remove Operative Paragraph 2,14 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Senegal voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle UPR cycle in 2013, Senegal received 13 SOGI recommendations, seven of them to repeal the above-mentioned article. The Government argued that article 319 must be interpreted as a punishment for "unnatural acts committed in public", and that nobody has been imprisoned for punishment for "unnatural acts committed in public", and that nobody has been imprisoned for

In its 3rd cycle of the UPR (2018), Senegal noted (functionally rejected) all 13 SOGIESC recommendations received. France, Iceland, Israel, Uruguay, Chile, the Netherlands, Australia and Mexico focused their recommendations on taking steps to end the discrimination suffered by the LGBTQ population in the country. Luxembourg, Ireland, the United States and Canada emphasised the need for an end to persecution based on sexual orientation and gender identity. Finally, Australia, Spain and the USA mentioned decriminalisation of consensual same-sex sexual acts.16

The State referred to the SOGIESC situation during the Session, affirming that "nobody has been detained on the grounds of sexual orientation or gender identity and courts have established no jurisdiction over any offense in connection with these matters. People are only convicted when they act in the street, when they commit this crime in the street. And this (homosexuality) is a crime that amounts to indecency exposure".17 Hence, a hostile position towards the LGBTQI community is still being taken by government officials.

Treaty Bodies

In July 2013, the Committee against Torture (CAT) noted with concern the information on several violent arrests based on people's alleged sexual orientation,18 and urged the State to repeal Section 319(3) of the Penal Code, take effective measures to prevent arrests and police violence and ensure that all acts of violence are investigated and that the perpetrators are brought to justice and that the victims obtain reparation.19

Special Procedures

In 2017, the Working Group on the issue of discrimination against women in law and in practice took notice of the violence, stigmatisation and exclusion suffered by lesbian women in Senegal.20

In December 2015, three mandates received information concerning the alleged arrest and arbitrary detention of seven individuals,21 and their conviction for engaging in consensual same-sex conduct.

14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
16 "UPR-Senegal", ILGA Website, 9 November 2018.
17 "UPR-Senegal", ILGA Website, 9 November 2018, Section C.
18 Concluding observations concerning the fourth periodic report of Senegal, CAT/C/SEN/CO/4, 15 May 2018, para. 35 (only in French).
19 Concluding observations concerning the fourth periodic report of Senegal, CAT/C/SEN/CO/4, 15 May 2018, para. 36 (only in French).
21 Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest standard attainable of physical and mental health; Special Rapporteur on the independence of judges and lawyers.
Provisions in force

- Offences against the Person Act (1861).

**Buggery**

**Section 61.**

Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than ten years.

Human rights situation

Reports have demonstrated that LGBT people face a very hostile socio-political climate in Sierra Leone. This has not improved, according to a documentary photographer who interviewed individuals living in Freetown, Sierra Leone’s capital about their daily struggles of being LGBT.

Though the anti-buggery law is not actively enforced, a 2014 shadow report highlighted that it “contributes significantly to the stigma and discrimination of people on the basis of their sexual orientation and gender identity”. This is particularly in the healthcare sector where healthcare professionals have refused treatment or abused LGBT patients after discovering their identities, based on a study conducted by Dignity Association.

LGBTI human rights defenders have often been the target of homophobic attacks. After the brutal murder of Fannyann Eddy, founder of the Sierra Leone Lesbian and Gay Association, in 2004, other activists have also received threats to stop their activism over the years. George Reginald Freeman, founder of Pride Equality International, was forced to seek asylum in Spain in 2014 after facing repeated harassment and violence from both the police and citizen vigilantes.

Statements by public officials

In 2011, in response to former UK Prime Minister David Cameron’s threat to cut aid to countries with poor human rights records on SOGI issues, political and religious leaders came out in opposition. Deputy Information Minister, Sheka Tarawallie said: “it is not possible that we will legalise same sex marriages as they run counter to our culture”.

Bishop Arnold Temple, President of the Methodist Church also declared that “The church in Sierra Leone will do everything possible to protect democracy but our values will not accept the call from British PM, for countries to accept the practice of lesbianism and gayism”.

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8. “Sierra Leone says no to gay marriage”, news24, 11 September 2011.
In 2014, in response to the World Bank’s sanction of a loan to Uganda over its anti-gay law, Sierra Leone’s President Ernest Koroma said, “We have to ensure that the communities are sensitised well enough. It is not right for issues to be imposed lock, stalk and barrel from the international world.”

However, he also cautioned that following such “engagement”, the consensus of the African people must be respected: “When a country arrives at a consensus, I think the country should be led by what it believes is right for the country and not what is necessarily right for the international community because of the variations in our traditions.”

**National Human Rights Institution**

The Human Rights Commission of Sierra Leone has claimed to lack authority to protect or promote LGBT rights. Communication Officer of the Commission, Henry Sheku, stated in a 2011 radio interview that “the law of Sierra Leone does not give the Commission mandate to advocate and support LGBTI human rights.”

**UN voting record**

In 2011, Sierra Leone was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council. Elected onto the HRC commencing 2013, Sierra Leone abstained on the 2014 Resolution 27/32 (on updating the 2011 report). As it was no longer on the HRC in 2016, it did not participate in the adoption of Resolution 32/2 which created the mandate of the independent Expert on SOGI.

At the session of Third Committee of the UN General Assembly held in November 2016, Sierra Leone did not vote on the LAC amendment to remove Operative Paragraph 2, yet voted in favour of the African oral amendment to block the Independent Expert on SOGI at the UNGA Plenary Session on 19 December 2016. Further, Sierra Leone voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In its 2nd UPR in 2016, four States urged Sierra Leone to repeal the 1861 Act (decriminalise), while five contain language urging non-discrimination or anti-stigmatisation initiatives. The Sierra Leone delegation ‘noted’ (functionally rejected) all recommendations. Sierra Leone’s 3rd UPR begins in January 2021.

**Treaty Bodies**

In April 2014, the Human Rights Committee urged Sierra Leone to review its legislation to ensure that discrimination on the grounds of sexual orientation and gender identity is prohibited, including by decriminalizing same-sex sexual acts.

**Special Procedures**

In June 2013, several mandates expressed concern regarding the physical attack and death threats against George Reginald Freeman for his LGBT advocacy work. They noted that these attacks and threats “could be directly motivated to [sic] his peaceful and legitimate activities in defence of the rights of LGBTI people in Sierra Leone.”

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9 “Sierra Leone president cautions western countries, World Bank over anti-gay law”, Vanguard, 1 March 2014.
11 “Sierra Leone LGBTI Activists Suffer After Radio Appearance”, ILGA (website), 15 November 2011.
15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.
17 Concluding observations on the initial report of Sierra Leone, CCPR/C/SLE/CO/1, 17 April 2014.
18 They are: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.
19 For more information, see UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) SLE 1/2013, 20 June 2013.
Provisions in force

- **Penal Code** (Legislative Decree No. 5/1962).

  **Carnal intercourse with a person of the same sex**

  **Article 409. Homosexuality.**
  Whoever has carnal intercourse with a person of the same sex shall be punished, where the act does not constitute a more serious crime, with imprisonment from three months to three years. Where the act committed is an act of lust different from carnal intercourse, the punishment imposed shall be reduced by one-third.

  **Security measures**

  **Article 410. Security Measures.**
  A security measure may be added to a sentence for crimes referred to in Articles 407, 408, and 409.

  **Incitement to lewd acts**

  **Article 406.**
  Whoever, in a public place or a place open to the public, incites anyone to lewd acts, even in an indirect manner, shall be punished, where the act does not constitute a more serious offence, with imprisonment up to one year or with fine up to Sh. 2,000.

Human rights situation

The political situation in Somalia has been complicated since the fall of the dictator Mohamed Siad Barre in 1991, and the appropriate enforcement of the national Penal Code is questionable. However, Somaliland in the north has declared itself independent, and it still applies the Penal Code. However, further south and central in the country, as recorded in Christman’s 2016 report, “Al-Shabaab’s beliefs stem from a Salafi-Wahhabi strand of Sunni Islam (an ultra-conservative movement within Sunni Islam).

They enforce a strict interpretation of Shariah law. Shariah law explicitly forbids “homosexuality”; the punishment for those ‘found guilty’ is at a judge’s discretion, and may be punished by death.”

UN Human Rights Council report noted the use of the death penalty in parts of the country. A 2013 media report interviewed gay Somali refugees who described the violent hostility against LGBT people. One interviewee said, “I have no doubt all gays, lesbians, HIV/AIDS positive people and other minorities will be killed. It will be a massacre.”

A gay teen was allegedly stoned to death in March 2013 in front of a crowd of villagers after he was tried and convicted of sodomy by an al Shabaab judge.

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1 “Gay Teen Allegedly Stoned To Death In Somalia For Sodomy”, HuffPost, 21 March 2013.
4 Noor Ali, "Gay Somali refugees face death threats", Al Jazeera, 8 July 2013.
5 Meredith Bennett-Smith, "Gay Teen Allegedly Stoned To Death In Somalia For Sodomy", Huffington Post, 21 March 2013.
Writing in 2014, the Somali artist and writer Dirieye Osman, now resident in the UK, says to come out in Somalia one must be prepared for, “...physical abuse, ceaseless harassment, imprisonment or death”. Osman’s own family threatened him with violence upon learning that he is gay. In early 2017, it is reported that al Shabaab (a militant group allied to al-Qaeda) murdered two individuals on account of their sexual orientation.

In 2016, a 22-year-old Somali woman was scheduled to be killed before she managed to escape to Uganda. This occurred after an acquaintance had outed her, which led to harassment and threats from others in the community: she had also been beaten by four men after school one day.

**National Human Rights Institution**

Somalia does not have a National Human Rights Institution in accordance with the Paris Principles.

**UN voting record**

Somalia was not a member of the Human Rights Council between 2011 and 2016 and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Somalia abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2 and voted in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Somalia did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In its 2nd UPR in early 2016, Somalia appears to have received only one recommendation (Canada) regarding SOGI: “Address widespread impunity—including for attacks against journalists, civil society and human rights defenders, women and LGBTI persons—by conducting timely and impartial investigations, investigating threats of violence, and prosecuting perpetrators”. The State ‘noted’ this recommendation, and no other comment was recorded in the Working Group’s report.

Somalia’s 3rd UPR is scheduled to begin in January 2021.

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8 Catrina Stewart, “Young Somali activist sentenced to death for being a lesbian”, Independent UK, 30 January 2016.


10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

Provisions in force

- **Penal Code** Act No. 9 of 2008 (Feb. 10, 2009).

  **Carnal intercourse against the order of nature**

  **Section 248. Unnatural Offences.**

  (1) Whoever, has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him or her commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years and may also be liable to a fine. [...]  

  *Explanation:* Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

Human rights situation

**Article 14 of the Transitional Constitution of the Republic of South Sudan** does not guarantee equality on the basis of sexual orientation, while Article 15 specifies that the right to marry applies to heterosexual marriages. This negation in law reflects the attitude of the State’s leaders, as seen in their statements (below), their inaction, and in more general social sentiments.¹

Religious leaders are highly respected in the State, and many Christian leaders have criticised “homosexuality” as a “perversion”.² For instance, Pastor Manasseh Maring of Christ Ministries South Sudan rebuffed the Archbishop of Canterbury Justin Welby’s 2016 public apology to LGBT people by saying that “we are not going to sin against God by blessing same-sex relationships in our churches”³.

In 2017, an Amnesty International researcher reported on the situation: “No one can be openly homosexual in South Sudan. Given the lawlessness, it’s the kind of place where you could easily end up dead because your actual or perceived sexuality.”⁴

In August 2018, LGBT human rights defenders had to flee the country after facing threats from the State’s national security forces.⁵ Members of Access for All (AfA) were arrested and arbitrarily detained for conducting health education, and the group’s office was shut down by the authorities in December 2017 on the basis that they were promoting “homosexuality”.

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¹ “South Sudan youth object to same-sex marriage”, Sudan Tribune, 30 April 2012.
⁴ Joe Morgan, “South Sudan says it will consider stop using child soldiers as long as it can still kill gay people”, Gay Star News, 31 March 2017.
⁵ “LGBT Activist Flees South Sudan Amid Threats From National Security Operatives”, The Tower Post, 23 April 2018.
Statements by public officials

Upon independence in 2011, President, Salva Kiir Mayardit declared that his promise of equality would not be extended to lesbians and gays. He had earlier said that LGBT recognition was “not in our character” and “if anybody wants to import or to export it to Sudan, I will not get the support and it will always be condemned by everybody.”

In 2012, James Mawut Lueth, a member of South Sudan’s governing Sudan People’s Liberation Movement, said in a news interview: “Our culture condemns in the most serious terms same sex marriage, so also our religions, Christianity and Islam in particular. This is premised on the principle that the human race must guarantee the production and reproduction of human beings.”

In a 2017 radio interview, Justice Minister had said that “same-sex marriage is in conflict with our national laws and our cultures.”

National Human Rights Institution

South Sudan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, South Sudan was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI. Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report), nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate.

At the session of Third Committee of the UN General Assembly held in November 2016, South Sudan did not vote the LAC amendment to remove Operative Paragraph 2, and voted in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, South Sudan did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

South Sudan achieved its independence from Sudan on 9 July 2011, three months after Sudan’s 1st cycle UPR. Therefore, South Sudan did not in fact get an independent first review. At the 2nd cycle UPR, South Sudan’s first review was reported on in November 2016.

It appears that no civil society organisations raised SOGI issues in their submissions to South Sudan, and only Uruguay made a recommendation to decriminalise same-sex sexual acts between consenting adults. In its responses, the State indicated that Uruguay’s and other recommendations were “in conflict with the national laws, government structures, policies or customs.”

South Sudan’s next URP process begins in November 2021.

6 Paul Canning, “South Sudan, world’s newest country, off to bad start on LGBT rights”, SDGLN, 14 July 2011.
7 “South Sudan youth object to same-sex marriage”, Sudan Tribune, 30 April 2012.
12 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Provisions in force

- **Penal Code** (Act No. 8, 1991).

**Sodomy / Recidivism**

**Section 148. Sodomy.**

1. Any man who inserts his penis or its equivalent into a woman's or a man's anus or permitted another man to insert his penis or its equivalent in his anus is said to have committed Sodomy.

2. (a) Whoever commits Sodomy shall be punished with flogging one hundred lashes and he shall also be liable to five years imprisonment.
   
   (b) If the offender is convicted for the second time he shall be punished with flogging one hundred lashes and imprisonment for a term which may not exceed five years.
   
   (c) If the offender is convicted for the third time he shall be punished with death or life imprisonment.

**Gross indecency**

**Section 151. Indecent Acts.**

Whoever commits an act of gross indecency upon the person of another person or any sexual act which does not amount to Zina or Sodomy shall be punished with not more than forty lashes and shall also be liable for imprisonment for a term which may not exceed one year or fine.

**Qadhf**

**Section 157. Qadhf (Casting Accusation of In chastity).**

1. Whoever imputes to any honourable living or dead person by express words, implicitly, by writing or indicative signs accusation of Zina or Sodomy or illegitimacy is said to commit Qadhf.

2. A person is said to be honourable (Chaste) if he has not been convicted for Zina, Sodomy, Rape, Incest or Practising Prostitution.

3. Whoever commits Qadhf shall be punished with flogging eighty lashes.

**Human rights situation**

In 2006, Freedom Sudan, a LGBT organisation was set up, and the group runs an online forum to provide support and advice to LGBT people in the country. In 2010, it was reported that 19 men were lashed 30 times and fined for allegedly cross-dressing and "behaving like women" at a private party. A 2011 article explained that sexual behaviour is closely linked to the concept of honour, which results in honour killings and strong hostility towards any public discussion of "homosexuality" as it is regarded as linked to "sexual harassment, child abuse, class hatred and..."
marital infidelity”. In addition, laws on gender policing and same-sex behaviour are often used against political opponents, such as in the case of journalist Lubna Hussein who was arrested and jailed for wearing trousers.

Since 2012, Rainbow Sudan runs an online magazine on LGBT issues. Its editor explained that “to understand the gay community in Sudan you have to understand the religious factor here... it is a big taboo and regarded one of the biggest sins possible.” He added: “we are just at the very first steps to start discussing about homosexuality. We move at the pace of a baby. Currently the country is not ready to open up to LGBTQ issues, but we have not lost hope of succeeding.”

In 2016, the Mesahat Foundation for Sexual and Gender Diversity released a booklet documenting the stories and daily struggles of LGBT Sudanese. It reported that many LGBT Sudanese leave the country to seek safety and those who are unable to do so must “withstand the physical, psychological, and emotional abuse.” Contributors to the report received death threats, suffered homophobic attacks and discrimination from family members, at the workplace and in school when they are outed or perceived to be LGBT. In addition, a short video on LGBT life in Sudan was released, illustrating an underlying brutality in social attitudes towards sexual and gender diversity.

**National Human Rights Institution**

The Sudan National Human Rights Commission was established in 2012, though key leadership positions were only recently filled. The Commission does not appear to have carried out any work in relation to SOGI.

**UN voting record**

Sudan was not a member of the Human Rights Council in 2011, 2014 or 2016 and, therefore, did not vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Sudan voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session. Additionally, it voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In its 2nd cycle review in May 2016, Sudan ‘noted’ (rejected) 2 recommendations to prevent discrimination based sexual orientation, Sudan’s 3rd UPR commences May 2021.

**Treaty Bodies**

In 2007, the Human Rights Committee emphasised that the use of the death penalty for consensual same-sex acts, was incompatible with the ICCPR. In 2018, the HRC reiterated its concern about the persistence of discriminatory provisions. It also urged for the repeal of the sodomy law, the use of flogging and the death penalty.

In 2015, Committee on Economic, Social and Cultural Rights (CESCR) urged Sudan to amend discriminatory provisions and to punish SOGI-based acts of discrimination.

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6 Ibid.
8 Mesahat Foundation for Sexual and Gender Diversity, LGBT Voices from Sudan: Recording a Past, Building a Future (2016).
9 "Queer Voices From Sudan...What is it like to be Queer in Khartoum?", Mesahat Youtube Channel, 30 January 2017.
11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4. Draft report of the Working Group on the Universal Periodic Review Sudan, A/HRC/WG.6/25/L.5, 19 May 2016.
13 Id., para. 16.
15 Id., para. 16.
16 Concluding observations on the second periodic report of the Sudan, E/C.12/SDN/CO/2, 27 October 2015, para. 20.
## Provisions in force


### Carnal knowledge against the order of nature

#### Section 154. Unnatural offences.

1. Any person who:
   - a. has carnal knowledge of any person against the order of nature; or
   - c. permits a male person to have carnal knowledge of him or her against the order of nature,

   commits an offence, and is liable to imprisonment for life and in any case to imprisonment for a term of not less than thirty years.

### Attempted unnatural offence

#### Section 155. Attempt to commit unnatural offences.

Any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term of not less than twenty years.

### Gross indecency (between males)

#### Section 157. Gross indecency.

Any male person who, whether in public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person, with himself or with another male person, whether in public or private, commits an offence and is liable to imprisonment for five years.

### Gross indecency (gender neutral)


Any person who, in public or private commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, commits an offence and is liable on conviction to imprisonment for a term of not less than one year and not exceeding five years or to a fine not less than one hundred thousand shillings and not exceeding three hundred thousand shillings.

Section 145.
Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to a term not exceeding five years or to a fine not exceeding 500,000 shillings.

Human rights situation

Respect for the rights of LGBTI people has declined markedly in recent years. In mid-2016, the government launched a crackdown on LGBT communities that has been escalating ever since.1

Harsh anti-homosexuality legislation together with State-representative’s hostile public statements, social media persecution,2 widespread arrests, forced anal examinations,3 raids and threats of deregistration against NGOs for “promotion” activities,4 bans on the import and sale of lubricants—a safer sex commodity listed by the government as “encouraging” same-sex sexual activity5—suspension of HIV/AIDS programs for gay men,6 and shutdown of drop-in centres and private clinics that provide services to key population, have led LGBTI people to conceal their identities.7 As a result, fewer voices being able to openly speak up against such oppression. It has also limited their access to HIV/AIDS prevention, testing and treatment.8

In February, Deputy Health Minister Hamisi Kigwangalla ordered three men accused of “advocating for sodomy” through social networks to report to police.9 The following week, the government banned 40 private health centres providing HIV-related services because, according to Health Minister Ummy Mwalimu, they were “promoting homosexuality”.10 A few days later, Kigwangalla informed that authorities were investigating an alleged “homosexuality syndicate” and announced plans to publish a list of gay people offering sex services online with the intention of arresting them and use them to obtain more information about people engaged in same-sex activities.11 A week after, he backtracked claiming the issue would be dealt with differently for “strategic reasons”.12

Human rights defenders warned about the rise of violence against LGBTI people that outing members of the community would cause.13 Acting on Kigwangalla’s orders, police in Dar es Salaam arrested a 19-year-old man suspected of “homosexuality” based on his Instagram posts and subjected him to an anal exam.14

In early July, following a series of anti-LGBTI statements and threats of LGBTI NGOs deregistration, and persecution or deportation of human rights defenders from top officials, organisations worldwide called on Tanzania to “end

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3 “Inside Tanzania’s AIDS-enhancing anti-LGBT crackdown”, 76crimes, 10 April 2017.
4 “In an apparent crackdown, Tanzania government raids NGO meeting on reproductive rights”, Devex, 6 January 2017.
5 “Tanzania bans lubricant in bid to ‘curb homosexuality’”, Independent, 23 July 2016.
6 “Tanzania suspends some HIV programs for gay men, says health minister”, Reuters, 31 October 2016.
11 “Tanzania threatens to publish ‘gay list’”, Deutsche Welle, 18 February 2017.
12 “Tanzania: Outing of gay people cancelled at the last minute”, Mambaonline, 28 February 2017.
13 “They are killing the LGBT community’ says Tanzanian activist”, Mambaonline, 27 February 2017.
14 “Teen posted on Instagram and the next thing he knew, a doctor was invading his body”, The East African, 1 June 2017; Human Rights Watch, World Report 2018 (2017), 544-545.
its hostile rhetoric toward civil society groups and threats to obstruct their work."  

On September 15, Zanzibar police arrested 20 people for alleged "homosexuality" at a workshop aimed at addressing stigma and discrimination in the family with regard to HIV/AIDS. All but two staff members of the NGO which organised the workshop were released without being charged. Pan Africa ILGA and the Centre for Human Rights of the University of Pretoria strongly condemned the action and called to "unconditionally release the two NGO staff members".

On October 17, Dar es Salaam police raided a workshop aimed at discussing the possibility of legally challenging HIV policies in Tanzania and detained 13 human rights lawyers and activists for "promoting homosexuality." The Initiative for Strategic Litigation in Africa (ISLA) and Community Health Services and Advocacy (CHESA), the NGOs in charge of the organisation of the meeting, stated in a joint press release that the police operation was "an attempt to intimidate citizens from approaching judicial institutions when their rights have been violated, to create an environment where lawyers are afraid to provide legal representation and to ultimately create an environment where it is unthinkable to hold the state accountable for human rights violations."  

In December 2017, police in Dar es Salaam arrested a woman over a widely shared online video showing her and another woman kissing and embracing at a party. In May 2018, 65 civil society groups called on the government to address the "worrying decline in respect for human rights", identifying persecution of LGBTI human rights defenders as a main concern.

On October 29, Regional Commissioner for Dar es Salaam Paul Makonda announced plans to form a task force to identify and arrest LGBTI people and asked members of the public to collaborate by reporting suspected gay people. Human rights organisations strongly condemned the move. The European Union criticised the human rights situation in Tanzania and claimed it would revise its relations with the country, and UN High Commissioner for Human Rights warned about it turning into a "witch-hunt" and being "interpreted as a licence to carry out violence, intimidation, bullying, harassment and discrimination against those perceived to be LGBT". She also called for a review of laws criminalising consensual same-sex sexual acts. Following her declaration, the Ministry of Foreign Affairs and East African Cooperation issued a statement distancing the government's position from Makonda's.

However, many activists and non-activists remain afraid and alert. That same day, 10 men were arrested on "homosexuality"-related charges at a same-sex wedding in Zanzibar. They were to face anal examinations, but ended up being released on bail a few days later. Also, community based

15 "Tanzania vows to arrest those 'protecting' gay interests", Agence France Presse, 26 June 2017; "Tanzania threatens crackdown on LGBT advocates", Reuters, 26 June 2017; "Tanzania's president is cracking down on LGBTQ rights, He says cows would approve", Vox, 28 June 2017; "Tanzania: Stop Threatening Rights Groups", Human Rights Watch, 6 July 2017.
21 "Tanzania: Civil society groups express concern over rapid decline in human rights", Civicus, 10 May 2018.
24 "EU reviews relations with Tanzania over homosexuality crackdown", Reuters, 5 November 2018.
26 "Paul Makonda: The fight against homosexuals in Dar es Salaam is not the official stance" (in Swahili), BBC, 5 November 2018.
28 "Gay witch-hunt sparks fear and panic in Tanzania's LGBT+ community", Reuters, 1 November 2018; "Tanzania's LGBT community 'fearing for their lives'", CNN, 5 November 2018; "Tanzania: One transgender woman's pain amid fears of arrest", Amnesty International, 9 November 2018; "As Tanzania's LGBT fear for their lives, HIV will thrive", CNN, 1 December 2018.
29 "Tanzania: 10 men arrested in Zanzibar for 'being gay'", Amnesty International, 6 November 2018.
30 "Men suspected of 'being gay' in Zanzibar released on bail - police, lawyer", Openly, 8 November 2018.
HIV prevention programs for gay men were suspended for allegedly “promoting homosexuality”.31

By the end of the month, the intensification of the clampdown on SOGI-related activity had cast a shadow over foreign aid. The Canadian government, one of Tanzania’s main sources of development funding, voiced its concern about the situation of LGBTI people in the country.32 After cancelling visiting missions to the country because of discrimination and harassment against LGBTI people,33 the World Bank withdrew a $300m loan.34 On the very same day, Denmark announced it would withhold $9.88m aimed at the Tanzanian government due to “negative developments” and “unacceptable homophobic statements”, and give it to human rights organisations instead.35

Finance Minister Philip Mpango considered accepting gay rights an “intolerable” condition for aid.36 President Magufuli said he preferred financial assistance from China because it was “not tied to any conditions”.37 Anthony Oluoch, former Program Manager for Pan Africa ILGA, suggested that “[i]n a global community rife with power-imbalances [...] [t]here should be no manipulation of the global aid system to try to bring about change”. Recalling that aid “goes to improving the lives of LGBT+ people”, he stated that “[i]f sending a message to the world community comes at the detriment of the section of the society they are trying to protect then that message does not need to be sent” and urged to support activists on the ground.38

Statements by public officials

President John Magufuli: “Those who teach such things [advocating LGBTI equality] do not like us, brothers. They brought us drugs and homosexual practices that even cows disapprove of”.39

Deputy Health Minister, Hamisi Kigwangalla: “The war against promotion and normalization of homosexuality in Tanzania is real. I commend recent efforts by the police force on our cause”;40 “[We must] fight with all our strength against groups supporting homosexuality in our country”;41 “I will publish a list of gay people selling their bodies online. [...] Those who think this campaign is a joke are wrong. The government has long arms and it will quietly arrest all those involved. Once arrested, they will help us find others”.42

Regional Commissioner for Dar es Salaam, Paul Makonda: “We will do away with all NGOs in our region of Dar es Salaam that accept aid that comes with homosexuality related conditions. [...] If a homosexual has an Instagram account, all those who ‘follow him’ it is very clear that they are just as guilty as the homosexual. [...] There is no [religious] writing that allows [homosexuality], our country’s laws do not allow this. [...] If God has forbidden, if the nation’s Constitution has forbidden, we cannot continue to turn a blind eye”.43 “I prefer to anger those countries [that condemn Tanzania’s crackdown on LGBTI people] than to anger God”.44

Ministry of Foreign Affairs and East African Cooperation: “the government [...] wishes to clarify that Mr. Makonda was only airing his personal opinion [concerning LGBTI people] which does not represent the official position of the United Republic of Tanzania. [...] The United Republic of Tanzania will continue to respect and uphold all human rights as provided for in the country’s constitution”.45

National Human Rights Institution

Tanzania’s NHRI, the Commission for Human Rights and Good Governance, does not appear to address SOGIESC issues.

31 “Tanzania suspends some HIV programmes for gay men, says health minister”, Reuters, 31 October 2018.
34 “Freeze aid to Tanzania over rights violations, campaigners say”, Openly, 15 November 2018.
35 “Denmark withholds aid to Tanzania over homophobia”, The Local, 16 November 2018.
36 “Tanzania says it won’t accept gay rights as donors pull cash”, StarTribune, 14 November 2018.
38 “Withholding aid to Tanzania is a bad idea”, Openly, 26 November 2018.
39 “Tanzania vows to arrest those ‘protecting’ gay interests”, Agence France Presse, 26 June 2017.
40 Hamisi Kigwangalla, Twitter, 5 March 2017.
42 “Tanzania threatens to publish ‘gay list’”, Deutsche Welle, 18 February 2017.
43 “Three things that have been banned by RC Paul Makonda” (video), Fun-Lugha YouTube Channel, 7 July 2016.
UN voting record

In 2011, 2014 and 2016, Tanzania was not a member of the Human Rights Council and, therefore, did not participate in any of the votes for the resolutions on SOGI adopted by the Council.46

At the session of Third Committee of the UN General Assembly held in November 2016, Tanzania voted against the LAC amendment to remove Operative Paragraph 2,47 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Tanzania voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Tanzania ‘noted’ three recommendations to decriminalise and provide equal opportunity legislation across its civil code in its 1st cycle UPR in 2011. Although there were no recommendations for same-sex marriage given, in its responses to recommendations the delegation for Tanzania mentioned, “Tanzania had no law on same-sex marriage, as the practice of homosexuality went against its traditional, cultural and religious rights. Homosexuality was illegal and punishable by law”.48

At its 2nd cycle UPR in May 2016, Tanzania received six recommendations regarding decriminalisation, non-discrimination and access to justice, health and rights to assembly and expression. The delegation ‘noted’ (functionally rejected) all of them.49 The next UPR of Tanzania will take place in May 2020.

Treaty Bodies

In 2015, the Committee on the Rights of the Child (CRC) showed concern about reports that attitudes towards the sexual orientation of HIV-infected children prevent these children from seeking and receiving proper HIV services and community health services.50 It thus urged Tanzania to ensure access to proper HIV services and health services for all children, regardless of their sexual orientation and engage in public education campaigns to combat discriminatory attitudes towards children on the grounds of their sexual orientation”.51

Special Procedures

In 2017, several mandates52 were presented with a report concerning the arrest and detention of 13 people (including human rights lawyers and LGBTI activists) for “promoting homosexuality” while participating in consultations on possible strategic litigation challenging HIV policies in Tanzania.53 In 2018, a number of mandates54 received information about alleged restrictions to civic space in Tanzania, particularly of LGBT people and defenders of their human rights.55


47 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


50 Concluding observations on the combined third to fifth periodic reports of the United Republic of Tanzania, CRC/C/TZA/CO/3-5, 3 March 2015, para. 56.

51 Ibid.

52 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.

53 For more information, see: TZA 4/2017, 7 November 2017.

54 Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

55 For more information, see: TZA 3/2018, 9 July 2018.
TOGO

Provisions in force

- **Penal Code** (as amended in 2015 by Law No. 2015-010 of 24 November 2015).

**Indecent or unnatural acts (affront to good morals)**

**Article 392.**

Indecent or unnatural acts committed with a person of the same sex constitute an affront to good morals. Any attack on public morality by words, writings, images or by any other means also constitutes an affront to morality.¹

**Legal barrier to freedom of expression**

**Article 394.**

Anyone who:

1. publicly exposes, manufactures or sells for public display objects, images, films, sound recordings or visual audio, contrary to decency;
2. distributes or causes to be distributed on the public highway or by post, or door-to-door or electronically all books, brochures, catalogues, prospectuses, images, films, sound recordings or audio visuals contrary to decency, without the prior consent of the recipients;
3. distributes or publicly disseminate incentives for practices contrary to good morals by words, writing or any other means of communication.

shall be punishable by imprisonment from six (06) months to two (02) years and a fine of five hundred thousand (500,000) to two million (2,000,000) CFA francs or one of these two penalties.

Human rights situation

The law criminalising “unnatural acts between individuals of the same sex” was not repealed in the new 2015 Criminal Code and a new offence against “incitement to gross indecency” was introduced as well.² Though these laws are rarely employed in prosecution, several arrests have been made, most recently in 2012.³ Those arrested often end up being charged for other offences instead.⁴ The existence of these laws also leave LGBT people vulnerable to police harassment, blackmail and exploitation.⁵ For instance, Amnesty International reported on multiple cases of police harassment and arbitrary detention in 2014.⁶ A literature review further highlighted that discrimination and stigmatisation is rife among LGBT people across different aspects of life such as employment and healthcare.⁷ LGBT human rights defenders have reported receiving threats and harassment from both family and the public.⁸

A significant source of anti-LGBT sentiment comes from the Catholic Church, which has “frequently

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¹ Under article 393, anyone who commits an offense against morality is punished by imprisonment of one (1) to three (3) year(s) and a fine of one million (1,000,000) to three million (3,000,000) CFA francs or one of these two penalties.
⁴ Id., 15.
come on air to blame any mishap or natural disaster that happens in the country on homosexuals”.9 They also often promulgate anti-LGBT sentiments in the media or their teachings. As a result, it is said that “the biggest threat to the Togo LGBT community is the church and religious leaders.”10

**UN voting record**

In 2011, 2014 and 2016 Togo was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions adopted by the Council.11 At the session of Third Committee of the UN General Assembly held in November 2016, Togo voted against the LAC amendment to remove Operative Paragraph 2,12 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Togo voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In its 1st cycle UPR in 2011, Togo received five recommendations relating to sexual orientation. It noted all of them. However, in its response to the recommendations, the delegation said, “Togo was not prepared to legislate on the question of homosexuality, given that homosexuals were not subject to any form of discrimination. Such legislation might in fact be counterproductive, given the attitude of the population”.13 At Togo’s 2nd UPR in November 2016, Australia, Argentina, Brazil, Mexico, Spain, Slovenia, France and Belgium all made recommendations to decriminalise same-sex sexual acts. Slovenia and Argentina also made recommendation regarding discrimination, and Uruguay called for Togo to investigate all allegations of attacks and arbitrary detentions of LGBTI persons.14 Togo’s 3rd UPR begins in November 2021.

**Treaty Bodies**

In 2011, the Human Rights Committee (CCPR) expressed concern about the criminalisation of same-sex sexual acts between consenting adults.15 It added that the State’s claims that “the provision is not applied in practice” or “that it is important to change mindsets before modifying the law” did not allay its concern about this law.16 It called on the State to decriminalise and to take steps to put an end to prejudice and the social stigmatization.17

**Special Procedures**

In 2014, the Special Rapporteur on the situation of human rights defenders visited Togo. She reported on cases of false accusations against LGBT activists of rape and abuse of minors, and threats, harassment and intimidation faced by these activists.18 She observed that the criminalisation of consensual same-sex sexual acts between adults can “further stigmatize those advocating for the rights of LGBT persons and make them more vulnerable to pressure and attacks”.19

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10 Ibid.
14 Ibid.
15 Ibid.
16 Ibid.
18 Ibid., para. 78.
**Tunisia**

**Provisions in force**

- **Penal Code** (1913) (as amended).

  **Sodomy**
  
  Article 230.
  Sodomy, when not covered by any of the cases provided for in preceding articles, is punishable by three years’ imprisonment.¹

  **Promotion of indecency**
  
  Article 226.
  Anyone found guilty of deliberately and publicly promoting indecency shall be subject to six months’ imprisonment and a fine of 48 dinars.

**Human rights situation**

Despite ardent opposition following its formation as an NGO in June 2015, the Tunisian organisation SHAMS (Sun) managed to get NGO accreditation as the deadline for complaint had expired in May 2015. However, the organisation was court-ordered to suspend its activities for 30 days in early January 2016.²

SHAMS came to prominence around its December 2015 demonstrations centered on a young gay Tunisian man arrested in September 2015 who had been jailed after undergoing a forced anal exam to establish his sexual orientation.³

On Human Rights Day 2015 (10 December), six students were each given three years jail time under Article 230, but following an Appeals Court ruling in early-March 2016, their sentences were reduced to time already served. It is reported that one of these students refused to undergo a forced anal examination, and was subsequently tortured.⁴

Similar violations have since been reported,⁵ such as the arrest of two young men in Sousse in December 2016 and their conviction in early 2017.⁶ According to a joint press release from NGO Damj and the World Organization Against Torture (OMCT), they were also subject to anal examinations without their consent.⁷

In January 2017, a district court in Hammamet ordered the detention of a trans woman with a public indecency charge after the police arrested her at a Halloween party for dressing as a woman and telling a police officer she considered herself one.⁸ Her lawyer claimed she had been subjected to torture, humiliation and taunting at the police station due to the reveal of her gender identity.

In March 2017, SHAMS Facebook page described a new case where forced anal examinations were...
being carried out to find “proof” of proscribed same-sex sexual conduct.9

In April, the National Council of the Medical Order issued a statement strongly condemning “any medical examination that is unjustified and/or that touches the dignity or the physical and mental integrity of the person examined”, including forced anal and genital exams aimed to “prove” ‘homosexuality’, and clarifying that doctors must inform people that they have the right to refuse them.10 In September, Minister for Human Rights, Mehdi Ben Gharbia, stated that “[anal] exams can no longer be imposed by force, physical or moral, or without the consent of the person concerned”.11 Yet, Human Rights Watch warned about “the possibility that someone accused of same-sex conduct might ‘consent’ to an anal exam under pressure from police, because they believe their refusal will be held against them, or because they believe it will prove their innocence”.12 Credible sources revealed that the practice was still taking place in 2018.13

A 2018 report further highlighted discrimination and violence from family and community members and, particularly, from law enforcement agents.14 Since the ‘Arab Spring’, Tunisian LGBT groups have allegedly enjoyed greater visibility,15 and activism has grown.16 However, hostility against human rights defenders and NGOs supporting the rights of LGBTI people has also been reported.17

In December 2017, NGO SHAMS launched what was referred to as one of the first LGBTIQ online stations in the Arab world. According to the association, they have been receiving threats ever since.18 After the National Union Council of Imams’ brought a lawsuit against the radio station, rumours about its imminent shutdown began circulating, but were later dismissed (see below).19

In June 2018, the Individual Freedoms and Equality Committee, a presidential commission comprised of legislators, professors and human rights advocates, suggested decriminalising same-sex acts, stating that “the state and society have nothing to do with the sexual life amongst adults [...] sexual orientations and choices of individuals are essential to private life.”20 However, LGBTI activists remarked the lack of real political will to repeal Article 230 of the Penal Code.21

Existing legal challenges

Freedom of speech

In December 2017, the Secretary General of the National Union Council of Imams filed a complaint against the NGO SHAMS for launching SHAMS Rad, an online radio station that caters to LGBT people.22 On 1 March 2018, a primary court in Tunis refused the group’s petition to ban the broadcast for constituting “an imminent danger for [Tunisia’s] values and [...] religious and social identity” and proclaimed that no violation of the rights of others or their reputations had been committed.23

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9 SHAMS, Facebook Page, 16 March 2017.
15 “Call to Decriminalize Homosexuality in Tunisia Gives Hope to the LGBTQ+ Community”, Muftah, 23 June 2018.
17 “LGBT activists in Tunisia under pressure”, CIVICUS Website, 13 June 2016.
19 SHAMS Facebook Page, 29 December 2017.
21 “Call to Decriminalize Homosexuality in Tunisia Gives Hope to the LGBTQ+ Community”, Muftah, 23 June 2018; “LGBT activists report ‘witch hunt’ against homosexuals in Tunisia” (in Spanish), eldianio.es, 21 December 2018.
22 “National Union Council of Imams files complaint against SHAMS organization and wants to get its online radio closed” (in French), HuffPost, 28 December 2017.
UN voting record

In 2011, 2014 and 2016, Tunisia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolution.

At the session of Third Committee of the UN General Assembly held in November 2016, Tunisia did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Tunisia did not vote on the amendment that tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle of the UPR Tunisia received three recommendations to decriminalise consensual same-sex sexual acts and repeal Article 230. It rejected all these recommendations and stated that, "it would be possible to conduct an objective and transparent national dialogue on the subject. However, it was not ready at this stage to adopt a decision".

During its 3rd cycle of the UPR in May 2017, Tunisia accepted 22 SOGIESC recommendations. It accepted two of them, whilst noting (functionally rejecting) the remaining twenty. Both Luxemburg’s recommendation on taking steps to “ensure the protection of LGBTQI persons from all forms of stigmatization, discrimination and violence and abstain from unlawful examinations”, and Ireland’s proposal to “immediately cease the practice of forced anal examinations of LGBTI persons” were accepted by the State. However, recommendations to decriminalise consensual same-sex sexual acts and to fight against the violence and discrimination suffered on the basis of SOGI were rejected. Further, Tunisia did not make any comment on SOGIESC issues during the session.

Treaty Bodies

In 2016, the Committee on Economic, Social and Cultural Rights (CESCR) urged Tunisia to repeal article 230 of the Penal Code, and train law enforcement officials to respect the diversity of sexual orientation and gender identities.

In 2016, the Committee Against Torture (CAT) also called for decriminalisation but also stressed the State should “prohibit intrusive medical examinations” [to determine sexual activity] “that have no medical justification and cannot be performed with the free and informed consent of the persons subjected to them, who consequently will then be prosecuted”.

Special Procedures

In 2015, several mandates received a report concerning the alleged physical abuse, degrading medical exam, irregular judicial proceedings and sentencing of a 22-year-old man solely based on his perceived sexual orientation.

In 2016, a number of mandates were presented with information about the reportedly arbitrary arrest and detention of two human rights defenders due to their work for LGBT people in the country.

25 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
27 These recommendations were formulated by Ireland, Denmark, Sweden, the United States, Belgium, the Netherlands, Canada, Germany, France, Costa Rica, Norway, Brazil, Spain, Iceland, Argentina, Australia and Chile. See: Report of the Working Group on the Universal Periodic Review: Tunisia, A/HRC/36/5, 11 July 2017.
28 Concluding observations on the third periodic report of Tunisia, CAT/C/TUN/CO/3, 10 June 2016, para. 41, 42.
29 Working Group on Arbitrary Detentions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatments or punishments; Special Rapporteur on the right of everyone to enjoy the highest standard of physical and mental health.
30 For more information, see: TUN 2/2015, 2 November 2015.
31 For more information, see: TUN 3/2016, 24 November 2016.
32 For more information, see: TUN 3/2016, 24 November 2016.
Provisions in force


  **Carnal knowledge against the order of nature**

  **Section 145. Unnatural offences.**
  
  Any person who:
  
  (a) has carnal knowledge of any person against the order of nature; [...] 
  
  (c) permits a male person to have carnal knowledge of him or her against the order of nature,

  commits an offence and is liable to imprisonment for life.

  **Attempted unnatural offence**

  **Section 146. Attempt to commit unnatural offences.**
  
  Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.

  **Gross indecency**

  **Section 148. Indecent practices.**
  
  Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.

**Human rights situation**

In July 2015, the Uganda Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation published a detailed report on violations based on SOGI in 2014 with targeted recommendations. In September 2016, they produced a report outlining 171 recorded violations in the previous period.

In March 2016, the Non-Governmental Organisations Act (2016) entered into force. This law impedes the registration of NGOs "where the objectives of the organisation as specified in its constitution are in contravention of the laws of Uganda". Sexual Minorities Uganda’s (SMUG) application for registration was rejected on the ground that its name and objectives were unacceptable because same-sex sexual relations were criminalised in the country. ¹

Uganda’s openly hostile rhetoric has aggravated discrimination and violence against members of the LGBTI community. ² Several cases of people subjected to forced anal examinations to prove engagement in proscribed consensual same-sex acts have been documented. ³

While Ugandan human rights activists have been internationally recognised for promoting equality

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¹ For more information see “Existing legal challenges” (above) and entry for Uganda under section on “Legal barriers to the registration of sexual orientation-related NGOs” in the Global Overview section of this report.

² “Sexual minorities in Uganda: ‘modify the law, but also the mentality’” (in French), RFI Afrique, 17 May 2017.

as related to SOGI, there have been threats and violent attacks against NGOs fighting for the rights of LGBTI people in the country, and some of them have even been forced to temporarily shut down operations.

Plans by NGO Rainbow Riots to open Uganda’s first community centre for LGBT persons in 2019 met with public opposition from Ethics and Integrity Minister, Simon Lokodo. On Lokodo’s orders, officials have been banning events thought to be “promoting homosexuality”, specifically targeting HIV prevention and response meetings.

In 2016, Pride celebrations were repeatedly and violently disrupted, and activists were arrested. In 2017, after a Pride gala scheduled to take place at a hotel was shut down and police officers appeared at other venues with the intention of arresting participants, organisers were forced to cancel the event. They explained the decision in these terms: “even all the courage and determination that we carry in our hearts is not enough to put the lives of so many innocent people at risk”.

A few weeks later, the government announced the set up of the Pornography Control Committee, designed to detect and curtail the circulation of pornographic material. Human rights organisations fear it may turn into another vehicle to persecute LGBT groups and communities.

In December 2017, SMUG and Icebreakers Uganda launched the #SeeTheInvisible campaign addressing depression within the LGBTI community. A report by SMUG highlighting healthcare discrimination faced by sexual and gender minorities in the country was released in June 2018. According to the organisation’s Executive Director, Frank Mugisha, the situation is alarming: “[t]he moment you open up to a health worker about your sexual orientation you are immediately frowned upon, asked if you are a Christian and in some instances threatened with arrest or denied services.” The report also mentions the growing HIV prevalence among LGBTI people, especially men who have sex with men (MSM).

Statements by public officials

Uganda’s President, Yoweri Museveni, 2017: “Africans here, we know a few people who are ‘rumoured’ to be homosexuals, even in history we had some few being rumoured, but you cannot stand up here and say ‘I am a homosexual.’ People will not like it. So whenever we talk to our partners in other parts of the world [we say]: ‘please that’s a private matter, you leave it’. But no, they want to impose it on you… that I should stand up and say, ‘oh yeah, homosexuals, oh yeah’.”

Minister of Health for General Duties Sarah Opendi, 2017: “Homosexuality remains an illegally activity, according to our laws and, therefore […] we cannot be seen doing the opposite […] the Global Fund money is supposed to help in the fight against malaria and other diseases not buying lubricants for homosexuals.”

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10 “No gay promotion can be allowed’: Uganda cancels pride events”, The Guardian, 21 August 2017.
13 “Uganda’s ‘Pornography Control Committee’ To Get Away With Tracking LGBT People”, Sexual Minorities Uganda Website, 28 August 2017.
14 “SMUG and IBU launch #SeeTheInvisible Campaign”, Kuchu Times, 8 December 2017; “SMUG & Icebreakers Uganda - Kampala, 2017”, Data4chan Website.
15 Sexual Minorities Uganda, ‘Even if they spit at you, don’t be surprised’. Health Care Discrimination for Uganda’s Sexual and Gender Minorities (2018).
17 President Museveni says West ‘imposing’ homosexuality on Uganda”, Mambaonline, 8 August 2017.
Member of Parliament, Latif Ssebagala, 2017: “There is a lot of homosexuality in schools and I think we need to bring back the [Anti-homosexuality] Bill to curb this vice”.  

Minister of Ethics and Integrity, Simon Lokodo, 2017 (variously):

“Homosexuality is not allowed and completely unacceptable in Uganda. [...] We don’t and can’t allow it. LGBT activities are already banned and criminalised in this country. So popularising it is only committing a crime”.  

“It’s true I ordered the police to stop and shut down all the gay pride events. No gay gathering and promotion can be allowed in Uganda. We can’t tolerate it at all. [...] We know they are trying to recruit and promote homosexuality secretly. But it’s worse to attempt to stand and exhibit it in public arena. This is totally unacceptable. Never in Uganda.”

“The display, sale and circulation of pornographic images in the print and electronic media is one of the key reasons we have escalating cases of drug abuse among youths, incest, teenage pregnancy and abortion, homosexuality and lesbianism and defilement”.

“We are going to procure this machine and it will detect ‘homos’ and porn actors especially those misusing applications like WhatsApp with sex acts. The South Koreans are programming it. And very soon we will ship it into the country and all the evil will be busted.”

Buhweju County MP Francis Mwijukye, 2018: “We shall continue to fight the LGBT issues on the international level until people here appreciate that same-sex is inhuman and anti-culture”.

Existing legal challenges

Consensual same-sex sexual acts

On 20 December 2013, the Parliament adopted the Anti-Homosexuality Act, which sought to punish same-sex sexual relations with imprisonment for life and prohibited same-sex marriage and "homosexual propaganda". However, on 18 August 2014, the Act was annulled by the Constitutional Court, which ruled that parliament lacked a required quorum when the law was approved, thereby retaining the previous 1950 Penal Code.

On 29 October 2014, members of Uganda’s ruling party circulated a draft of a new bill entitled, "The Prohibition of Promotion of Unnatural Sexual Practices Bill", which was intended to replace the annulled 2013 Act by categorising same-sex sexual acts alongside pedophilia, bestiality and other heinous acts. The Human Rights Awareness and Promotion Forum sought a ruling from the East African Court of Justice in February 2015, to clarify that laws such as the Ugandan Anti-homosexuality Act, are unacceptable and violate human rights. That Court found that because the law was not enacted, the case was moot, but under a public interest exception the court did not find the evidence sufficient to “…establish the degree of public importance attached to the practice of homosexuality in Uganda....”.

NGO registration

Sexual Minorities Uganda (SMUG) filed an application in the High Court of Uganda challenging Uganda Registration Services Bureau’s refusal to reserve the name of the organisation and register it because of its connection with people whose conduct is criminalised in the country.

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23 “Uganda’s ‘Pornography Control Committee’ To Get Away With Tracking LGBT People”, Sexual Minorities Uganda Website, 28 August 2017.
25 “Uganda court annuls anti-homosexuality law”, BBC news, 1 August 2014.
27 Full text of submission before the Court can be read here.
Hate speech

In 2012, SMUG sued Scott Lively, a United States-based anti-LGBTI evangelical pastor for his role in the persecution of LGBT people in Uganda. On 5 June 2017, U.S. District Court in Springfield, Massachusetts, dismissed the suit on jurisdictional grounds but affirmed that Lively’s actions violated international law: “The question before the court is not whether Defendant’s actions in aiding and abetting efforts to demonize, intimidate and injure LGBTI people in Uganda constitute violations of international law. They do. [...]” SMUG’s Executive Director Frank Mugisha stated the case was a win for the organisation. A few days after, an appeal was filed by the Liberty Counsel claiming that the language used by the judge was not necessary to the disposition of the case and was, therefore, seeking to strike it from the record. On 10 August 2018, U.S. Court of Appeals for the 1st Circuit denied Lively’s attempt to censor the District Court’s ruling.

National Human Rights Institution

Uganda’s National Human Rights Institution, operating in accordance with the Paris Principles, is the Uganda Human Rights Commission. The NHRI has dealt with SOGIESC issues, as evidenced in its 17th Annual Report.

UN voting record

In 2011, Uganda voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI. Further on, in 2014 and 2016, Uganda was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the SOGI resolutions adopted in those years.

At the session of Third Committee of the UN General Assembly held in November 2016, Uganda voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Uganda voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In October 2011, at its 1st UPR review, Uganda received 19 recommendations, only three of which it accepted (all to do with prosecution of individuals who perpetrate violence against LGBT people). The rest of the recommendations concerned existing and proposed new legislations.

At Uganda’s 2nd UPR in November 2016, the Draft Report of the Working Group contains 18 sexual orientation recommendations that the State received, asking for concrete measures to tackle the discrimination suffered by the LGBTIQ community and the decriminalization of consensual same-sex sexual relations.

However, during the Interactive Dialogue the State’s formal response appeared to ignore the realities associated with SOGI in Uganda: “All Ugandans were treated equally, without discrimination. Lesbian, gay, bisexual, transgender and intersex persons who were discriminated against in accessing services or in the enjoyment of certain rights could petition the Commission for redress”. The State noted (functionally rejected) all recommendations on SOGIESC issues.

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30 "Sexual Minorities Uganda v. Scott Lively", Center for Constitutional Rights Website.
31 "In Scathing Ruling, Court Affirms SMUG’s Charges Against U.S. Anti-Gay Extremist Scott Lively While Dismissing on Jurisdictional Ground", Center for Constitutional Rights Website, 6 June 2017.
32 "Pastor Lively Files Challenge to Judge’s Prejudicial Language", Liberty Counsel Website, 8 June 2017.
In November 2010, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern about the criminalisation of consensual same-sex sexual acts and reported violence against women on account of their sexual orientation and gender identity, particularly in employment, health care and education, and it addressed the negative effects of the proposed Anti-Homosexuality Bill. It called on Uganda to decriminalise, oppose the then Bill, and provide effective protection from violence and discrimination against women based on SOGI, and sensitising public, law enforcement and others.

In May 2016, the Committee overseeing the Convention of the Rights of Persons with Disabilities noted "the absence of concrete measures to prevent and eradicate discrimination against women and girls with disabilities... especially on the grounds of sexual orientation and gender identity."

In 2015, the Committee on Economic, Social and Cultural Rights called for Uganda to urgently take steps to amend the Penal Code to decriminalize consensual same-sex sexual conduct, as well as to prevent discrimination against LGBTs and "bring perpetrators to justice.

In February 2011, various mandates were informed about the alleged murder of LGBTI activist David Kato in late January.

In March 2012, several mandates received a report concerning the re-tablening of the Anti-Homosexuality Bill (AHB), and in February 2013 some of those mandates were presented with concerns over the proposed Bill in the parliamentary agenda.

In February 2014, various mandates were informed of the alleged passing by Parliament of a revised version of the AHB on 20 December 2013. In June 2012, three mandates had been provided with information on the reported disruption of a workshop for LGBTI human rights defenders by the police.

In August 2016, a number of mandates received a report about police raids, arrests of human rights defenders and assault of many participants during that year’s Uganda Pride celebration.

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40 Concluding observations of the Committee on the Elimination of Discrimination against Women: Uganda, CEDAW/C/UGA/CO/7, 5 November 2010, para. 43.
41 Id., para. 44.
42 Concluding observations on the initial report of Uganda, CRPD/C/UGA/CO/1, 12 May 2016.
43 Concluding observations on the initial report of Uganda, E/C.12/UGA/CO/1, 8 July 2015.
44 Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.
45 For more information, see: UGA 1/2011, 1 February 2011.
46 Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group on Arbitrary Detention.
47 For more information, see: UGA 2/2012, 29 March 2012.
48 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.
49 For more information, see: UGA 6/2012, 21 February 2013.
50 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders.
51 For more information, see: UGA 1/2014, 3 February 2014.
52 Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association.
53 For more information, see: UGA 5/2012, 25 June 2012.
54 Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
55 For more information, see: UGA 6/2016, 29 August 2016.
**Provisions in force**

- **Penal Code Act** (as amended by Act No. 15 of 2005).

**Carnal knowledge against the order of nature**

**Section 155. Unnatural offences.**

Any person who:

(a) has carnal knowledge of any person against the order of nature; or [...]  
(c) permits a male person to have carnal knowledge of him or her against the order of nature;

commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.

**Attempted unnatural offence**

**Section 156. Attempt to commit unnatural offences**

Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.

**Gross indecency**

**Section 158. Indecent practices between persons of the same sex**

(1) Any male who, whether in public or private, commits any act of gross indecency with a male [...] person, or procures a male [...] person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male [...] person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(2) Any female who, whether in public or private, commits any act of gross indecency with a female [...] person, or procures a female [...] person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female [...] person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years. [...]  

**Human rights situation**

The United Nations country team stated in 2017 that the public environment relating to lesbian, gay, bisexual, transgender and intersex persons remained largely hostile, particularly in some faith-based organisations. In 2013, LGBT group Friends of Rainka documented at least 43 incidents and violations against LGBT people in a six month period. The rise in anti-gay sentiments that year was attributed to a rumour first reported by a local tabloid that four gay couples had allegedly...

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2 "43 anti-LGBT violations in Zambia; ‘accident waiting to happen’", Erasing 76 Crimes, 30 September 2013.
attempted to register "same-sex marriages" during the Easter weekend. Furthermore, amid the anti-gay crackdown, tribal chief Chief Madzimawe of the Ngoni and Chief Shakumbila of Mumbwa condemned LGBT people, and stated: "It is not a culture of Zambians, Africans and Ngonis to practice homosexuality and gay people should be caged".

In April 2013, after speaking on national television about the need to repeal Articles 155, 156 and 158 of the Penal Code (which are categorised under 'Offences Against Morality'), activist Paul Kasonkomona was arrested and stood before Lusaka Magistrates Court. On 25 February, the court acquitted him of charges of "soliciting for immoral purposes in a public place" (which is a Nuisance offence under Article 178(g) of the Penal Code), holding that the State has failed to present a sufficient case for the defence to answer resulting in the acquittal of Kasonkomona. The State appealed this ruling to the High Court. On 15 May 2015, Justice Mulongoti confirmed the acquittal of Kasonkomona and ruled that the State had not made out a case against Kasonkomona.

In the same year, 21-year-old barber Philip Mubiana and bricklayer James Mwape, 20, were arrested and charged with sodomy. However, the duo was acquitted after being detained for a year after a magistrate found that the State had failed to prove its case. There was also another case in 2014 where two men were arrested in Chisamba, a town in central Zambia, then subsequently acquitted as well. Human Rights Watch reported that in these cases, the defendants were often subjected to forced anal examinations, which is purportedly used as medical evidence of anal sex.

In 2017, the Football Association of Zambia had planned to introduce a policy to prohibit discrimination on the basis of sexual orientation. This sparked outrage among Christian leaders, with International Federation of Christian Churches president Simon Chihana claiming that doing so was "inviting the wrath of God" and would "bring the happenings of Sodom and Gomorrah here."

In 2018, two men were found guilty of "homosexual acts". In delivering his judgment, the judge stressed that "the law is what it is and not what it ought to be". In 2019, the Minister of Religious Affairs and National Guidance, Godfridah Sumaili, ordered the cancellation of a television programme for allegedly "promoting homosexuality." He said, "Our stand as a Christian nation is clear and the laws of the land speak louder."

**Statements by public officials**

In 2015, President Edgar Lungu declared: "We will not support homosexuality. I will not compromise human nature because of money. God made man and woman." As Minister of Home Affairs, he had earlier urged the police to arrest the four gay couples that had allegedly sought to get married: "It is a pity that foreigners have started bringing this thing to us now. We are on dangerous ground where people are bringing new things to us and we are watching. The police must do their work: "same-sex marriages are not a normal thing. In 2013, Lungu had also rebuked the EU for "dangling" grants to NGOs in Zambia: "This is unzambian; it is not part of our culture. I know some money-hungry civil society organisations will fall for the money but we are waiting to see which Zambian will get the money and start championing same-sex marriages."

**National Human Rights Institution**

During the consultation process following the first draft Constitution in 2013, the Human Rights Commission of Zambia (HRC) clarified that its proposed anti-discrimination clause is "a very progressive provision and has sought to capture as many groups as possible". However, it added that "the provision itself is very open-ended and may..."
lead to the handing of certain rights to or inclusion of certain groups that the people of Zambia may not be ready or willing to accept. In particular this concern is directed at members of the Lesbian, Gay, Bisexual, Transgender and Inter-Sex (LGBTI) community. It then proposed a rewording of the anti-discrimination clause to prevent LGBT people from relying on the grounds of “conscience” and “belief” to gain recognition for rights.18

**UN voting record**

In 2011, 2014 and 2016 Zambia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the SOGI resolutions.19

At the session of Third Committee of the UN General Assembly held in November 2016, Zambia voted against the LAC amendment to remove Operative Paragraph 2,20 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Zambia voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In its 2nd cycle of the UPR, Zambia accepted only one of the 11 recommendations on SOGI issues regarding “impartial investigations” on attacks against LGBT people.21 However, Zambia reported on the implementation of that recommendation by simply affirming that “there were no restrictions under Zambian law towards the investigation and prosecution of crimes committed against a person”, and “all allegations of attacks and threats against individuals, irrespective of the offence are required by law to be effected without discrimination”.22

During its 3rd cycle of the UPR carried out in November 2017, Zambia received eight SOGIESC recommendations. It noted (functionally rejected) all of them, including the one issued by Uruguay to prohibit forced anal examinations.23

**Special Procedures**

In 2013, several mandates24 expressed concern regarding criminal charges brought against LGBT human rights defender Paul Kasonkomona. In particular, they noted the campaign against LGBTI human rights defenders.25

In 2015, two mandates26 showed concern regarding the alleged arbitrary arrest and prosecution of two men on the sole basis of their sexual orientation and the lack of fair trial and due process.27

In 2016, several mandates28 expressed concern regarding arrests of LGBT human rights defenders and the refusal to formally register Engender Rights Centre for Justice on grounds of “soliciting for immoral purposes”.29

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20 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
24 They were: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders.
25 For more information, see ZMB 1/2013.
26 Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatments or punishments.
27 For more information, see ZMB 1/2015.
28 They were: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.
29 For more information, see ZMB 4/2015.
ZIMBABWE

Provisions in force


**Section 73. Sodomy.**

1. Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

2. Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.

Human rights situation

- Additional information on the situation in Zimbabwe is provided at the end of this entry in a "Local Perspective Essay" written by Aubrey Alessandra Bree Chacha for ILGA World.

In 2006, Zimbabwe amended its Penal Code extending the criminalisation from the simple definition of having practised anal sexual intercourse to "any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act". In 2006, Zimbabwe amended its Penal Code extending the criminalisation from the simple definition of having practised anal sexual intercourse to "any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act".2

The atmosphere of severe socio-political hostility directed at sexual and gender minorities over the past years was described in UK Home Office’s 2018 report. In fact, former president Robert Mugabe’s anti-gay rhetoric has been backed up by many politicians, including a member of the Zimbabwe Human Rights Commission (see below). Human rights defenders have strongly condemned such comments and even lodged a formal complaint with the Commission.

In November 2017, Mugabe resigned amidst an intra-party crisis and shortly after Parliament began impeachment proceedings against him. LGBTI activists were reportedly among those who celebrated his departure, hoping the new leadership would adopt a different stance on sexual and gender minority communities. Unfortunately, new President Emmerson Mnangagwa made it clear he would not canvass for decriminalisation of consensual same-sex sexual acts.

In July 2018, a Zimbabwean football referee was allegedly blackmailed on the basis of his sexual orientation and outed to his family and community. Having suffered rejection and fearing victimisation for his sexual orientation at home, he decided to

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1 Subsection 3 deals with sexual intercourse and indecent acts with minors.
apply for asylum in the UK. According to Sky Sports, he was granted an initial five-year asylum reprieve by the Home Office and will have the opportunity to apply for settlement in 2023.

That same month, the opening of five health clinics aimed at catering to the needs of men who have sex with men (MSM), and backed by the National AIDS Council, was announced. Zimbabwean society holds widespread discriminatory and violent attitude towards sexual and gender minorities in the country: for example, in late-2018 a teacher who came out during a school assembly tackling homophobic bullying was forced to resign after a huge outcry from parents.

In early-2019, it was reported that a period of political unrest had sparked off in Zimbabwe and that the human rights situation deteriorated considerably.

**Statements by public officials**

President Emmerson Mnangagwa, 2018: “In our Constitution [homosexuality] is banned and it is my duty to obey my Constitution.”

Human Rights Commissioner Petunia Chiriseri on Mugabe’s hostile statements against LGBT people, 2017: “[President Mugabe] took a firm stand against unbiblical, un-cultural, unacceptable practices which foreigners […] seek to impose upon Africa. […] [W]e applaud [him] for [his] courage […], it preserved our nation and family values.”

**Existing legal challenges**

**Discrimination based on sexual orientation**

In October 2015, the country’s Labour Court (based in Bulawayo) accepted the plea of a youth worker who had been fired from the civil service because he had been arrested and paid a fine following a police raid on a party held by LGBTI NGO GALZ in 2014. This court found that the dismissal based on sexual orientation was unconstitutional (although sexual orientation is not expressly named in the Constitution document).

**Gender identity discrimination**

In July 2017, Bulawayo High Court begun hearing the case brought by a trans human rights defender who had been detained and charged with “criminal nuisance” for using a toilet comporting with her gender identity at a city hotel.

**National Human Rights Institution**

Zimbabwe has a National Human Rights Institution in accordance with the Paris Principles: the Human Rights Commission of Zimbabwe. The Commission itself does not include SOGIESC in its work.

As explained above, in 2017, Commissioner Petunia Chiriseri praised former president Mugabe’s discriminatory statements against LGBT people.

**UN voting record**

In 2011, 2014 and 2016 Zimbabwe was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of the SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Zimbabwe voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

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10 “MSM sexual health clinic to open in Zimbabwe”, Gay Express, 31 July 2018.
15 “Court Rules in Favour of Dismissed Zimbabwe Worker Linked to Gay Party”, VOA Zimbabwe, 27 October 2015.
18 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Additionally, Zimbabwe voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st UPR in October 2011, Zimbabwe received only one recommendation: to repeal the 2006 law “as soon as possible” (France) – this was, unsurprisingly, rejected and the State made no reference to SOGI in its final report or in its Interactive Dialogue.19

At Zimbabwe’s 2nd UPR session in 2016, the State received 12 SOGI-related recommendations, mostly to do with decriminalisation. However, Zimbabwe rejected all of them, making no mention of SOGI issues in the State’s Interactive Dialogue.20

Zimbabwe’s 3rd UPR commences in November 2021.

Treaty Bodies

In March 2012, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern at the high prevalence of violence against women, especially lesbian, bisexual and transgender.21 It thus urged Zimbabwe to enact comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination, launch a sensitisation campaign aimed at the general public and provide appropriate training to law enforcement officials.22

In April 2016, the Committee on the Rights of the Child (CRC) expressed concern that national legislation remained inconsistent with the non-discrimination of the Constitution, regarding, *inter alia*, LGBTI children.23

Special Procedures

In October 2012 and February 2014, three mandates24 received information on alleged repeated acts of harassment against leaders of two human rights associations advocating for social tolerance of sexual minorities and for the repeal of homophobic legislation reportedly operating as unregistered organisations.25

LOCAL PERSPECTIVE

The Criminalization of Same-Sex Acts and the LGBTIQ in Zimbabwe

By Aubrey Alessandra Bree Chacha.26

Being a member of the LGBTIQ community has never been easy in Zimbabwe, a country where the law does little to protect those who are persecuted.

Something that former dictator Robert Mugabe regarded as “being worse than dogs and pigs”, the gay man in Zimbabwe has been known to be “a shame” to his family, community, professional, economic and political environment. Such was the case with Takunda, a gay man who was chased away by his family and shunned by society for having consensual same-sex relations.27 This is frequently reflected in the media, where journalists report that “it is risky, if not deadly, to be gay and lesbian in Zimbabwe – a country where such relations are beyond taboo”.28

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23 Concluding observations on the second periodic report of Zimbabwe, CRC/C/ZWE/CO/2, 7 March 2016.
24 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders.
26 Aubrey Alessandra Bree Chacha (commonly known as “Bree”) is a transwoman, human rights activist, philanthropist and entrepreneur from Harare, Zimbabwe. She is the first transwoman to publicly announce her transition in Zimbabwe in 2018, a brave move amidst a transphobic environment which she felt was necessary to educate society about transgender persons, our struggle and the need for the LGBTIQ+ to receive equal respect and opportunities just like any human being. Bree is the ambassador of Transsmart Trust, an NGO which focuses on human rights, health and capacity building of trans and intersex persons as well reducing stigma, discrimination and criminalization which affects the marginalized trans community across the region. She is an aunt, an innovator, a friend but most importantly a human being just like anyone else.
27 “Worse than dogs and pigs: life as a gay man in Zimbabwe” Reuters, 4 September 2017.
Such stigma and criminalization have forced same-sex relations to be on the downlow, often increasing the spread of HIV/AIDS, depriving patients of proper medical care, since same-sex sexual acts are deemed “filthy” in the eyes of many medical practitioners in Zimbabwe. This further forces many gay men to live “double lives”, having a heterosexual marriage but a same-sex relationship or affair.

Same-sex sexual acts are criminalized, whether they are consensual or not. Despite the fact that Gays And Lesbians of Zimbabwe (GALZ) met the current President Emmerson Mnangagwa, the stigma and discrimination towards the LGBTIQ in Zimbabwe is still on the rise. President Emmerson Mnangagwa was quoted saying, “With regards to areas that we felt we would not accept, it is issues of gays and homosexuality, which is unlawful in our country. We rejected all those. There are a few countries from Europe which recommended we reconsider our position with regard to adults of same sex marrying each other that we rejected”.

Personal stories of transgender people are starting to become more visible in Zimbabwe. This helps opening local minds to diversity and helps people understand the presence and need for acceptance for the LGBTIQ community. However, life is still extremely difficult and, with no laws protecting us, it does feel like we are walking on eggshells. Never knowing who will try to hurt us, not being able to freely express our human right for non-stigma and discrimination.

This scenario is but one of many, in December 2018, two transwomen were gang raped to a point of anal fracture and near death. This heinous crime was reported to Gumisayi Bonzo from Transsmart Trust Zimbabwe. Upon reporting to health care providers, many questions were asked and it took them long to get treatment because of the stigma associated with the patient’s gender identity. This is the usual treatment for many LGBTIQ persons seeking health care services in Zimbabwe.

From experience and hearing lived in realities from other members of the LGBTIQ in Zimbabwe, our Government still has a long way to go in decriminalizing consensual same-sex sexual acts in the country. The LGBTIQ key population groups are human beings as well, deserving of the same respect and freedom just like any Zimbabwean. As the saying goes, “Let’s Leave no one behind”, thus in this new dispensation of resuscitating the country we should not leave out the human rights of the marginalized LGBTIQ community, who are also a relevant part of our country’s development.

29 *Zimbabwe says NO to homosexuality* News24, 7 November 2016.
ANTIGUA AND BARBUDA

Provisions in force

- Sexual Offences Act (Act No. 9 of 1995).

**Buggery**

**Article 12.** Buggery.

(1) A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment: [...] 

(b) for fifteen years, if committed by an adult on another adult; [...] 

(2) In this section “buggery” means sexual intercourse per anum by a male person with a male person or by a male person with a female person.”

**Serious indecency**

**Article 15.** Serious indecency.

(1) A person who commits an act of serious indecency on or towards another is guilty of an offence and is liable on conviction to imprisonment [...] 

(b) for five years, if committed on or towards a person sixteen years of age or more. [...] 

An act of “serious indecency” is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of genital organ for the purpose of arousing or gratifying sexual desire.”

Human rights situation

A detailed report of 2014 describes the legal and living conditions of sexual minorities, and a 2015 Kaleidoscope Trust report, Speaking Out, illustrates a very mixed landscape of strong societal and official homophobia, some official address (in terms of limited police training), and limited advocacy resources.¹

In May 2016, Minister of Social Transformation, Samantha Marshall, defined the buggery law as “antiquated” and resolved to advance a decriminalisation recommendation to Cabinet.² In September, the government issued a statement that “[a]ll persons irrespective of sex, sexual orientation, or gender identity are entitled to enjoy in Antigua & Barbuda the protections provided for by our constitution and by international human right law.”³ This public statement—“Policy on Protection from violence and discrimination of persons of the LGBTI community”—reminded the public of the State’s international law obligations.

However, even after these statements, and in the aftermath of the decriminalisation of consensual same-sex sexual acts between adults in Belize, in August 2016, the Cabinet of Antigua and Barbuda

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² “Minister to recommend decriminalisation of buggery”, Antigua Observer Newspaper, 18 May 2016.

³ “Gov’t says it protects the LGBTI community”, Antigua Observer Newspaper, 2 September 2016.
proclaimed that “the buggery law will remain unchanged” in the country.4

In 2017, carnival decorations resembling the gay pride flag were taken down after an LGBT activist joked that the event was a gay pride.5 The Festivals Minister later clarified that the removal was not a “homophobic reaction”, but nevertheless apologised to those who were “offended by it”.6

In July 2017, the Prime Minister Gaston Browne refused to apologise for making derogatory remarks by calling a critic an “antiman”, which is culturally used to insult LGBTQ people.7

In May 2018, the Deputy Commissioner of Police Everton Jeffers warned that persons circulating a list of alleged homosexuals could be in breach of the Electronic Crimes Act 2013 for sending by electronic means material that is false or causes insult or injury.8

A gay police officer interviewed by Human Rights Watch in 2018 said that LGBT people are often afraid to enter police stations due to fear and concern that they would not be taken seriously.9 In response, he has organised LGBT sensitivity training for police officers, which has improved their attitudes towards LGBT people.

**Statements by public officials**

In 2011, the Antiguan Attorney General openly supported buggery laws, stating: “There will be no change in the law on buggery in Antigua & Barbuda, at least not if I can help it. Being gay is morally wrong, and to be honest personally, I am still homophobic.”10

In September 2018, Antigua and Barbuda’s Ambassador to the OAS and the US, Sir Ron Sanders published an opinion article calling for the decriminalisation of buggery and affirming that gay people are equal citizens.11

**National Human Rights Institution**

The Office of the Ombudsman does not appear to have done any work on sexual orientation or gender identity.

**UN voting record**

In 2011, Antigua and Barbuda was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for any of the three SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Antigua and Barbuda voted against the LAC amendment to remove Operative Paragraph 2,12 and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Antigua and Barbuda voted against the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

During its 1st cycle UPR in 2011, the delegation of Antigua and Barbuda stated that although “criminalisation was on the books... it was only in the very rare instances that the law had actually been enforced”.13 Citing “society’s leanings” and “public opinion” they spoke of the need for “extensive public consultation” and “the current pre-disposition of its people and their religious influences and indoctrination” [these two last arguments were added in its final response.14 The

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4 “Antigua Gov’t denies turning a blind eye to LGBTI community”, Jamaica Observer, 3 September 2016; “A&B says no to buggery”, Antigua Observer Newspaper, 26 August 2016.


6 “Greene says Carnival decoration was contractor’s blunder”, Antigua Observer, 25 July 2017.


12 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity* at the 71st Session of the United Nations General Assembly (2017), 4.


State received eight recommendations directly related to SOGI, rejecting six (decriminalisation and public awareness campaigns on discrimination), while it accepted two (condemning SOGI-related acts of violence and instituting policies and initiatives addressing discrimination). The delegation indicated that “the government would continue its efforts on education and information to ensure that the public opinion would in time adopt the international standards”.15

In its 2nd cycle UPR in 2016, the delegation insisted on the fact that “it would take time to sensitize Antiguan society, which was very moral and religious”, and that “if the Government were to force these issues, the reaction from society would be negative and regressive”, while acknowledging criminalising laws “had to change at some point if the Government was serious about human rights”.16

The State received 13 SOGI-related recommendations, accepting only one generalist recommendation regarding discrimination, while rejecting ten which specifically referred to decriminalisation and a further two on specific SOGI discrimination.17

Antigua and Barbuda’s next UPR cycle will take place in January 2021.

Organisation of American States (OAS)

Antigua and Barbuda has joined all the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by the General Assembly of the Organisation of American States (OAS). Most notably, Antigua and Barbuda has not joined other OAS Member States in adding footnotes in an attempt to limit or reject the content of these resolutions.18

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18 “OAS-GA Resolutions” OAS Website.
BARBADOS - CRIMINALISATION

Provisions in force

- **Sexual Offences Act (1992) Chapter 154.**

  **Buggery**

  **Section 9. Buggery.**

  Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

  **Serious indecency**

  **Section 12. Serious indecency.**

  (1) A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years.

  (2) A person who commits an act of serious indecency with or towards a child under the age of 16 or incites the child under that age to such an act with him or another, is guilty of an offence and is liable on conviction to imprisonment for a term of 15 years.

  (3) An act of “serious indecency” is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.

Human rights situation

- Additional information on the situation in Barbados is provided at the end of this entry in a “Local Perspective Essay” written by Ro-Ann Mohammed for ILGA World.

  In May 2016, Nation newspaper—one of the most widely read newspapers in Barbados—trivialised the rape of a person who was either a gender non-conforming woman or transgender man and referred to the crime as “male medicine”.¹ B-GLAD, a local LGBT civil society organisation, condemned the piece stating that it was a “perfect example” of the lack of value placed on LGBT lives and more specifically of the lives of masculine-expressive lesbians in Barbados.² UN Women also issued a statement showing concern about the article.³ Massive public outcry forced the newspaper to offer an apology.⁴

  In early 2017, a study was published probing public views in Barbados, Guyana and Trinidad and Tobago regarding the usefulness of the anti-gay laws in: reflecting moral standards, stopping “the spread of homosexuality”, importance in terms of public health, and effectiveness in protecting young people from abuse.⁵

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² “Barbados - G.L.A.D” Facebook (Website).
⁴ “We apologise”, Barbados Nation, 25 May 2016. See also: “RoMoSexuality”, Online Blog, 10 August 2018.
In March 2017, it was reported that 16 members of the Royal Barbados police force participated in a sensitivity training programme run by various LGBT NGOs. A 2017 news article featured Shari Inniss-Grant who founded Join the Conversation, which aims to create a safe space for LGBT people to promote diversity and equality through sharing their experiences.

However, in April 2017, the World Congress of Families, an anti-LGBT event, was organised for a second time in Barbados with American speakers promulgating homophobic and fear-mongering views. In October 2017, a Christian youth group organised a march to “reclaim” the rainbow from the LGBT community, which initiated a counter-march. In November 2017, Barbados held its first official LGBT pride after an earlier march in 2015 failed to take place due to obstacles and fear of violence among the community.

Statements by public officials

In early 2016, during a debate on the Domestic Violence Amendment Bill, the Minister of Education declared that the time has come for Barbadians “to stop turning a blind eye and accept the fact that gay relationships were now part of Barbadian culture”.

In May 2017, Minister of the Environment, Dr Denis Lowe, declared that he did not support the LGBT movement in Barbados with American speakers promulgating homophobic and fear-mongering views. Lowe reiterated this in May 2018, after his party decided to bring up the issue of same-sex marriage during the electoral campaign. He said, “I stand firmly against it. If you want to do that, do it in the privacy of your home. Don’t tell me there is going to be a law that will tell me I have to be subjected to that.”

In March 2018, Steve Blackett, Minister of Social Care and Community Development, said that calls for equality for LGBT people made straight people feel “marginalised [and] harassed”. He said, “This LGBT lobby is so insistent, so persistent, claiming this community is being marginalized and stigmatized. They have been so persistent and persistent that I, as a straight person, you as a straight person, we’re beginning to feel marginalized, harassed and stigmatized by them.”

UN voting record

Barbados was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, it abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2, and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Likewise, Barbados abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd cycle UPR in 2013, Barbados received 13 SOGI-related recommendations. None of the recommendations that urged decriminalisation of same-sex sexual acts were accepted. Barbados argued “because it is a democracy,” the Government “was hesitant to go against the wishes of its people”. Furthermore, the delegation alleged that “prosecution [of same-sex sexual activity] could only occur if a minor was involved or a non-

15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right. ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), p. 4.
consenting adult”. Of the remaining recommendations, two related to discrimination were also rejected, and one accepted in part. The three recommendations that were accepted urged the Government to protect “all human rights, including those LGBT [sic]”; to “protect the LGBT population from harassment, discrimination and violence”; and to provide “human rights education, including related to sexual orientation and gender identity, to all law enforcement officials.” Barbados’ next UPR cycle will take place in January 2018.17

During its 3rd cycle of the UPR carried out in January 2018, Barbados received 13 SOGIESC recommendations but rejected all of them, including those referring to decriminalisation.18 During the Working Group session, Barbados delivered very technical, albeit confusing, statements on the issue of criminalisation: “Although buggery is criminalised by Section 9 of the Sexual Offences Act, persons who engage in same-sex relations in Barbados are not prosecuted since the persons engaged in such relationships are unlikely to complain to the police – without a complainant, there can be no successful prosecution”. “Same-sex relations are not criminalised in our legislation – what is criminalised is buggery. The relevant government provisions confirm that in practice there is no intervention by the law between consenting adults. However, where a minor is involved, or in the case of a non-consenting adult, prosecution is possible against the offender involved”.19

Treaty Bodies

In 2007, the Human Rights Committee expressed concern over criminalisation of consensual same-sex sexual acts. It urged the State to decriminalise and protect “homosexuals” from harassment, discrimination and violence.20 In 2017, the CEDAW Committee urged Barbados to improve access to information on sexual and reproductive health and rights for LBTI women and girls and train medical personnel to respond to their specific health needs.21 It also called for the State to ensure equal rights and opportunities for women who face intersecting forms of discrimination, in particular LBT women.22

Organisation of American States (OAS)
As a member of the Organisation of American States, Barbados has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted since 2008.23 However, since 2013 Barbados has included footnotes to these annual resolutions in an attempt to limit or reject their content. In 2017, it included a footnote stating that it could not join consensus because SOGI was not reflected in its national law.24 This was reiterated in the 2018 resolution.25

A LOCAL PERSPECTIVE

God Don’t Like Ugly: Colonial Legislation and Post-Colonial Barbados

By Ro-Ann T. T. Mohammed26 for ILGA World.

The criminalisation of same-sex intimacy was imposed on Barbados through colonial legislation in 1868.27 The ‘buggery’ law has since been added to the “Sexual Offences Act” (SOA); criminalising anal sex by life imprisonment;28 the harshest penalty in the Western Hemisphere. It remains protected from contest in domestic court by Section 26 of the Constitution, which was designed to prevent adjustment of legislation existing prior to Barbados’ 1966 independence.29 In June of 2018, three

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17 Ibid.
19 Id., Section C.
21 Id., para. 36.
22 Id., para. 44.
23 “Rapporteurship on the Rights of LGBTI Persons: Links”, IACHR Website.
25 Id., footnote 12.
26 Ro-Ann Mohammed is a Caribbean activist whose work focuses on intersectional oppression and the decolonisation of Caribbean spaces. Over the past near decade, she has been cultivating her activism through radical visibility, education, community building and creating spaces for empowerment - most recently, coordinating Barbados’ first Pride Parade in 2018. She founded and directs SHE (Sexuality Health & Empowerment), which is the only group in Barbados focused specifically on LBQT activism and she is also the co-founder of the LGBT public advocacy organisation, BGLAD.
Barbadians (a transgender woman, a lesbian and a gay man) filed a petition before the Inter-American Commission on Human Rights (IACHR) challenging the SOA, charging that it discriminates on the basis of their SOGIE.  

Courts have defined ‘buggery’ as “sexual intercourse committed against the order of nature (i.e. per anum) by man with man or in the same unnatural manner by man with woman”, Criminalised by up to ten years is ‘serious indecency’; overarchingly defined as, “an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire”, involving anyone over the age of sixteen.

These laws’ can be traced to the late-antiquity: Christian categorisation of non-procreative sex acts as “sin”, and although similar legislation was struck down in Britain in 1967, they’re a relic of Barbados’ colonial legacy, a legacy also represented in Barbados’ large majority Christian population.

Today, this legislation is usually enforced against men who engage in sexual activity with underage boys. As it makes no mention of consent, it enforces a troubling conflation of ‘homosexuality’ with sexual predation, and detractors of the LGBTQ movement continue to associate same-sex attraction with sexual deviance as reflected in societal attitudes. When a staff member of the Barbados Boy Scouts Association sexually assaulted a 12-year old member, the head of the Association spoke out against ‘homosexuality’, as opposed to paedophilia.

In 2016, then-Prime Minister Freundel Stuart said, “Rape is the offence committed against in a heterosexual relationship and buggery is the offence committed in a same-sex relationship.”

Criminalisation, combined with Barbados’ lack of anti-discrimination legislation on the basis of SOGIE, reinforce the narrative that LGBTQ people are second-class citizens; societal beliefs supported by Christian leaders and healthcare providers who continue to publicly condemn same-sex intimacy as “unhealthy”, but simultaneously deny that people face discrimination on the basis of SOGIE in Barbados. Such denigrating messaging has created an environment where LGBTQ people are dissuaded from accessing critical healthcare resources, further marginalising a population who is already disproportionately affected by HIV/AIDS.

Amidst resistance, local activists continue to advance the movement. Barbados’ first Pride month celebrations and parade took place in 2018. Church leaders said they were “repulsed” and held a press conference where they labelled the “gay agenda” a threat to human existence, vowing to “destroy any attempt by the LGBT community to make homosexual preferences a human right in Barbados”.

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38 Arshy Mann, “What does Barbados’ prime minister have to say about the country’s harsh buggery laws?”, Daily Xtra, 19 April 2017.
41 Church: No climate of violence against LGBT, Nation News. 16 November 2017.
43 “Barbados holds first Pride Parade and it’s as fabulous as you expect”, Pink News. 24 July 2018.
Provisions in force


**Buggery/Attempt to commit buggery**

Section 16(1)(b). Buggery.

1. A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for: 

   - (b) ten years, if committed by an adult on another adult; 

   and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.

2. Any person who attempts to commit the offence of buggery [...] is guilty of an offence and liable to imprisonment for four years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to the psychiatric hospital for treatment.

3. In this section “buggery” means sexual intercourse per annum by a male person with a male person or by a male person with a female person.

**Gross indecency**


1. Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment for five years. [...]  

4. In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of genital organs for the purpose of arousing or gratifying sexual desire.

Human rights situation

In 2012, the Education Ministry said that the problem of "anti-social behaviour and homosexuality" in the country’s schools were much bigger than imagined, and a committee was set up to implement strategies to mitigate the spread of such “deviant” behaviours.¹

In March 2012, two American men on board a gay cruise were arrested for engaging in “buggery” in public view on the balcony of the ship.² The men reported being detained in “inhumane conditions” and taunted by the authorities.³ They were eventually charged for “indecent exposure”.⁴

In response to this incident, the president of the Dominica Association of Evangelical Churches (DAEC) Michael Daniel issued a statement “vehemently” opposing gay cruise tours to the country.⁵ He added that anyone found guilty of

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¹ "St. Jean says anti-social behavior, homosexuality bigger than imagined", Dominica News Online, 6 September 2012.
² "Two arrested on gay cruise in Dominica", The Guardian, 22 March 2012.
³ "Gay men describe Dominica experience as ‘horrible’", Dominica News Online, 23 March 2012.
⁴ "UPDATE: Gay men plead guilty to indecent exposure; scheduled to leave Dominica Thursday", Dominica News Online, 22 March 2012.
⁵ "Evangelical association “vehemently opposed” to gay cruise tours visiting Dominica", Dominica Vibes, 23 March 2012.
“such immoral acts being displayed in public should receive the full weight of the law”.

In 2014, Minority Rights Dominica (MiRiDom) and the Sexual Rights Initiative, submitted a report for the country’s UPR examination, indicating that human rights defender groups in Dominica “are forced to operate underground because of fear that their members will be victimised”, and “those who are openly gay complain of acts of physical abuse, and are often victims of vandalism committed against their positions, as well as being ejected from house and home”.6

In July 2014, the Prime Minister Roosevelt Skerrit dismissed claims that the police was threatening to arrest people engaging in private, consensual same-sex sexual activity.7 He said, “[t]his has never happened in Dominica and I don’t think that will be happening any time now or later”. Though some news outlets have reported that 15 women and ten men were sentenced to imprisonment for engaging in same-sex sexual activity in 2001,8 this has been disputed by the police. A spokesperson said that while there were 35 reported cases of buggery between 1995 and 2000, police records revealed that no one was actually sent to prison.9

The 2015 Inter-American Commission on Human Rights (IACHR) report on violence against LGBTI persons states that the so-called “gay panic” defence (defined as the attempt to justify the killing of a person by arguing that the violence was prompted by alleged same-sex sexual advances made by the victim) has been accepted by local courts in Dominica.10 This was successfully argued by David St. Jean, who had stabbed Clement “Johnson” James to death on the basis that he was just “defending himself” after the victim purportedly stared at him in a sexual manner while holding his crotch and licking his lips.11

A 2018 report by Human Rights Watch featured an LGBT activist who shared information about the violence people experience because of their gender identity or sexual orientation.12 She added that many do not report violence because the police often ignored them.

**Statements by public officials**

In 2014, the Prime Minister Roosevelt Skerrit declared that the country will not follow in other countries’ footstep in recognising same-sex marriage: “I will make it clear that there are some things that this Government will not accept, and we will never allow for the state to recognise same-sex marriage in our country. If other countries want to do it, that’s a matter for them but there are certain guiding principles that we must follow”.13

In 2016, Senator Isaac Baptiste spoke against the criminalisation of buggery in Dominica. During his contribution to the Parliamentary debate on the introduction of a Bill to amend the Sexual Offences Act, Mr. Baptiste stated that “the continued criminalization of buggery as it is now provided for, to the extent that the court can subject that person to psychiatric observation and treatment, is not consistent with what is happening internationally”.14

**National Human Rights Institution**

Dominica does not have a National Human Rights Institution in accordance with the Paris Principles.

**UN voting record**

Dominica was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three SOGI HRC resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Dominica did not vote on the LAC amendment to remove Operative Paragraph 2,15 and abstained during the vote to adopt the African oral

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6 Minority Rights Dominica (MiRiDom) and the Sexual Rights Initiative, Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBTI) Rights in Dominica For the 19th Session of the Universal Periodic Review (2014).
7 “Dominica PM says no to same-sex marriage”, Jamaica Observer, 9 July 2014.
8 Scott Roberts,”Dominica Prime Minister: ‘We will never accept same-sex marriage’”, PinkNews, 10 July 2014.
9 “Police shoot down gay website allegations”, Dominica News Online, 28 March 2013.
10 Inter-American Commission on Human Rights, Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas (2015), paras. 491, 494.
15 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Dominica did not vote on the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

*Universal Periodic Review*

Dominica rejected all (7) the recommendations to repeal the above-mentioned articles that it received in its 1st cycle UPR in 2010.\(^\text{16}\) It also rejected a series of recommendations to address discrimination in relation to HIV, engage in sensitivity training with judiciary and security forces, and to employ the Yogyakarta Principles to guide such work. In its response, Dominica conceded that the law is “discriminatory” and that there is a “certain element of discrimination in the society”. It also stated that its 2003 HIV/AIDS strategy was inclusive “regardless... of sexual persuasion”.\(^\text{17}\)

Dominica’s 2nd cycle UPR in May 2014 generated 12 strong recommendations to decriminalise and strengthen anti-discrimination provisions within the country in relation to LGBT populations. The only mention of sexual orientation during the interactive dialogue was linked to HIV: a mere reiteration of the fact that its 2003 AIDS strategy did not discriminate on grounds of sexual orientation.\(^\text{18}\) No other address was given to four very strong comments made about Dominica’s duties in regard to protection of human rights defenders doing SOGI-related work.

Dominica’s next UPR cycle will take place in May 2019.

**Organisation of American States (OAS)**

As a member of the General Assembly of the Organisation of American States (OAS), Dominica has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008.

In 2013, Dominica decided to introduce a joint footnote—together with Saint Vincent and the Grenadines and San Kitts and Nevis—stating that the delegations of these three countries were “unable to join consensus on the approval of [the] resolution”.\(^\text{19}\) Since 2014, Dominica has withdrawn from the list of countries inserting footnotes aiming to limit or reject the content of these resolutions.

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\(^{19}\) *Rapporteurship on the Rights of LGBTI Persons: Links* [IACHR Website](https://www.iachr.org/en/).
Provisions in force


  **Unnatural connexion**
  
  *Article 431.*
  If any two persons are guilty of unnatural connexion, or if any person is guilty of an unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years.

  **Gross indecency**
  
  *Article 430.*
  Whoever publicly and wilfully commits any grossly indecent act is guilty of a misdemeanour.

Human rights situation

In 2013, the Seventh Day Adventist church organised a march against “sexual immorality” with chants such as “man to man is so unjust... woman to woman is even worse”. However, a church leader claimed was not targeting gay and lesbian people, but only the immorality of people who practice “homosexuality”. In 2015, a pastor of the Adventist church was allegedly exposed for engaging in same-sex sexual activity during a church conference.

In October 2014, Groundation Grenada Directors presented at the National Consultation on Constitution Reform, proposing an expansion of the bill of rights of Grenada to include protections for LGBT people.

A 2015 UPR shadow report by several LGBT NGOs noted that there had been at least two people charged for consensual same-sex sexual conduct.

In 2016, a man was detained for such acts with a police officer commenting that “homosexuals and lesbians are no longer hiding... since the night America legalised gay marriage”. In October 2016, the Government announced that it would postpone the referendum for a new Constitution amid growing concerns raised about one of the bills to be voted, which was said to allow for recognition of gay relationships. Rumours of a loophole in the Rights and Freedoms Bill that would have allowed same-sex marriage led to the postponement of the referendum on the new Constitution. In November 2016, the Rights and Freedom Bills were defeated at the referendum by a wide margin.

A 2018 report by Human Rights Watch found that LGBT people in Grenada faced discrimination from

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the church, family, schools and the police. According to an interviewee, the younger generation is becoming more accepting of LGBT people because of more positive media portrayals.

**Statements by public officials**

In 2013, the president of Grenada’s Senate, Lawrence Joseph, suggested that the Caribbean island should reconsider its laws prohibiting sex between men: “the day is fast approaching” when Grenada will need to amend anti-sodomy laws to “fall in line with the mainstream”.

In 2015, while visiting New York, Prime Minister Keith Mitchell called for more tolerance for Grenada’s LGBT community. However, in 2017, he was reported to have made homophobic comments against supporters of the main opposition political party.

**National Human Rights Institutions**

The Office of the Ombudsman does not appear to have done any work on SOGI issues.

**Existing legal challenges**

**Consensual same-sex sexual acts**

Two lawyers purportedly initiated a constitutional challenge to the criminalizing provision after a man was charged for engaging in consensual same-sex sexual activity. However, the charge was withdrawn after the challenge was brought.

**UN voting record**

In 2011, 2014 and 2016 Grenada was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Grenada did not vote the LAC amendment to remove Operative Paragraph 2, and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

**International advocacy and supervision**

**Universal Periodic Review**

At its 1st cycle UPR in May 2010, Grenada received five recommendations to decriminalise same-sex sexual acts, all of which it refused. However, it did note that the current law “could be viewed as discriminatory”, and with time growing tolerance would help in addressing this issue.

In January 2015, Grenada’s 2nd cycle UPR concluded. The State received 16 SOGI recommendations, mostly concerning decriminalisation. All of them were rejected. Grenada’s next UPR is in October 2019.

**Organisation of American States (OAS)**

As a member of the General Assembly of the Organisation of American States (OAS), Grenada has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008.

In October 2015, a public hearing was held at the Inter-American Commission on Human Rights (IACHR) at the request of Groundation Grenada and GrenCHAP on the subject of same-sex sexual acts and the law. After Grenada failed to appear at the hearing, the IACHR urged Grenada to decriminalise same-sex sexual acts, and in the meantime to issue a de facto moratorium on application of this legislation.
Provisions in force

- **Criminal Law (Offences) Act (1998).**

  **Buggery**

  **Section 354. Buggery.**
  Everyone who commits buggery, either with a human being or with any other living creature, shall be guilty of felony and liable to imprisonment for life.

  **Attempted Buggery**

  **Section 353(a). Attempt to commit unnatural offences.**
  Everyone who [...] attempts to commit buggery [...] shall be guilty of felony and liable to imprisonment for ten years.

  **Gross indecency**

  **Section 352. Committing acts of gross indecency with male person.**
  Any male person, who in public or private, commits, or is a party to the commission, or procures or attempts to procure the commission, by any male person, of an act of gross indecency with any other male person shall be guilty of misdemeanor and liable to imprisonment for two years.

Human rights situation

Guyanese NGO Society Against Sexual Orientation Discrimination (SASOD) and the Sexual Rights Initiative (SRI) drafted a detailed shadow report that illustrates the main local challenges in terms of legal and societal bias and reported that “in a national survey 25% of Guyanese admitted to being homophobic while 18% approved of using violence against LGBT persons”.¹

Also in 2016, representatives of a human rights organisation met with the Ministry of Social Protection and recommended that the government extend workplace discrimination protection to include sexual orientation, gender identity and health status.² More recommendations to decriminalise consensual same-sex acts came from the European Union and the British Government and from the Guyana’s Country Coordinator for the President’s Emergency Plan For AIDS Relief (PEPFAR), a United States governmental initiative to address the global HIV epidemic.³

In March 2017, a city magistrate dismissed a physical assault case and refused to allow the victim, a transgender woman, from entering the court.⁴ The magistrate was subsequently disciplined by the Judicial Service Commission for denial of justice.⁵

In April 2017, it was reported that the government had announced a plan to hold a referendum on whether “homosexuality” should remain

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criminalised. However, this was opposed by LGBT rights groups on the basis that a referendum would only fuel homophobia “as misguided, emotional arguments are made on a topic which the majority of the population is not educated to engage on rationally”. In July 2017, the Minister of Foreign Affairs, Carl Greenidge clarified that the government had only indicated that it was a possibility that a referendum would be held.

In December 2017, SASOD concluded a consultation exercise on a proposed legislative amendment to protect LGBT people from workplace discrimination under the Prevention of Discrimination Act 1997. The government has expressed support for this move though there has not been any legislative developments in this respect after SASOD published a report on this issue in 2018.

In June 2018, the first local Pride parade took place in Georgetown with over 300 participants urging the government to decriminalise consensual same-sex acts. As part of the week-long celebration, the Bishop of the Anglican Diocese of Guyana, Charles Davidson, hosted a forum on faith for the LGBT community and called for more understanding about sexuality among Christians. He noted also that while the seventh commandment prohibited adultery, it is not criminalised in the country while buggery, which he described as “crazy”, is.

In August 2018, a full-page advertisement was taken out by close to 100 Christian leaders to oppose any attempt to decriminalise same-sex intimacy. This followed their unsuccessful attempt to ban the Pride parade earlier in June 2018.

Statements by public officials

In January 2016, Prime Minister Granger said that he is “prepared to respect the rights of any adult to indulge in any practice which is not harmful to others”. Previously in 2015, he noted that his government would not allow religious imposition to trump the human rights of LGBT people in Guyana. A month earlier, the former Health Minister had spoken about Guyana showing leadership and repealing the archaic law, within the context of the United Nations Sustainable Development Goals (2015–2030).

In May 2017, the Minister of Foreign Affairs Carl Greenidge said that the decriminalisation of buggery is a “sensitive” issue because of the “different mix of not only ethnic groupings, but religious groupings”.

In September 2017, in response to a question on the buggery law issue, the First Lady Mrs Sandra Granger stated that her “personal view is that if two men engage in consensual sex and they harm no one, that is their right and their business. The government has no place in their relationship.” She added that Guyana cannot go the way of Animal Farm and “impose the belief that some animals are more equal than the others.”

National Human Rights Institutions

The Office of the Ombudsman does not appear to have done any work on sexual orientation or gender identity.

Existing legal challenges

Cross-dressing

In November 2018, the Caribbean Court of Justice ruled that Section 153(1)(xlvii) of the Summary Jurisdiction (Offences) Act which criminalised cross-dressing for an “improper purpose” was unconstitutional. The case was brought by four trans women who were arrested and convicted under the provision in 2009.
In the CCJ decision, the President wrote: "No one should have his or her dignity trampled on, or human rights denied, merely on account of a difference, especially one that poses no threat to public safety or public order".19

In response, the Prime Minister Moses Nagamootoo accepted the decision and said that the ruling "is one step forward in an appreciation of the fact that society has differences."20

**UN voting record**

In 2011, Guyana was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.21 Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),22 nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate.23

At the session of Third Committee of the UN General Assembly held in November 2016, Guyana voted against the LAC amendment to remove Operative Paragraph 2,24 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Guyana voted in favour of the amendment which tried to block financial resources allocated to the Independent Expert on SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

At its 1st cycle UPR in May 2010, Guyana received seven recommendations to decriminalise and include SOGI as a ground for non-discrimination.25 In its responses the State said that no cases stemming from the law had come before the courts, and that "[c]hanges to laws required widespread consultation and a major change in attitude on the part of the populace". The delegation also indicated that attempts to include the phrase "sexual orientation" in the anti-discrimination clause of the Constitution "had been met with widespread consternation and protest".

Guyana received 17 recommendations in its 2nd cycle UPR in January 2015, of which it accepted three: to strengthen protections, to ensure that hate crimes and discrimination based on sexual orientation or gender identity are vigorously investigated and appropriately prosecuted, and further review of legislative non-discrimination provisions relating to SOGI.26 All other recommendations had a call to decriminalise, and all 14 were rejected ('noted').

In its responses the Guyana delegation pointed out that prior to elections the Parliamentary Special Select Committee had a mandate to look at reviewing the legislation, but that process had ceased. It stressed there had been "unfettered freedom" in regard to freedom of expression for LGBT groups, and that the State did not discriminate based on sexual orientation, as provided by the Constitution.

Guyana’s 3rd UPR cycle commences in January 2020.

**Treaty Bodies**

Both the CEDAW Committee, in 2012 and the CESCR in 2015 have urged Guyana to decriminalise consensual adult same-sex acts.27 Both bodies have also expressed concern at the high levels of discrimination based on sexual orientation and gender identity.

Additionally, in 2013, the CRC urged the State to ensure that its programmes address the situation of

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24 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
discrimination against children because of their sexual orientation and/or gender identity.\(^28\)

**Special Procedures**

In 2017, the Working Group of Experts on People of African Descent reported receiving complaints from civil society groups on the prevalent discrimination against LGBT people and sex workers. It noted that LGBT people often choose not to express their sexual orientation or identity out of fear of being threatened, subjected to discrimination or victimised.\(^29\)

**Organisation of American States (OAS)**

As one of the 35 Member States of the Organisation of American States (OAS) Guyana has subscribed to the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by the OAS General Assembly since 2008. However, in 2013 and 2014, Guyana requested the insertion of footnotes in an attempt to limit or reject the content of the resolutions approved in those two years respectively.

In 2013 the Government declared it was “unable to join consensus” given the fact that several of the issues addressed in the Resolution were the subject of deliberation “by a special select Committee of the National Assembly”.\(^30\) The exact same footnote was inserted in 2014.\(^31\) However, in 2016, Guyana withdrew from the list of countries requesting such “declarations”.\(^32\)

In 2017, SASOD commended the government for supporting the OAS resolution condemning discrimination and violence against LGBTI people.\(^33\)

In terms of human rights monitoring by the Inter-American Commission on Human Rights (IACHR), in late 2013, a public hearing on reports of discrimination and violence against children based on sexual orientation and gender identity in Guyana was held in Washington DC.\(^34\) In 2015, another public hearing was held, focusing on access to social, economic and cultural rights.\(^35\)

\(^28\) “Concluding observations on the combined second to fourth periodic reports of Guyana, adopted by the Committee at its sixty-second session (14 January–1 February 2013)”, CRC/C/GUY/CO/2-4, 18 June 2013.


\(^31\) OAS General Assembly, Human rights, sexual orientation, and gender identity and expression (2014).

\(^32\) See all OAS-GA Resolutions since 2008 here: “Rapporteurship on the Rights of LGBTI Persons: Links” IACHR Website.

\(^33\) “SASOD Commends Government for Supporting LGBTI Resolution at Recent OAS General Assembly”, SASOD (website), 7 July 2017.


Provisions in force

- **Offences Against the Person Act (1864).**

<table>
<thead>
<tr>
<th>Offence</th>
<th>Article Reference</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buggery</td>
<td>76</td>
<td>Whosoever shall be convicted of the abominable crime of buggery committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.</td>
</tr>
<tr>
<td>Attempted Buggery</td>
<td>77</td>
<td>Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.</td>
</tr>
<tr>
<td>Proof of carnal knowledge</td>
<td>78</td>
<td>Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.</td>
</tr>
<tr>
<td>Gross indecency</td>
<td>79</td>
<td>Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour.</td>
</tr>
</tbody>
</table>

In 2009, Jamaica introduced a new **Sexual Offences Act** which establishes the rules for the ‘Sex Offender Register and Sex Offender Registry’ at Sections 29 - 35, operative as of October 2011. Under this law, anyone convicted of a “specified offence” must be registered as a “sex offender” and comply with specific obligations. Articles 76, 77 and 79 of the Offences Against the Person Act (cited above) fall under the category of “specified offences” as per Article 2 of the law’s First Schedule.

**Human rights situation**

In August 2017, Jamaican fashion designer, reality TV star and gay LGBTI activist Dexter Pottinger was found stabbed to death in his Kingston home.¹ A neighbour reported hearing “Help!” and “Murder!” screams from the victim’s house, but did not immediately notify the police.² According to early reports, the murder was not ruled as a hate crime.

¹ “Dexter Pottinger dead: Gay activist and face of Jamaica Pride found murdered in his home”, Independent, 2 September 2017.
² “To Jamaica’s murdered gay icon Dexter Pottinger #RestInPower”, Dazed, 6 September 2017.
crime. A suspect was allegedly arrested and charged a few days after the episode.

The repeal or retention of buggery laws in the country has been a divisive topic within the Christian Church. The Council of Churches reportedly held a special sitting in July 2017 to arrive at a uniformed position after the Head of the Anglican Church in Jamaica and the Cayman Islands and the President of the Jamaica Theological Seminary supported the decriminalisation of same-sex consensual acts among adults and the prohibition of marital rape.

In October, "Intimate Conviction", a two day conference examining the Christian Church and anti-sodomy legislation across the Commonwealth was held in Kingston. The Jamaica Evangelical Alliance and the Seventh-day Adventist Church in Jamaica allegedly distanced themselves from the conference. A conservative Christian group has reportedly accused Jamaican judges of importing alien principles when deciding the cases challenging buggery laws and faith-based groups have allegedly been lobbying for anti-LGBTI legislation.

In January 2018, an American pastor known for opposing women's rights and for having repeatedly called for LGBT people to be executed (and who had previously been deported from, and denied entrance to, numerous countries) was banned from entering Jamaica (as requested by civil society through an online petition signed by almost 39,000 people and a letter to the government). The decision was based on the Chief Immigration Officer's assertion that his statements were not conducive to the country's climate at that moment. The pastor was reported reacting to the news by wishing the death of the activist that launched the petition.

A Human Rights First report denounced the link between the criminalisation of consensual same-sex activity among adults and dancehall music, and the role that it plays in perpetuating hate and violence towards LGBTI people in the country. Violence seems to have also contributed to the anti-LGBTI sentiment by constantly reporting alleged "gangs" of violent homosexual criminals. However, during the last couple of years, writing, films, and music aimed at visibilising LGBT lives have proliferated and some local news portals, like The Gleaner, have shown support of the rights of LGBTI people.

After successful Pride celebrations in 2017, Montego Bay Pride march was held again in October 2018 and its organiser, Maurice Tomlinson, claimed that even though the event was incident-free, there was fear among participants.
In December 2018, The Guardian announced that Jamaica was “no longer the most homophobic place on Earth” on account of the work human rights advocates have been carrying out to promote respect, acceptance and inclusion of sexual and gender minorities. Nevertheless, J-FLAG called to broaden the conversation about the rights of sexual and gender minorities, and Jamaican LGBTI activist Jaevion Nelson recommended establishing a pro-poor advocacy agenda to address the intersections of poverty and SOGI.

That same month, a House committee in charge of reviewing sexual offences legislation suggested putting buggery, among other controversial topics, to a referendum, thus reigniting interest in Prime Minister Andrew Holness’s pre-election prior proposal. Activists strongly condemned the recommendations made by the committee.

**Statements by public officials**

**Former Minister of Education Ronald Thwaites:** “[T]here is no place in our schools for violence or bullying based on differences in gender, ethnicity, religion, group identity, place of residence and/or sexual orientation. We will not allow persons to be discriminated [against].”

**Minister of Justice, Delroy Chuck:** “The Government’s position is clear and I will repeat it, the law will not be changed, save and except by a referendum. The buggery law will never be changed unless a referendum so decides.”

**Prime Minister Andrew Holness, 2018:** “It’s not my business [whether a prospective Cabinet member was gay]; neither is it my interest. Whatever is in my discretion to distribute politically, a person’s sexuality or sexual orientation is not a criteria for the use of my discretion.”

**National Human Rights Institution**

Jamaica’s National Human Rights Institution in accordance with the Paris Principles, is the Office of the Public Defender. There is no evidence that any work on SOGI issues has been carried out by the institution. However, Arlene Harrison Henry, who was designated Public Defender in 2015, publicly stated that LGBT people are entitled to equality, representation, and equal protection of laws.

**Existing legal challenges**

**Consensual same-sex sexual acts**

Despite striking reports showing that up to 91% of Jamaicans believe lawmakers should make no attempt to repeal buggery laws, decriminalisation efforts are also being channelled through strategic litigation before local courts. The first hearing in this case, concerning Maurice Tomlinson, a gay LGBTI activist who escaped the country after authorities failed to investigate the reported threats against his life, was held in January 2016. This was followed by a two-year delay in the proceedings caused by discussions about the Public Defender, whose statutory job it is to support the human rights of Jamaican citizens, joining the matter as an interested party. In November 2018, the Court of Appeal ruled against the Public Defender, while granting standing to ten religious groups in favour of the defendant’s position. Before this case, AIDS-free World had lodged a complaint with the Jamaica Supreme Court on behalf of a man whose landlord reportedly evicted him from his home because of his sexual orientation.
orientation. The lawsuit, listed as the first domestic challenge to the country’s anti-sodomy legislation, was later withdrawn due to concerns for the alleged victim’s personal safety and that of his family.

Freedom of speech
In 2012, Maurice Tomlinson filed a complaint against Jamaican television stations that refused to air “Love and Respect”, a 30-second video paid advertisement calling for respect for the basic human rights of Jamaican LGBTI people, produced by human rights activists and AIDS-Free World. He is currently pursuing an appeal with the support of the Canadian HIV/AIDS Legal Network.

UN voting record
Jamaica was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Jamaica voted against the LAC amendment to remove Operative Paragraph 2 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Jamaica abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision
Universal Periodic Review
To provide law enforcement agencies with appropriate LGBT sensitisation training was the only recommendation accepted by Jamaica in its 1st cycle UPR in October 2010. All other 11 recommendations were rejected – calls for decriminalisation, non-discrimination and protection of LGBT human rights defenders. In its Final Report, the Working Group recorded the State’s response: “Jamaica stressed that the issue of male homosexuality was one of great sensitivity in Jamaican society, in which cultural norms, values, religious and moral standards underlay a rejection of male homosexual behaviour by a large majority of Jamaicans; and that the Government was committed to ensuring that all citizens were protected from violence”.

At its 2nd cycle UPR in May 2015, Jamaica received 18 recommendations from States, of which it accepted only three: all of which were to do with the investigation and prosecution of violence acts against LGBT people and those defending their rights. The rejected, or ‘noted’, recommendations were primarily to do with criminalisation, but also many to do with codifying non-discrimination provisions relevant to LGBT people. The State mentioned that “several initiatives had been put in place” in order to create better understanding of SOGI-related issues in Jamaica, giving the example of police sensitisation in regard to in-force education on human rights, diversity training and support to LGBT people in the reporting of crime. Jamaica’s next UPR commences in May 2020.

Treaty Bodies
The Human Rights Committee (CCPR) (November 2011) and the Committee on Economic, Social and Cultural Rights (CESCR) (June 2013) urged Jamaica to repeal its buggery laws, to send a strong message that harassment, discrimination or violence against LGBT persons would not be tolerated, and to swiftly and effectively investigate, prosecute and sanction individuals for such acts. Both bodies also voiced their concern over the stigmatisation of people living with HIV/AIDS, fuelled by legislation.

46 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International. Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
50 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Jamaica, CCPR/C/JAM/CO/3, 17 November 2011, para. 8; Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftyieth session (29 April–17 May 2013), E/C.12/JAM/CO/3-4, 10 June 2013, para. 8, 9.
criminalising same-sex consensual relations among adults due to the association of homosexuality with the medical condition, and the negative impact on the enjoyment of their social and cultural rights."51

In July 2015, the Committee on the Rights of the Child (CRC) expressed concern about gaps in the overall data collection in Jamaica, in particular with respect to LGBTI children.52

In November 2016, the Human Rights Committee reiterated its 2011 suggestions made to Jamaica regarding discrimination against LGBTI people and people living with HIV/AIDS and the criminalization of consensual same-sex activity among adults.53

In May 2017, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) noted with concern that emigration is mostly driven by poverty, unemployment and violence targeting sexual and gender minorities, among others.54

Special Procedures

In October 2010, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment touched upon the harsh living conditions of gay men deprived of their liberty.55

Organisation of American States (OAS)

As a member of the Organisation of American States (OAS), Jamaica is under the jurisdiction of the Inter-American Commission on Human Rights (IACHR). The IACHR visited Jamaica in 2011 and reported on SOGI issues56 and in 2014 it held two ex officio public hearings, one in March and another one in October, to follow up on the Report. In both hearings, civil society organisations and the State submitted updated information with regard to the issues discussed in that 2012 Report.57

At the General Assembly of the OAS, Jamaica joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by that body since 2008. However, since 2013, Jamaica has introduced footnotes to every resolution on the matter approved since then, in an attempt to limit or reject the content of these international instruments. The footnote inserted in 2013 (fn. 3) reads: "The Government of Jamaica is unable to join the consensus on the approval of this resolution, given that the terminology of gender expression, as proposed, is ambiguous and has the potential to impose one value system over another."58 Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica’s domestic law. The exact same footnote was repeated in 2014 (fn. 6).59

However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: "The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. References

51 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Jamaica, CCPR/C/JAM/CO/3, 17 November 2011, para. 9; Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April–17 May 2013), E/C.12/JAM/CO/3-4, 10 June 2013, para. 28.

52 Concluding observations on the combined third and fourth periodic reports of Jamaica, CRC/C/JAM/CO/3-4, 10 March 2015, para. 16.


54 Concluding observations on Jamaica in the absence of a report, CMW/C/JAM/CO/1, 23 May 2017, para. 62.

55 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his Mission to Jamaica, A/HRC/16/52/Add.3, 11 October 2010.


58 Human rights, sexual orientation, and gender identity and expression, AG/RES. 2807 (XLIII-O/13), 6 June 2013, fn. 3.

59 Human rights, sexual orientation, and gender identity and expression, AG/RES. 2863 (XLIV-O/14), 5 June 2014, para. 6.

60 Promotion and protection of human rights, AG/RES. 2887 (XLVI-O/16), 14 June 2016, fn. 1.


SAINT KITTS AND NEVIS

Provisions in force

- Offences against the Person Act (Act No. 7 of 1873) (as amended up to 2002).

**Abominable crime of buggery**

**Article 56. Sodomy and bestiality.**

Any person who is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

**Attempt to commit the abominable crime**

**Article 57. Attempt to commit an infamous crime.**

Any person who attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, commits a misdemeanour, and, on conviction, shall be liable to be imprisoned for a term not exceeding four years, with or without hard labour.

Human rights situation

In 2012, after an openly gay teenager was found shot in his head and chest, there was strong public sentiment that the attack was justified because of the victim’s sexual orientation.¹

In 2015, law enforcement officers attended a LGBT-sensitivity training programme that was lauded by Assistant Commissioner of Police Vaughn Henderson in the spirit of the constitutional principle of non-discrimination.² In late 2015, a media outlet interviewed three gay men from St Kitts and Nevis who said that “violence and harassment against the LGBT community is common and that police do little to stop it”.³ It was reported in December 2015 that a gay man was seeking asylum in Canada after suffering from two gay bashing attacks.⁴

In 2017, the US Human Rights Report reiterated its 2016 observation that “negative societal attitudes towards the LGBTI community impeded the operation of LGBTI organisations and the free association of LGBTI persons”.⁵ In fact, it has been reported that the country’s first LGBT organisation, the St Kitts/Nevis Gay-Straight Alliance for Progress, only had its first meeting in January 2016.⁶

In 2018, a Human Rights Watch report quoted a gay male interviewee from St. Kitts and Nevis who said “I have to leave to be me” due to the discriminatory environment in which he lived.⁷ The report also found that there was a general climate of homophobia, with family members as a major source of discrimination and violence. For instance, a 20-year-old gay man reported how his mother had threatened to kill her sons if they grew up to become “anti-man” (an expression used to derogatory refer to LGBT people).⁸

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¹ Arshy Mann, “Can St Kitts protect its gay citizens?”, Xtra, 23 December 2015.
³ “Gay man opens up about homophobia in St Kitts”, Xtra, 22 December 2015.
⁶ “LGBT safety in St Kitts and Nevis”, Xtra, 23 February 2016; “St. Kitts/Nevis Gay-Straight Alliance for Progress” Facebook Website.
Statements by public officials

In 2013, the Inter-American Commission on Human Rights (IACHR) welcomed the statement delivered by former Prime Minister of St. Kitts and Nevis, Denzil Douglas.12 Douglas had recommended "having a very serious look" at laws that criminalise "those who are engaged in sex work for pay", and "those who are considered to be homosexuals".10 However, less optimistic press reports indicated that, despite giving pro-LGBT comments to international audiences, Douglas had done nothing to remove the laws while he was in office, and that he had even been caught on camera making homophobic statements against his political opponent.11

In 2015, Prime Minister Dr Timothy Harris stated, "It is clear that Caribbean countries must continue to confront the issues that are related to the elimination of stigma and discrimination and disentangle them from the misperception that this is a gay agenda".12

UN voting record

In 2011, 2014 and 2016 Saint Kitts and Nevis was not a member of the Human Rights Council and, therefore, did not participate in the vote for the SOGI resolutions.13 At the session of Third Committee of the UN General Assembly held in November 2016, Saint Kitts and Nevis voted against the LAC amendment to remove Operative Paragraph 2,14 and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Saint Kitts and Nevis voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Saint Kitts and Nevis did not accept any of the eight recommendations regarding decriminalisation and non-discrimination at its 1st cycle UPR in January 2011, the State delegation noted that it protects, not excludes, MSM in its HIV programming, and that despite the existence of the criminalising legislation, LGBT people enjoyed the same freedoms as everyone else in the "tolerant society" that is Saint Kitts and Nevis.15 At its 2nd UPR cycle in 2015, the State also received eight recommendations concerning the same issues: decriminalisation and non-discrimination.16 During the interactive dialogue, the delegation completely denied the existence of any formal or positive legal discrimination against persons based on their sexual orientation.17 Saint Kitts and Nevis’ 3rd UPR session commences in May 2019.

Organisation of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Saint Kitts and Nevis has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008.18 However, in 2013, Saint Kitts and Nevis joined Dominica and Saint Vincent and the Grenadines to insert a joint footnote stating that the delegations of these three countries were "unable to join consensus on the approval of this resolution". Even though the State withdrew from the list of countries that inserted further footnotes in 2014 and 2016 resolutions, Saint Kitts and Nevis inserted a footnote to the 2017 resolution.
SAINT LUCIA

Provisions in force

- Criminal Code, No. 9 of 2004 (effective 1 January 2005).

**Bugger / Attempted bugger**

Section 133. Buggery.

(1) A person who commits bugger commits an offence and is liable on conviction on indictment to imprisonment for:

   (a) life, if committed with force and without the consent of the other person;

   (b) ten years, in any other case.

(2) Any person who attempts to commit bugger [...] commits an offence and is liable to imprisonment for five years.

(3) In this section “bugger” means sexual intercourse per anum by a male person with another male person.

**Gross indecency**

Section 132. Gross Indecency.

(1) Any person who commits an act of gross indecency with another person commits an offence and is liable on conviction on indictment to imprisonment for ten years or on summary conviction to five years.

(4) In this section “gross indecency” is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.

Human rights situation

In 2011, the country’s first LGBT human rights office—which had recently been opened by United and Strong a registered NGO based in St Lucia that focuses on SOGI issues—was maliciously [alleged] burned to the ground within months of opening.1

Also, in 2011, three gay American tourists were subject to hate crime based on their sexual orientation where the perpetrators used anti-gay slurs during the attack.2 Following the attack, the minister for tourism expressed his “sincere apologies” to the victims.

The experience of sexual- or gender-diverse tourists is very different from citizens, as the government aims to attract tourists to visit the country.3 There have been occasional reports of violence against LGBT people,4 but underreporting is common for reasons of fear or State apathy. For instance, no progress had been made in the investigation of the 2015 killing of Marvin Anthony Augustin, which appears to have been a hate crime.5

Furthermore, in terms of economic, social and cultural rights, LGBTI persons were denied access

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1 Tris Reid-Smith, “How gay group United and Strong is changing the island of Saint Lucia”, Gay Star News, 4 July 2012.
4 Mary Lawlor, “They put a knife to my throat and told me I shouldn’t be speaking on TV about gay men”, The Journal.ie, 1 November 2015.
5 *After 56 stabs, Marvin’s killer is still out there*, St Lucia News Online, 22 May 2015.
to rental homes or were forced to leave rental homes and were denied jobs or left jobs due to a hostile work environment.6

In 2015, United and Strong organised a rights sensitisation training programme for law enforcement officers.7 In October 2017, the same organisation co-organised the 5th annual Caribbean Women and Sexual Diversity Conference (CWSDC) in St Lucia.8 One outcome of the conference was the establishment of the Transgender Caucus Group for the Eastern Caribbean.9

In 2016, United and Strong called on political parties “to make a full position statement on the issue of LGBT discrimination”, after a video showing the Minister of Tourism using a derogatory word sparked outrage on social media.10 In fact, in 2015, the interplay of buggery laws and tourism was the subject of a special report by Telesur, and same-sex tourism has also been proposed as a new source of tourism revenue by United and Strong.11

In November 2017, United and Strong criticised the Minister for External Affairs Sarah Flood-Beaubrun for organising the World Congress of Families, which promoted heteronormativity and opposed “homosexuality”.12 It expressed concern about the Acting Prime Minister, Guy Joseph, and another politician, Lenard Montoute, attending the event as well. Currently, in 2019 United and Strong focuses on dialogue with political groups and individuals, in government and opposition.13

Statements by public officials

In 2017, the External Minister, Sarah Flood-Beaubrun, reiterated her position against the decriminalisation of buggery, and stated that the country will remain “resolute” against international pressure: “Even if it’s a long struggle in some countries, this is one country that we will continue struggling”.14 She has also claimed that same-sex parenting can “set children up for failure” because it was against the “natural order”.15

National Human Rights Institution

The Office of the Parliamentary Commissioner does not appear to have done any work on sexual orientation or gender identity.

UN Voting Record

In 2011, 2014 and 2016 Saint Lucia was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions.16

At the session of Third Committee of the UN General Assembly held in November 2016, Saint Lucia voted against the LAC amendment to remove Operative Paragraph 217 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Saint Lucia abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in January 2011, St Lucia received eight recommendations. It accepted two which both concerned investigation and protection of SOGI-related human rights defenders. Having asserted that non-discrimination in the Constitution was inclusive of all St Lucians, the

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7 “Rights Sensitisation for Law Enforcement Officers”, United and Strong (website), 21 May 2015.
8 Rehani Isidore, “Caribbean LBT Women’s Conference Marks Historic 5th year”, HTS St Lucia, 10 October 2017.
10 “NGO wants St Lucia political parties to state position on LGBT”, St Lucia News Online, 29 June 2015.
15 Rehani Isidore, “‘We should not set children up for failure’ – Sarah Flood-Beaubrun”, HTS St Lucia, 5 December 2017.
17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
delegation made an interesting comment during its Interactive Dialogue: “Matters regarding how a society interacts, what principles it is governed by and how it will evolve in the future clearly reveal a need for advocacy and changes in attitude of certain sectors of society. The question remains, however, whether such advocacy should be the role of the Government, or whether it should be carried out by those who believe they are discriminated against.”

In its 2nd cycle UPR in November 2015, the State revealed that it was “considering enacting ordinary legislation addressing discrimination on the grounds of sexual orientation”, as suggested by the Constitutional Reform Commission, referencing its 2006 Labour Code that already outlaws such discrimination. Furthermore, the delegation indicated that “all Saint Lucians, including LGBT persons, were afforded full protection under the Constitution”, and that judicial redress was afforded to “any individual” regardless of sexual orientation. Saint Lucia received a total of 13 SOGI-related recommendations. All recommendations to repeal laws criminalising same-sex consensual acts or legislation that may otherwise discriminate against LGBT people were rejected.

Only three recommendations (and one in part) were accepted, all of them referring to awareness-raising campaigns and “strengthening the fight” against discrimination based on sexual orientation and gender identity. Saint Lucia’s next (3rd) UPR session starts in November 2020.

Organisation of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Saint Lucia has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all OAS-GA Resolutions since 2008).

However, in 2013, Saint Lucia announced it would insert a footnote to that year’s resolution (fn. 7). The following year, Saint Lucia inserted a footnote that reads as follows: “Saint Lucia is unable to join consensus on the approval of this resolution since we are of the view that the term ‘gender expression’ is one that is not thoroughly defined or accepted internationally. Moreover, not only is the expression heavily nuanced but most importantly it is currently not defined in domestic law” (fn. 12).

Saint Lucia inserted no footnote in the 2016 resolution (there was no resolution in 2015).

However, in both 2017 and 2018, Saint Lucia again included footnotes stating that it was “unable to agree to the section” because “most of the terms are not defined under international agreements and resolutions to which Saint Lucia is committed”21 and the section “does not conform to its domestic laws”22.
SAINT VINCENT AND THE GRENADINES

Provisions in force

- **Criminal Code (1990)**

  **Buggery**
  
  **Section 146.**
  
  Any person who:
  
  (a) commits buggery with any other person; [...] (c) permits any person to commit buggery with him or her;
  
  is guilty of an offence and liable to imprisonment for ten years.

  **Gross indecency**
  
  **Section 148.**
  
  Any person, who in public or private, commits an act of gross indecency with another person of the same sex, or procures or attempts to procure another person of the same sex to commit an act of gross indecency with him or her, is guilty of an offence and liable to imprisonment for five years.

Human rights situation

In 2010, Prime Minister Ralph Gonsalves, made disparaging comments about opposition Senator Vynnette Frederick, suggesting she was a lesbian. Based on those remarks, she brought a claim against the Prime Minister on the basis that those comments had negatively impacted her performance at the elections. In 2015, Frederick called for the country to discuss the issues of same-sex relationships, and added that she was well positioned to lead the discussion because of her perceived sexuality.

In 2015, a gay author from St Vincent published a book after he moved to Canada, based on his personal experiences of anti-gay violence and prejudice while growing up.

This echoes the findings in the 2017 US Department of State Human Rights Report that there remains social discrimination against LGBTI persons. Although local observers believed such attitudes of intolerance were slowly improving, members of professional and business classes were more inclined to conceal their LGBTI sexual orientation.

More recently, a 2018 Human Rights Watch report found many instances of violence and discrimination, often committed by the police or family members.

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1 “Frederick’s complaints against Gonsalves contains info from separate meetings”, iWitness News, 1 December 2011.
3 Dinah Zeldin, “Why gay author from St Vincent only came out in Canada”, Xtra, 26 November 2015.
therefore, did not vote for the adoption of any of the SOGI resolutions. He added that he was not making a case for decriminalisation, but for an “intelligent conversation” on whether it should be decriminalised.

National Human Rights Institution

Saint Vincent and the Grenadines does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, 2014 and 2016 Saint Vincent and the Grenadines was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.9 At the session of Third Committee of the UN General Assembly held in November 2016, Saint Vincent and The Grenadines voted against the LAC amendment to remove Operative Paragraph 2,10 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Saint Vincent and the Grenadines abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in May 2011, the State rejected 11 recommendations to lift discriminatory laws and practices, including the repeal of Section 146 (in line with the Human Rights Committee Concluding Observations in 2008).11 In response, the State said that its current legislation was supported by society and there was no call to repeal it, “[in] n the context of the moral, societal and cultural make-up of the State”. In this vein, Saint Vincent and the Grenadines compared its own legal situation to that of the United Kingdom arguing that it had taken “hundreds of years” for the UK to repeal similar legislation, and “the harsh nature of the sentences imposed under British law,” comparing them to the “relatively short period of time that Saint Vincent and the Grenadines has been an independent state, and the less punitive sanctions involved”.12

In its 2nd cycle UPR, Saint Vincent and the Grenadines once again rejected all SOGI-related recommendations. During the interactive dialogue, the delegation indicated that criminalising provisions “had existed for a long time and that the precepts underlying them had overwhelming public support in the country’s Christian society espousing Judaeo-Christian values in the Caribbean context”. However, changes in those values were acknowledged as “occurring, particularly among sections of young people”. The delegation went on to stress that “there had been no imprisonments” based on the criminalising provisions, but at the same time, as it did in its 1st cycle, insisted on the fact that there was “no public or legislative appetite to revise any of [these] laws”.13

Saint Vincent and the Grenadines’ next URP starts in May 2021.

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6 “St Vincent: Man says he killed preacher during same-sex encounter”, iWitness News, 20 August 2018.
7 “Unacceptable to beat up gays – PM Gonsalves”, Searchlight, 7 September 2018.
8 Ibid.
10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Treaty Bodies

In 2015, the Committee on the Elimination of Discrimination Against Women noted that women in same-sex relationships are not covered by the 2015 Domestic Violence Act, and recommended this exclusion be rectified.\(^\text{14}\)

In 2017, the Committee on the Rights of the Child expressed concern regarding the criminalisation of consensual same-sex conduct between men, which may penalise boys above 16 years of age and perpetuate the notion that LGB children have a psychosocial disorder.\(^\text{15}\) It urged the State to decriminalise consensual same-sex conduct and raise public awareness of the equality of and the importance of not discriminating against LGBT people, and to fully respect the diversity of children’s sexual orientation.\(^\text{16}\)

Organisation of American States (OAS)

As a member of the General Assembly of the Organisation of American States (OAS), Saint Vincent and the Grenadines has joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by this body since 2008 (see all OAS-GA Resolutions since 2008).\(^\text{17}\) In 2013, Saint Vincent and the Grenadines, along with Dominica and San Kitts and Nevis, inserted a footnote stating that the delegations of these three countries were “unable to join consensus on the approval of this resolution” (fn. 2). The Government further stated that “the term ‘gender expression’ is one that is not thoroughly defined internationally or that has international acceptance” and suggested that the discourse at the OAS “should be confined only to language which has been recognized or approved by the United Nations”. In 2016, Saint Vincent and the Grenadines withdrew from the list of countries inserting footnotes. Further, at the OAS General Assembly in June 2016, Minister of Economic Planning and Sustainable Development of Saint Vincent and the Grenadines, Camillo Gonsalves, described the Orlando shooting as a “tragic and heinous event” and said that his country offered its “support in ridding the world of hate and the tools of hate”.\(^\text{18}\)

However, despite these positive sentiments, in 2017 and 2018, Saint Vincent and Grenadines again inserted a limiting footnote in the section on the human rights and prevention of discrimination and violence against LGBTI people.\(^\text{19}\)

\(^{14}\) Concluding observations on the combined fourth to eighth periodic reports of Saint Vincent and the Grenadines, CEDAW/C/VCT/CO/4-8, 28 July 2015.

\(^{15}\) Concluding observations on the combined second and third periodic reports of Saint Vincent and the Grenadines, CRC/C/VCT/CO/2-3, 13 March 2017, para. 22.

\(^{16}\) Id., para. 23.

\(^{17}\) “Rapporteurship on the Rights of LGBTI Persons: Links” IACHR Website.

\(^{18}\) “Media Center: Press Releases: E-074/16”, OAS Website.

\(^{19}\) OAS General Assembly, “Promotion and protection of human rights”, AG/RES. 2908 (XLVII-O/17), 21 June 2017, footnote 10; OAS General Assembly, “Promotion and protection of human rights”, AG/RES. 2928 (XLVIII-O/18), 5 June 2018, footnote 11 “… the equality of all human beings as enshrined in its Constitution. It is necessary to underscore that some of the terms in this resolution are not defined in the domestic laws of Saint Vincent and the Grenadines or internationally. Accordingly, Saint Vincent and the Grenadines disassociates itself from those terms that are incompatible with and contrary to its national laws, reserving its rights to interpret the terms of this resolution.”
CRIMINALISATION

ASIA

STATE-SPONSORED HOMOPHOBIA 2019
PROVISIONS IN FORCE

A new Penal Code came into force on 14 February 2018. While the new legislation was welcomed as "a milestone in the country's criminal justice reform", it explicitly criminalises same-sex sexual conduct though the punishment has been reduced. Previously, Article 427 of the 1976 Penal Code imposed a long imprisonment term for the offence of "pederasty". Furthermore, all sexual contact outside marriage was punishable with a maximum of the death penalty and a high-profile Islamic scholar has claimed that "there was broad consensus amongst scholars that execution was the appropriate punishment if homosexual acts could be proven". Notably, the practice of the practice of bachebazi - which involves the sexual abuse of underage boys - is now explicitly criminalised under Chapter 5 of Book 4 of the new Penal Code.


Chapter Two: Adultery and its Penalty.

Mosaheghe

Section 645. Mosaheghe.
A person who commits "Mosahege" with another person, each of the former shall be sentenced to small imprisonment, not exceeding one year.

Chapter Three: Sodomy and its Penalty.

Sodomy

Section 646. Crime of Sodomy.
(1) A person who commits sodomy with another female or male, shall be punished in accordance with the provisions of this chapter.
(2) For the purpose of this section, sodomy happens by the penetration of a male sexual organ into a female or a male anus, not considering the depth of the penetration.

Penalty for sodomy

Section 647.
Those who commit sodomy, shall be sentenced to medium imprisonment not exceeding two years.

Aggravation of sodomy

Section 648.
In one of the following cases commitment of the acts, specified above, is considered to be aggravating conditions and shall be sentenced to medium imprisonment, exceeding two years:

1 "UNAMA welcomes Afghanistan’s new penal code - Calls for robust framework to protect women against violence", UNAMA (website), 22 February 2018.
3 Sayed Jalal Shajjan, "The revised Afghanistan criminal code: an end for Bacha Bazi?", South Asia @ LSE (website), 24 January 2018.
4 Mosaheghe traditionally feminine same-sex sexual relationship does not involve penetration, it is all about touching both sexes and sexual pleasure.
AFGHANISTAN - CRIMINALISATION

(1) In the case where the person against whom the crime has been committed is one of the temporary or permanent “Maharem” (with whom marriage is prohibited according to rules of Islam) of the offender.

(2) In the case where the offender is a tutor, teacher, or servant of the person against whom the crime has been committed or the latter has, one way or another, has authority or influence over the former.

(3) In the case where the person against whom the crime has been committed is affected by the genital disease because of the offenders disclaim of having sexually transmitted diseases.

Tafkhiz

Section 649. Tafkhiz.

When the male offender commits "Tafkhiz" with another man, the former shall be sentenced to small imprisonment (three months to a year).

Chapter 4. Ghavadi.

Ghavadi

Section 650. Ghavadi.

(1) “Ghavadi” is to incite two or more people to commit adultery or "sodomy" by introducing them to each other or finding them a place to do so. In recognition of the crime “Ghavadi”, repetition is not important.

(2) Those who are convicted of “Ghavadi” shall be punished in accordance with the provisions of this chapter.

Human rights situation

LGBT people face significant violence and discrimination from the State, their own families, and society at large. However, there is sparse evidence, anecdote and data being reported on the situations of sexual and gender minorities in the country, and there are no SOGI advocacy organisations or networks known of.

In 2004, an American adviser to the Afghan government was purportedly arrested for consensual same-sex sexual acts with a local man. In 2011, a video of police officers harassing a transgender person was published online. Police violence is not uncommon, which includes the use of "honey traps" to arrest persons because of their perceived sexual orientation. LGBT people have also been victims of “honour killing” by their families. Such a practice is perpetuated by Article 398 of the Penal Code, which provides a reduced sentence for murder in cases of honour killings. In 2015, it was reported that a parallel justice court sentenced three gay men, including one boy who was 17-year-old, to execution by "wall-toppling". The 17-year-old survived and was allowed to live.

However, same-sex sexual relations, both amongst men and amongst women (vastly under-reported) are not uncommon in the country. A researcher noted that men in Afghanistan would sometimes have consensual same-sex sexual relations, though they would not identify as gay in the Western sense; these relations are culturally accepted, as encapsulated in a common phrase that "women are for babies, men are for sex".

5 Tafkhiz = (masculine or feminine) same-sex sexual relationships not involving any penetration criminalized in article 649.
7 Nushin Arbabzadah, “Will Afghanistan learn that cross-dressers are not criminals?”, The Guardian, 13 November 2011.
8 "Fear, secrecy and danger a way of life for Afghan gays", Inquirer.net, 5 November 2016.
In addition, the practice of bacha bazi—which is a socially-embedded form of male paedophilia—continues to operate, especially among the upper echelons of society as well as the police and security forces. According to a 2017 shadow report to the Committee against Torture, young boys are kept in slave-like conditions to be sexually abused by their masters and others. This practice is now criminalised under Chapter 5 of Book 4 of the Penal Code, and prohibits a person from keeping a boy (or Mokhanas) for such a purpose, forcing a child to perform this practice, organising or participating in a bache bazi party.

Yet across Afghanistan, people who identify as gay or LGBT, particularly if in any way public, are faced with significant discrimination. For instance, in 2013, a gay Afghan man, Nemat Sadat, was the first person to come out publicly on social media, which led to his being pressured to resign from his position as a professor at the American University of Afghanistan and leave the country.

Following the 2016 shooting by Afghan-born Omar Mateen at a gay club in Florida, USA, a news report found that many Afghans supported his actions on the basis that "homosexuality" was wrong.

National Human Rights Institution

Although a senior member of Afghanistan Independent Human Rights Commission (AIHRC) attended the Workshop on the Role of NHRIs in Promoting and Protecting the Rights and Health of LGBTI in Asia and the Pacific in 2015, there has been no mention of sexual orientation or SOGI in the work of that Commission, or in its 2018 submission to the Universal Periodic Review.

UN voting record

Afghanistan was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, Afghanistan voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Afghanistan voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd UPR in 2014, the only recommendation regarding SOGI that Afghanistan received was not accepted: Norway urged to decriminalise. A Joint Submission (SRI, IFPP, and AFGA) made a reference to men who have sex with men (MSM), and this appears to be the only mention of SOGI-related material in Afghanistan’s entire 2nd cycle UPR.

Afghanistan’s 3rd UPR review is taking place at time of writing.

Treaty Bodies

In 2011, the Committee on the Rights of the Child (CRC) expressed “grave concern” about widespread sexual abuse and exploitation of children. It urged the State to ensure that child victims of sexual abuse or exploitation are treated as victims and no longer charged and detained as offenders, and to address the sexual exploitation of children.

15 Tim Craig, “After Orlando attack, prevailing view is there are ‘not any gays’ in Afghanistan”, The Washington Post, 19 June 2016.
17 Afghanistan Independent Human Rights Commission (AIHRC), Stakeholder submission to the 32nd Session of the Working Group on the UPR Human Rights Council, Jan-Feb 2019, UPR-info website.
18 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
21 Concluding observations on Afghanistan’s initial report to CRC, CRC/C/AFG/CO/1, 8 April 2011, para. 70.
22 Id., para. 71.
Provisions in force

- **Penal Code** (Act XLV of 1860).

  **Section 377. Unnatural Offences.**

  Whoever voluntarily has carnal intercourse against the order of nature with man, woman, or animal, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

  **Explanation:** Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Human rights situation

Intolerance and targeted violence against SOGI activists have sharply increased over the past years in Bangladesh, resulting in subdued efforts around organising and visibility, and the inevitable need for many LGBT folk to flee the country.

Reports suggest that the levels of violence and threat from religious radicals that LGBT people have been exposed to have remained high, and the State has not offered protection. A shadow report by Boys of Bangladesh reported that the extremely hostile climate has led many activists to conceal their identity or leave the country.

There are no registered SOGI-based NGOs in Bangladesh, although there are some long-standing CSOs, such as Boys of Bangladesh and the Bhandu Social Welfare Society, and online communities such as Roopbaan, Shambhab (a lesbian network) and Vivid Rainbow.

In February 2015, Avijit Roy, the author of Bangladesh’s first scientific book (2010) on same-sex sexual identity, was savagely murdered on the streets of Dhaka, seemingly by religious fundamentalists. According to a 2017 shadow report by Front Line Defenders, the murder and the growing threat of violence faced by LGBTI human rights defenders has resulted in the breakdown of activist networks and people have become more fearful of being associated with each other.

Moreover, on 25 April 2016, the editor of Roopbaan, Xulhaz Mannan, and fellow activist Mahbub Tonoy, were gruesomely executed in an apartment in Dhaka. The culprits have not been found, although reporting in early 2019 indicates the investigation is ongoing.

In May 2017, the police special forces—the Rapid Action Battalion—was mobilised to raid a gathering in Dhaka: 28 men were arrested, outed and exposed in the media as gay. All were eventually released and granted bail.

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4. “Victim Blaming: Bangladesh’s Failure to Protect Human Rights Defenders” (Front Line Defenders 2016), 18.
States by public officials

In response to the murders of the two LGBT activists in 2016, the Prime Minister Sheikh Hasina said that her government would not take responsibility for “untoward incidents” that befell people who expressed “objectionable opinions” and likened the activists’ writing to “porn”.10

National Human Rights Institution

In 2018, the National Human Rights Commission of Bangladesh (JAMAKON) proposed an anti-discrimination law along with the Law Commission of Bangladesh that includes sexual orientation and gender identity as a prohibited ground of discrimination.11 Human Rights Watch reported that JAMAKON has advocated for the protection of sexual and gender minorities from discrimination and arbitrary arrest.12

UN voting records

In 2011, Bangladesh voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.13

In 2014, it was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.14

In 2016, Bangladesh voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.15

At the session of Third Committee of the UN General Assembly held in November 2016, Bangladesh voted against the LAC amendment to remove Operative Paragraph 2,16 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Bangladesh voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

While referencing “family values” at its 2nd cycle UPR in April 2013, the Bangladeshi Minister for Foreign Affairs stated that LGBT people should be protected from violence and discrimination in law.17 Bangladesh accepted a recommendation to carry out sensitisation training with public officials regarding SOGI discrimination at its 1st UPR, but this issue was not picked up at its 2nd cycle review, nor is there evidence that such sensitisation has significantly occurred.18

During its 3rd cycle of the UPR carried out in May 2018, Bangladesh received 11 SOGIESC recommendations. It noted (functionally rejected) all of them, Argentina, Chile, Honduras, Mexico and Slovenia called for the decriminalisation of consensual same-sex sexual relations (in particular, Section 377 of the Criminal Code). Belgium, Brazil, Italy, Mexico and Norway focused on the violence and discrimination suffered by the LGBTIQ community, asking the State to take necessary steps to fight against those scourges. Belgium and Germany also recommended the State to protect human rights defenders and activists from the LGBTIQ community from threats and violence, ending impunity by conducting thorough investigation of potential violations of their rights. The State referred to the SOGIESC situation during the Session, expressing that their reluctant attitude towards the recommendations received on this

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10 “Campaign of terror against Bangladesh’s liberal voices”, The Economist, 27 April 2016.
16 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
17 “Bangladesh FM Dr. Moni recognizes need to protect LGBT persons, affirms their constitutional rights”, Rainer Ebert YouTube Channel, 29 April 2013.
matter was a result of the fact that “as a democratic government, reflecting the will of the people, our efforts need to be aligned with the people’s views and opinions, as well as the social, cultural and religious values of our people”. Hence, it appears to be claimed that Bangladesh has based their LGBTIQ-hostile attitude on a supposed democratic will of its population.

**Treaty Bodies**

In April 2017, the Human Rights Committee considered the initial report of Bangladesh on the ICCPR. In its concluding observations, Bangladesh was urged to “decriminalize consensual sexual acts between same-sex couples, provide protection to lesbian, gay, bisexual and transgender persons from violence and harassment by ensuring that all cases are promptly investigated and that perpetrators are prosecuted and punished with appropriate sanctions, and eliminate barriers to employment and violations to the dignity of “hijras”.

In April 2018, the Committee on Economic, Social and Cultural Rights considered the initial report of Bangladesh on the ICESCR. The Committee recommended that Bangladesh “expedite the adoption of comprehensive anti-discrimination legislation that prohibits direct, indirect and multiple forms of discrimination” and to “decriminalize same-sex relations between consenting adults and take the measures necessary to raise public awareness regarding, and combat discrimination based on, sexual orientation and gender identity”.

**Special Procedures**

The Special Rapporteur on freedom of religion or belief visited Bangladesh in late 2015. He reported “encouraging initiatives by representatives of sexual minorities and religious community leaders in South Asia, including some from Bangladesh, who met to discuss and better understand these issues” and “stress[ed] that the right to freedom of religion or belief is guaranteed for every single human being, so no one should be deprived the right on the basis of sexuality [or] gender”.

In May 2016, several mandates received information concerning the alleged assassination of two LGBTI human rights defenders. They also expressed “grave concern” at the smear campaign against organisers of the “Rainbow Rally”, an annual event organised to raise awareness about the rights of the LGBTI community.

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19 “UPR-Bangladesh”, ILGA Website, 17 May 2018, Section C.
20 Concluding observations on the initial report of Bangladesh, CCPR/C/BDG/CO/1, 27 April 2017, para. 12.
21 Concluding observations on the initial report of Bangladesh, E/C.12/BDG/CO/1, 18 April 2018, para. 24.
23 The mandates were the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.
24 For more information, see AL BGD 3/2016.
Provisions in force


**Chapter 14: Sexual Offences.**

**Section 213. Unnatural sex.**
A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sodomy or any other sexual conduct that is against the order of nature.

**Grading Section 214. Grading of unnatural sex.**
The offence of unnatural sex shall be a petty misdemeanour.

**Chapter 2: Classes of crime.**

**Penalty Section 3.**
For the purpose of this Penal Code, the classes of crimes shall be as follows: [...] 
(c) A crime shall be petty misdemeanour, if it is so designated in this Penal Code or other laws and provides for a maximum term of imprisonment of less than one year and a minimum term of one month for the convicted defendant.

**Human rights situation**

The law criminalising sodomy has purportedly not been used to arrest or prosecute anyone since it was introduced in 2004.¹ Some politicians have come out in favour of repealing the law while others are actively studying the possibility.² During the 2018 elections, the Bhutan Kuen-Nyam Party pledged to ensure the rights of sexual and gender minorities and enhance their dignity.³

Though reports of persecution or violence against LGBTQ people are rare compared to other countries in the region, activists have highlighted that there remains prejudice and discrimination from the public at large.⁴ According to a 2015 interview with gay youth activist, Pema Doji, the LGBT community is "quite hidden" due to the stigma and discrimination because it is a small country and "everyone knows each other".⁵

The country is largely Buddhist, and religious leaders have mostly come out in support of the LGBT community. For instance, in February 2015, prominent Buddhist lama and filmmaker Dzongsar Khyentse Rinpoche urged respect for the LGBT community, noting that tolerance is not enough.⁶

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¹ Namgay Zam, "Bhutan's underground gay community seeks acceptance", ABC News, 16 September 2013.
³ Tshering Palden, "BKP pledges an inclusive government", Kuensel, 27 August 2018.
⁵ “Growing up gay in Bhutan”, UNAIDS (website), 8 December 2015.
⁶
In 2008, a trans teen was permitted to wear the girl’s uniform in school by the country’s education ministry after they had staged a walk-out from their previous school where the male uniform was mandatory.7 In 2013, the introduction of Facebook led to increased visibility for the LGBT community with the creation of dedicated Facebook groups for the community.8 In 2014, Rainbow Bhutan was set up as a community for LGBT people with five members; this grew to more than 100 members in 2018.9 LGBT activists started commemorating the International Day Against Homophobia, Transphobia and Sexism in 2016 and in 2018, the event was held at a hotel with representatives from the government, civil society and the media.10

A 2016 survey found that over 42% of transgender women, and 23% of gay and bisexual men, have attempted multiple suicide while 24% used drugs to cope with the pressures of being different.11

Statements by public officials

In a 2013 interview, Gasa Dzongkha MP and Secretary of Bhutan’s National Land Commission Sangay Khandu said, “The issue is when the law is there and if people do not enforce it, is it okay? With time, as society progresses and thoughts broaden, homosexuality may need to be revisited.”12

In 2014, the anti-corruption minister Dasho Neten Zangmo said in an address to high school students that “romantic relationships, by the way, can be boy-boy or girl-girl”.13

National Human Rights Institution

Bhutan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting records

Bhutan was not a member of the Human Rights Council between 2011 and 2016, so it did not participate in the vote for any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in 2016, Bhutan abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,14 and abstained again during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Bhutan abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR in late-2009, the representative of Bhutan had claimed “[h]owever, I wish to share that the provisions concerning unnatural acts in the Penal Code of Bhutan have never since its enactment been evoked for acts between two consenting adults of the same sex. The provisions can be revised when there is felt need and desire from our people”. Bhutan did not accept any of the four recommendations to decriminalise same-sex sexual behaviour in its 2nd cycle UPR in April 2014.15 Bhutan’s 3rd UPR is in mid-2019.

Treaty Bodies

In 2017, the Committee of the Rights of the Child expressed concern peer violence and sexual harassment in schools affecting LGBTI children and urged Bhutan to combat bullying towards LGBTI children in schools and to train teachers and students to resolve conflicts peacefully.17

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7 "Teen transvestite gets Bhutan thinking about sex”, Reuters, 13 May 2008.
8 John Leupold, “To Be, or Not to Be, in Bhutan”, The Gay & Lesbian Review, 1 March 2016.
12 Andrew Potts, “Bhutan lawmaker says law criminalizing gays may go”, Gay Star News, 16 September 2013.
13 John Leupold, “To Be, or Not to Be, in Bhutan”, The Gay & Lesbian Review, 1 March 2016.
14 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
17 Concluding observations on the third to fifth periodic report of Bhutan, CRC/C/BTN/CO/3-5, 5 July 2017, para. 38(g).
BRUNEI

Provisions in force


**Section 377. Unnatural offences.**

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine. [S 12/97]

*Explanation:* Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Human rights situation

Since 2014, Brunei has been phasing in its *Syariah Penal Code Order* (SPC Order 2013). In March 2018, the Criminal Procedures Code on Syariah was approved by the Brunei Islamic Religious Council and consented to by the head of state; however, there remains several other procedures that need to be put in place before the Syariah Penal Code will be fully enforced. This law would impose the death penalty on same-sex sexual acts.

However, a scholar has pointed out that its impact is likely to be more serious on women’s rights than the LGBT community. This is because the new law is not likely to change the extant practice of non-enforcement of Section 377. In addition, the standard of proof under the Syariah law is significantly higher as four male witnesses must be present during the conduct in question before there can be a conviction.

In 2015, a Bruneian civil servant was fined under the Syariah Penal Code for cross-dressing in a public place. It was reported that he was “posing as a woman” and carried women’s personal items in his bag. However, cross-dressing as entertainment appears to be permitted.

Due to the challenges in providing services for LGBT people or setting up an NGO in the country, The Brunei Project has collaborated with Singaporean LGBT counselling organisation, Oogachaga, to provide hotline and email counselling. Indie webzine, Songket Alliance, has also published multiple stories about LGBT people in Brunei to raise awareness about their struggles.

The social environment is hostile and it has been reported that LGBT people have undergone conversion therapy; most do not come out publicly and use social media anonymously out of fear.

**Statements by public officials**

In prosecuting the Bruneian civil servant for cross-dressing, the Prosecutor warned that “if this is not dealt with, it can lead to the spread of social disorder such as homosexuality, free sexual relations, drug abuse and so on.”

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7. Ibid.
**UN voting record**

Brunei was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Brunei voted against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Brunei Darussalam voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

Brunei Darussalam rejected (‘noted’) the five recommendations made in its 2nd cycle Universal Periodic Review in April 2014. Unlike its 1st UPR cycle rejections in 2009 (mostly on non-discrimination), the major concerns of the 2nd cycle were decriminalisation (France, Canada, Spain and Czech Republic), and the revised Penal Code (Cap 22) that reintroduces the death penalty for same-sex sexual behaviour (Spain and Czech Republic). Bangladesh used the UPR process to encourage Brunei Darussalam to “uphold its social policies in line with ‘traditional family values’.”

Brunei’s 3rd UPR take place in May 2019.

**Treaty Bodies**

A Shadow Report submitted to the Committee on the Elimination of Discrimination Against Women describes in detail how “the enforcement of SPC Order 2013 is likely to result in even tighter family control and increased violence to force Bruneian lesbians, tomboys, masculine-looking women, bisexual women and transgender women to conform to social norms (and now criminal law) on sexuality and gender”. The CEDAW committee urged Brunei to immediately review the new Sharia Penal Code Order 2013 with a view to repealing its direct and indirect discriminatory provisions affecting women.

In February 2016, the Committee on the Rights of the Child recommended efforts are stepped up to address, inter alia, discrimination based on SOGI, and it recommended improving awareness-raising on such issues.

**Special Procedures**

In September 2014, several mandates expressed grave concern about the Syariah Penal Code Order, especially in relation to the use of the death penalty by stoning and corporal punishment. They called on the Brunei government to revoke implementation and repeal the SPC completely as it would not be in conformity with international human rights law.

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10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


15 Concluding observations on the combined initial and second periodic reports of Brunei Darussalam, CEDAW/C/BRN/CO/1-2, 14 November 2014, para 13(a).


17 The mandates were: Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

18 For more information, see BRN 1/2014.
Provisions in force


Chapter Two: Livat, Tafkhiz and Musaheqeh

Livat: penetration of male anus with penis

Article 233. Livat.
Livat is defined as penetration of a man's sex organ (penis), up to the point of circumcision, into another male person's anus.

Death penalty
100 lashes

Article 234.
The hadd punishment for livat shall be the death penalty for the insertive party if he has committed livat by using force, coercion, or in cases where he meets the conditions for ihsan; otherwise, he shall be sentenced to one hundred lashes.

The hadd punishment for the receptive party, in any case (whether or not he meets the conditions for ihsan) shall be the death penalty.

Note 1. If the insertive party is a non-Muslim and the receptive/passive party is a Muslim, the hadd punishment for the insertive party shall be the death penalty.

Note 2. Ihsan is defined as a status that a man is married to a permanent and pubescent wife and whilst he has been sane and pubescent has had a vaginal intercourse with the same wife while she was pubescent, and he can have an intercourse with her in the same way [vaginal] whenever he so wishes.

Tafkhiz: putting penis between male thighs or buttocks

Article 235. Tafkhiz.
Tafkhiz is defined as putting a man’s sex organ (penis) between the thighs or buttocks of another male person.

100 lashes
(Note: death penalty)

Note. A penetration [of a penis into another male person’s anus] that does not reach the point of circumcision shall be regarded as tafkhiz.

Article 236.
In the case of tafkhiz, the hadd punishment for the insertive and receptive party shall be one hundred lashes and it shall make no difference whether or not the offender meets the conditions of ihsan [mentioned in note 2 of article 234], or whether or not [the offender] has resorted to coercion.

Note. If the active party is a non-Muslim and the passive party is a Muslim, the hadd punishment for the active party shall be the death penalty.
Other homosexual acts: male (and female, note)

Article 237.
Homosexual acts of a male person in cases other than livat and tafkhiz, such as kissing or touching as a result of lust, shall be punishable by thirty-one to seventy-four lashes of ta’zir punishment of the sixth grade.

Note 1. This article shall be equally applicable in the case of a female person.

Note 2. This article shall not be applicable in the cases punishable by a hadd punishment under Shari’a rules.

Musaheqeh: touching between female sex organs

Article 238. Musaheqeh.
Musaheqeh is defined as where a female person puts her sex organ on the sex organ of another person of the same sex.

100 lashes

Article 239.
The hadd punishment for musaheqeh shall be one hundred lashes.

Conditions for musaheqeh punishment

Article 240.
Regarding the hadd punishment for musaheqeh, there is no difference between the active or passive parties or between Muslims and non-Muslims, or between a person that meets the conditions for ihsan and a person who does not, and also whether or not [the offender] has resorted to coercion.


Legal barrier to freedom of expression

Article 6.
The Press is free, except for items which undermine Islam’s bases and commandments, and public and private rights, as set forth in this chapter: […]
(2) Spreading fornication and forbidden practices and publishing photographs, pictures, and material which violate public chastity.

Note 2. A violation of what is set forth in this Article is subject to punishments as determined in Article 698 of the Islamic Penal Code* and in the event of persistence, they are subject to an intensification of the punishments and the forfeiture of one’s license.

* Article 698 of Islamic Penal Code provides for imprisonment of between two months to two years and flogging of up to 74 lashes.

Law on Computer Crimes (Law No. 71,063)

Legal barrier to freedom of expression

Article 14.
Whoever uses computer systems, telecommunications systems or data carriers to publish or distribute immoral content, or produces or store them with the intention of corrupting the society, will be sentenced to imprisonment for between 91 days to 2 years or will be fined ... or both.
Human rights situation

In August 2014, reports indicated that two men were executed by hanging for allegedly having engaged in consensual same-sex sexual acts. On 18 July 2016, a 17-year-old boy, Hassan Afshar, was hanged after being convicted of raping another male teenager, though he had consistently maintained that the sexual acts were consensual. In January 2019, reports indicated that a 31-year-old gay man was publicly executed by hanging. As reported in the press, Iran’s opaque judicial system creates enormous difficulties for journalists and human rights advocates to examine judicial cases, what makes it very difficult to ascertain to what extent convictions are based—exclusively or not—the specific provisions that impose the death penalty for consensual same-sex sexual acts.

In April 2017, 30 men were arrested in a gathering in Bagh-e Bahadoran, Isfahan (central Iran). The men were subsequently transferred to the Dastgerd Prison and charged with sodomy by a local court. According to JFI and 6Rang, since at least 2007, there have been several confirmed reports of state-led raids on private parties followed by mass arrest and detention of those suspected of same-sex sexual acts. Following an arrest, LGBT people are often made to reveal the names of other LGBT people they know. Individuals have also reported experiencing constant surveillance by the state’s intelligence service.

According to the Saghi Ghahraman, founder of the Iranian Queer Organisation, gay men often face the threat of blackmail as there are different punishments for consensual sexual intercourse which creates a climate of distrust between partners.

Health-care professionals have been reported to regularly tell gay and lesbian patients that their same-sex attraction and gender non-conformity are a sign of Gender Identity Disorder that must be treated with “reparative” therapies or sex reassignment surgeries, which are often carried out without prior consent. This is because religious clerics have issued fatwas recognising transsexual people as people “trapped in the wrong body” while homosexuality remains strongly condemned.

However, though the State is formally accepting of transgender people who have undergone gender reassignment and provides loans specifically to fund gender reassignment surgery, there remains significant societal discrimination and violence. Many gay and lesbian Iranians have tried to flee from Iran to avoid being forced to undergo gender reassignment.

Laws which restrict freedom of expression are often used as the legal basis to exert control on people’s behaviour both in public and in private spaces. The Supreme Council of National Security (SCNS) censored official journalists, forbidding them from covering certain topics including SOGIESC-related rights, in the name of ensuring national security. For instance, in September 2017, six admins of Telegram chat groups were reportedly charged with “promoting homosexuality”.

8. Rachel Banning-Lover, “Where are the most difficult places in the world to be gay or transgender?”, The Guardian, 1 March 2017.
10. Neva Thirani Bagri, ““Everyone treated me like a saint”—In Iran, there’s only one way to survive as a transgender person”, Quartz, 19 April 2017.
Statements by public officials

In March 2012, in response to accusations from other countries regarding Iran’s treatment of LGBT people, Mehrdad Bazrpash, a former Member of Parliament and former Deputy President of the country, stated that it was “one of the honours of the Islamic Republic is to violate the rights of homosexuals”.

On 4 April 2014, Iran’s Supreme Leader described “homosexuality” as “moral bankruptcy” and “libidinous behaviour”.

On 24 September 2014, the Iranian Speaker of Parliament described “homosexuality” as “modern Western barbarism”.

In December 2017, the Iranian Lesbian & Transgender Network published a report on official hate speech by state officials against LGBT people. In January 2011, Ali Larijani, the Speaker of Parliament justified the use of the death penalty for consensual same-sex sexual conduct on the basis that it is “effective in keeping society safe from perversion”.

National Human Rights Institution

Iran has a National Human Rights Institution in accordance with the Paris Principles: the Islamic Commission on Human Rights. The institution does not address SOGIESC issues.

UN voting record

Iran was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Iran voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Iran voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in February 2010, Iran received three recommendations regarding decriminalisation and discrimination based on SOGI, while at its 2nd cycle review in October 2014, there were 14 SOGI recommendations. These mostly focused on decriminalisation, persecution and discrimination.

At its interactive dialogue session, the delegation of Iran justified his country’s position on “homosexuality”, by saying it was not so long ago that same-sex sexual relations had been “subject to prosecution in most Western countries in the not too distant past”.

Iran will be before the UPR again in April 2019 for its 3rd cycle sessions.

Treaty Bodies

In 2011, the Human Rights Committee expressed concern that the LGBT community faced harassment, persecution, cruel punishment and even the death penalty as well as discrimination on the basis of their sexual orientation, including with respect to access to employment, housing,
education and health care, as well as social exclusion within the community. It called on the state to “repeal or amend all legislation which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity” and to “take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to employment, housing, education and health care, and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community”.24

While reviewing a periodic report of the Islamic Republic of Iran in 2013, the Committee on Economic, Social and Cultural Rights expressed concern over the criminalisation of consensual same-sex sexual acts and the possibility that convicted male persons may be subject to the death penalty.25 It also called on the state to “take steps to combat and prevent discrimination and societal stigma against members of the LGBT community, and ensure their enjoyment of all the rights enshrined in the Covenant, including unhindered access to employment, social services, health care and education”.26

The Committee on the Rights of the Child addressed Iran in February 2016. It expressed concern that “children who belong to the LGBTI group face continuous discrimination because of their real or perceived sexual orientation or identity and that the same sex sexual behaviour of adolescents above the actual age of criminal responsibility is criminalized and punished with penalties ranging from flogging to death penalty”.27 It also expressed concern that young people have no information on LGBTI issues, and trans people are forced into surgery and urges reversal of such policies.28

Special Procedures

In 2013, several mandates29 expressed serious concerns on the revised Islamic Penal Code (IPC), which provided for the use of the death penalty for non-violent acts and the use of stoning and other corporal punishments like amputation, flogging and crucifixion.30

23 Concluding observations of the Human Rights Committee - Islamic Republic of Iran, CCPR/C/IRN/CO/3, 29 November 2011, para. 10.
24 Ibid.
25 Concluding observations on the second periodic report of the Islamic Republic of Iran, E/C.12/IRN/CO/2, 10 June 2013, para. 7.
26 Id., para. 7.
27 Concluding observations on the combined third and fourth periodic reports of the Islamic Republic of Iran, CRC/C/IRN/CO/3-4, 14 March 2016, para. 31.
28 Id., paras. 71-72.
29 The mandates were the Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice.
30 For more information, see IRN 9/2013.
Provisions in force

  
  - **Consensual intercourse between men**
    
    **Article 193.**
    Consensual intercourse between men of full age (from the age of 21) shall be punishable with a term of imprisonment of up to seven years.

  - **Lewd signals / Legal barrier to freedom of expression**
    
    **Article 198**
    Whoever makes a lewd signal or act in a public place or such that one may see it or hear it from public place, or appears like the opposite sex in any way, shall be punished for a period not exceeding one year and a fine not exceeding 1000 Dinar or one either of these punishments.

- **Law On Press and Publications** (Law No.3 of 2006).
  
  - **Insulting public morals**
    
    **Article 21(3).**
    It shall be prohibited to publish anything that would: [...] insult the public morals or instigate to violate the public order or to violate the laws or to commit crimes, even if the crime did not occur.

  - **Legal barrier to freedom of expression**
    
    **Article 27(3).**
    Without prejudice to any severer penalty which is stipulated in another law, the chief editor and article writer or the author shall be penalized if he published in the newspaper what was prohibited under article 21, he shall be penalized by fine which shall not be less than 3,000 Dinar and not more than 10,000 Dinar.

- **Law regarding the regulation of electronic media** (Law No. 8 of 2016)
  
  - **Legal barrier to freedom of expression**
    
    **Article 18.**
    The sites and electronic media sites governed by the rules of this law, cannot publish, broadcast, rebroadcast, send or quote any content that contains any of the forbidden material mentioned in articles (19, 20, 21) of law no. 3 of 2006, and article 11 of law no. 61 of 2007, and punishments are mentioned in those two laws in case of violations.
Human rights situation

In 2007, Article 198 of the Penal Code was amended to criminalise cross-dressing and non-normative gender expression. In 2012, Human Rights Watch reported that this legislative development resulted in greater discrimination and persecution of transgender women in the country.1

In 2013, the government also banned gay men and transgender persons from entering the country.2 The director of public health announced that the country had developed “the technology” to detect such persons to prevent them from entering the country.3 When criticised by Amnesty International, politicians hit back with one claiming that the organisation should “take care of lofty and noble goals for which it was established, leave aside homosexuality and deviations and stop defending delinquents”.4

In May 2014 it was reported that vice police raided a “sex party” and arrested 32 people, both men and women (“tomboys”).5 Such raids also took place in 2012 and 2013.6 Hostilities towards the LGBT community persisted in subsequent years as well, with 41 men arrested in a raid of a male massage parlour in April 2016.7

In 2017, the Ministry of Information’s censorship department ordered cinemas to stop screening the Disney’s film “Beauty and the Beast” which contained a same-sex kiss.8

In July 2017, the government’s inter-ministry morals committee ordered the deportation of 76 gay men and the closure of 22 massage parlours.9

Statements by public officials

In a news report, the head of the Inter-Ministry Morals Committee, Mohammad Al Dhufairi said, “We have a zero-tolerance policy towards any morally objectionable activities, and we will not be lenient with anyone who breaks the rules or puts the health of Kuwaiti citizens and residents at risk.”10

National Human Rights Institution

Kuwait does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, Kuwait was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.11

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.12

In 2016, Kuwait was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.13

At the session of Third Committee of the UN General Assembly held in November 2016, Kuwait voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Kuwait voted in favour of the

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2 “Deputies support the rejection of the establishment of the “third sex”: we will prevent them from entering Kuwait by force of law”, Alrai Media, 8 October 2013.
4 Felicity Morse, “‘Gays are delinquent deviants who destroy humanity’: Kuwait MPs attack Amnesty International for protecting LGBT community”, Independent UK, 16 October 2013.
5 “Kuwait police raid ‘gay’ party, arrest 32”, Erasing 76 Crimes, 11 May 2014.
amendment which tried to block financial resources allocated to the IE SOGI.\footnote{Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International,\textit{ Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly} (2017), 4.}

\textbf{International advocacy and supervision}

\textit{Universal Periodic Review}

Kuwait ‘noted’ (rejected) a recommendation from Brazil to decriminalise same-sex acts between consenting adults at its 1st cycle UPR in 2010.\footnote{Draft report of the Working Group on the Universal Periodic Review: Kuwait, A/HRC/WG.6/8/L.14, 14 May 2010.}

At its 2nd UPR in January 2015, Uruguay and Iceland recommended Kuwait decriminalise same-sex sexual acts, and the Netherlands also iterated this and a call for non-discrimination in the country’s law. This call for non-discrimination was echoed by Argentina and Chile. Without alluding to SOGI, at para. 29 of the State’s formal acceptance of the report of the Working Group, the delegation justified that looking after public morals does not contravene Article 21 of the ICCPR (peaceful assembly).\footnote{Draft report of the Working Group on the Universal Periodic Review: Kuwait, A/HRC/WG.6/21/L.14, 30 January 2015, para. 29.}

Kuwait’s next UPR session is in early-2020.

\textit{Treaty Bodies}

In August 2016, the Human Rights Committee reiterated its 2011 recommendation for Kuwait to decriminalise consensual same-sex sexual acts between consenting adults and to repeal the offence of “imitating members of the opposite sex”, in order to bring its legislation into line with the Covenant.\footnote{Concluding observations on the third periodic report of Kuwait, CCPR/C/KWT/CO/3, 11 August 2016, para. 13; Concluding observations on the second periodic report of Kuwait, CCPR/C/KWT/CO/2, 18 November 2011, para. 30.}

It also urged the implementation of measures to put an end to the social stigmatisation of SOGI and the harassment, discrimination and violence perpetrated against persons based on their real or perceived sexual orientation or gender identity.\footnote{Concluding observations on the third periodic report of Kuwait, CCPR/C/KWT/CO/3, 11 August 2016, para. 13.}

In 2011, the \textit{Committee against Torture (CAT)} expressed concern about the discrimination and ill-treatment suffered by LGBT people. It called on the State to investigate crimes related to discrimination directed towards all vulnerable groups and pursue ways in which hate crimes can be prevented and punished; promptly, thoroughly and impartially investigate all cases of discrimination and ill-treatment of these vulnerable groups, and punish those responsible for these acts; and conduct awareness-raising campaigns for all officials who are in direct contact with victims of such violence, as well for the population at large.\footnote{Concluding observations on the second periodic report of Kuwait, CAT/C/KWT/CO/2, 28 June 2011, para. 25.}

There was no mention of LGBT issues in the 2016 Concluding Observations.\footnote{Concluding observations on the third periodic report of Kuwait, CAT/C/KWT/CO/3, 5 September 2016.}

\textit{Special Procedures}

In 2014, several mandates\footnote{The mandates were the Working Group on Arbitrary Detention; the Working Group on the issue of discrimination against women in law and in practice; and the Special Rapporteur on violence against women, its causes and consequences.} expressed concern at the allegation that a transgender woman was arrested under Article 198 of the Penal Code for “imitation of the opposite sex” and faced discrimination and other violations of her human rights in detention, including violence.\footnote{UA G/SO 218/2 G/SO 214 (89-15) KWT 1/2014, 5 February 2014.}

In 2017, the \textit{Working Group on the issue of discrimination against women in law and in practice} reiterated its concern about Article 198, and noted that it has received reports of discrimination against women on the basis of their gender identity and expression.\footnote{Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Kuwait, A/HRC/35/29/Add.2, 24 May 2017, para. 35 and para. 91.}

It added that “according to the information received, transgender people in Kuwait are an isolated, discriminated and vulnerable group who face harassment and threats”.\footnote{Ibid.}
**LEBANON**

**Provisions in force**

- **Penal Code (1943).**

  **Sexual intercourse against nature**
  
  **Article 534**

  Any sexual intercourse against nature is punished with up to one year of imprisonment.

  **Public morals**
  
  **Article 532.**

  The exposing of public morals by any of the ways mentioned in paragraphs 2 or 3 of Article 209 shall be punished with imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira.

  **Legal barrier to freedom of expression**
  
  **Article 209.**

  The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira.

**Human rights situation**

Though forced anal examinations are now rarely used as evidence in Article 534 proceedings, following a 2012 advocacy campaign known as “Tests of Shame”, the police continue to perform them, as well as conduct HIV and drug tests on arrested persons without their consent. According to activists, the number of arrests under Article 534 has increased between 2012 and 2016.

In 2013, a film due to be screened at the Beirut International Film Festival that included homoerotic scenes, was banned by the Interior Ministry’s censorship committee.

In 2014, the Morals Protection bureau of the Lebanese police raided a bathhouse on the basis that there were “suspected homosexuals”. Numerous customers and employees were arrested and charged under Article 534 as well as prostitution and public morals offences.

In December 2016, a Syrian refugee reported being detained and tortured by Lebanese Military forces.

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In January 2017, Judge Rabih Maalouf of the el-Metn court opined that, “Homosexuals have a right to human and intimate relationships with whoever they want, without any interference or discrimination in terms of their sexual inclinations, as is the case with other people.”

**Existing legal challenges**

**Consensual same-sex sexual acts (interpretation and repeal of Article 534)**

In 2010, an LGBTQ group, Helem, published a booklet analysing Article 534 and calling for its repeal. According to reports, numerous court decisions have interpreted Article 534 to not apply to consensual same-sex sexual intimacy on the basis that such intimacy is not in fact “against nature”. For instance, in January 2017, a Metn court judge declared that “homosexuality is a personal choice, and not a punishable offense”.

Most recently in July 2018, the Mount Lebanon Criminal Court of Appeal upheld a lower court’s decision that held that consensual sex between people of the same sex was not unlawful. However, activists report that despite these judicial pronouncements, Article 534 remain on the books and people perceived to identify as sexually diverse continue to be arrested arbitrarily.

**National Human Rights Institution**

Lebanon does not have a National Human Rights Institution in accordance with the Paris Principles.

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10 Heba Kanso, “I had suicidal thoughts’: Gay Lebanese speak out against conversion therapy”, Openly News, 8 November 2018.
11 Tamara Qiblawi, “Gay rights come to the fore as Lebanon prepares to vote”, CNN, 4 May 2018.
UN voting record

Lebanon was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for any of the three HRC resolutions on SOGI.

At the session of Third Committee of the UN General Assembly held in November 2016, Lebanon did not vote the LAC amendment to remove Operative Paragraph 2, and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Likewise, Lebanon did not vote the amendment on blocking financial resources of the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In 2010, at Lebanon’s 1st cycle UPR, Norway recommended they decriminalise and “ensure non-discrimination on the basis of sexual orientation and gender identity”, the response to which was ‘noted’ (refused).

At the Interactive Dialogue session in Lebanon’s 2nd cycle UPR in November 2015, the delegation, in response to the six strong recommendations that the State received said: “As for sexual orientation, although article 534 of the Penal Code stated that sexual intercourse contrary to nature was punishable, two court decisions had indicated that article 534 did not apply to homosexuals [referring to the above]."

Treaty Bodies

In May 2018, the Human Rights Committee (CCPR) called on the Lebanon to enact a comprehensive anti-discrimination legislation that includes a prohibition of discrimination on the basis of sexual orientation and gender identity. It also expressed concern that LGBTI persons continue to be arrested and prosecuted under article 534, and urged the state to decriminalise.

The Committee also expressed concern about reports of the prevalence of discrimination, hate speech and homophobic attitudes; harassment, violence and extortion directed at LGBTI individuals; violations of their freedom of expression and of peaceful assembly; and the lack of protection against such acts. It recommended that the State ensure that LGBTI individuals are afforded adequate and effective protection against all forms of discrimination, hate speech or violence based on sexual orientation or gender identity, and that such acts are properly investigated, prosecuted and, if the perpetrators are convicted, punished with appropriate penalties.

In 2016, the Committee on Economic, Social and Cultural Rights (CESCR) addressed issues of discrimination based on SOGI, urging the State to adopt a legal framework for combating discrimination, enshrine the principle in the Constitution, conduct campaigns to combat prejudices and stigmatisation.

In 2017, the Committee against Torture (CAT) reiterated its concerns about allegations of harassment, arbitrary detention, torture and ill-treatment, including beatings, sexual abuse, anal examinations and forced HIV testing, of men “suspected of being homosexual” held in custody by Internal Security Forces officers. It urged the State to prohibit forced anal searches and to ensure that body searches are conducted by the least intrusive means possible.

Special Procedures

In 2015, the Special Rapporteur on freedom of religion or belief expressed encouragement for ongoing discussions on the decriminalisation of consensual same-sex acts, including by challenging religious “justifications” for homophobic attitudes.
Provisions in force

- **Penal Code** (Consolidated version 1998).

  **Carnal intercourse against the order of nature**

  **Section 377A. Carnal intercourse against the order of nature.**
  
  Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.
  
  *Explanation:* Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section.

  **Section 377B. Punishment for committing carnal intercourse against the order of nature.**
  
  Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.

  **Gross indecency**

  **Section 377D. Outrages on decency.**
  
  Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

- **Film Censorship Act** (2002).

  **Legal barrier to freedom of expression**

  **Section 5.**
  
  (1) No person shall— (a) have or cause himself to have in his possession, custody, control or ownership; or (b) circulate, exhibit, distribute, display, manufacture, produce, sell or hire, any film or film-publicity material which is obscene or is otherwise against public decency.
  
  (2) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of not less than ten thousand ringgit and not more than fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Human rights situation

Several states in Malaysia have instated Islamic Sharia law, criminalising same-sex sexual acts with up to three years imprisonment and whipping. The Sharia law in the Malaysian state of Pulau Pinang confers penalties for sodomy (Liwat) and lesbian relations (Musahaqat) with heavy fines, three years imprisonment and 6 lashes.

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2 *Enakmen Kesalahan Jenayah Syariah* (Negeri Pulau Pinang) 1996.
In February 2015, leading opposition leader, and former Deputy Prime Minister Anwar Ibrahim was jailed for five years after losing his appeal against his conviction on sodomy charges, charges widely understood to be politically motivated.3

In February 2017, the government’s Islamic Development Department (JAKIM) released a video explaining how Muslims can “help” LGBT people change their sexual orientation.4 The video claimed that non-heterosexual orientation is a “test of Allah” and people must “face the test appropriate with what Islam demands”.5

In June 2017, the Ministry of Health was criticised for endorsing “conversion therapy” in a call for submissions to a video competition.6 In December 2017, the state of Terengganu claimed that it was planning to run a “conversion therapy” course aimed at transgender women.7 In February 2018, a newspaper published a checklist on “how to spot a gay”.8 In October 2018, the government released an app named “Hijrah Diri – Homoseksualiti” that is supposed to provide users with ‘practical ways to overcome the issue of homosexuality’.9

In September 2017, the Immigration Department announced in a press statement that they were banning the organisers of, and anyone planning to participate in, a “gay party” planned for 30 September in a club in central Kuala Lumpur. The Immigration Director-General said that the move was to preserve public order, declaring gay parties a threat to peace and security.10 In February 2018, an openly gay singer from Hong Kong was denied a performance permit allegedly because of her queer activism.11

In August 2018, the Shariah High Court in the state of Terengganu sentenced two women to caning and a fine for engaging in same-sex sexual activity.12 This was criticised by the Suhakum, the country’s human rights institution, as “humiliating and demeaning”. In Seremban, a transgender woman was attacked by a group of assailants in the same month.13 According to activists, there were at least three reported killings of transgender women in 2017.14 In one of these cases, five brothers were arrested in April 2017 for shooting and slashing a transgender woman to death.15

In the same month, the religious affairs minister, Mujahid Yusof Rawa, ordered the removal of two portraits of LGBT activists with Malaysian and rainbow pride flags from an arts festival in

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On the impact of government policies to “convert” LGBT people

**Brief comment by Jeremy Tan Fok Jun, Malaysian activist.**5

Mukkhayam [“conversion therapy”] programs organised by the religious department JAKIM are actively claiming the successfulness of such program. This is extremely worrying to the young LGBT individuals. In fact, the state of Terengganu has the intention to identify those who are “soft spoken” and those who “dress against masculinity” and to force them to attend these “conversion camps” to change their behaviour and sexual orientation. Religious brainwash will be conducted for those who attended the program, and even financial aid will be given upon the completion the program.

Bias and discriminatory laws create the notion that same-sex and cross-dressing behaviour are “deviant” and “wrong” in the eye of the public and correcting these behaviours by any means is socially valued. LGBT youth, especially those who are at school, have reported being bullied by their peers in the form of physical, verbal, and cyber bullying. These bullying behaviours have been justified to “correct” those who are perceived as non-heterosexual, or are suspected of engaging in same-sex sexual acts or cross-dressing behaviour.

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3 “Malaysia’s Anwar jailed for five years after losing appeal in sodomy trial”, Reuters, 10 February 2015.
4 “Sexual orientation can be changed, Malaysia’s Islamic authority says in new video”, Today Online, 13 February 2017.
5 Special thanks to Justin Francis Bionat, Regional Coordinator of Youth Voices Count for coordinating this input.
7 “Alarm over course to convert transgender people in Terengganu”, The Straits Times, 31 December 2017.
12 Jo Timbuong, “Syariah Court’s judgement against lesbian couple is final”, The Star Online, 16 August 2018.
13 “Rising concern in Malaysia’s LGBT community after attack on transgender woman”, The Straits Times, 24 August 2018.
14 Ibid.
15 “Five brothers arrested over transgender’s murder”, The Star Online, 7 April 2017.
Penang. In August 2018, a gay bar was also raided in Kuala Lumpur as part of the government’s effort to “mitigate the LGBT culture from spreading into our society”.17

Further, in December 2018, the Deputy Home Minister announced a ban on scenes in films deemed to be promoting “inappropriate” elements such as LGBT issues.18 This followed controversies over two films with gay scenes.19

Statements by public officials

In September 2018, Malaysia’s Prime Minister Mahathir Mohamad, stated that the country cannot accept LGBT culture or rights such as same-sex marriage, dismissing them as “Western” values.20

This was in response to the recommendation by the country’s National Human Rights Commission (Suhakam) to repeal laws that discriminate against the LGBT community.

In an interview with the Wall Street Journal in the same month, Mahathir added that Malaysia would not decriminalise sodomy because “we are a Muslim nation, and we do not tolerate sodomy. The rest of the world may tolerate it, but we cannot. That is against our religion.”21

Similarly, in July 2018, Minister in the Prime Minister’s Department Datuk Dr Mujahid Yusof Rawa said: “The rights of the LGBT community to practise their lifestyle is still subject to the law that does not allow it in Malaysia.” This was in response to a question on the government’s plan to address the “spread of the LGBT culture”.22

In October 2018, opposition leader Datuk Seri Ahmad Zahid Hamidi attributed an earthquake that took place in Indonesia to LGBT activities there. He warned that “we need to ensure that Malaysia and those who are against LGBT are spared Allah’s punishment.”23

Existing legal challenges

Constitutionality of criminalisation of cross-dressing

In November 2014, the Court of Appeal found section 66 of the Syariah Criminal Enactment of Negeri Sembilan State criminalising cross-dressing unconstitutional.24

The court observed that the existence of a law that punishes gender expression is degrading and deprives those affected of their dignity and value in society.25

National Human Rights Institution

In August 2018, the Shariah High Court in the state of Terengganu sentenced two women to caning and a fine for engaging in same-sex sexual activity.26

This was criticised by the Suhakum, the country’s National Human Rights Institution, as contrary to the practices of a “cultured, civilised, moderate and progressive society”. Additionally, the NHRI observed that such a punishment was not intended to educate but “to humiliate [and] injure the reputation of the women and their families”.27

UN voting record

In 2011, Malaysia voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.28

In 2014 and 2016, Malaysia was not a member of the Human Rights Council and, therefore, did not...
participate in the vote for the adoption of the SOGI resolutions adopted in those years.29

At the session of Third Committee of the UN General Assembly held in November 2016, Malaysia voted against the LAC amendment to remove Operative Paragraph 2,30 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Malaysia voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Having received seven recommendations from States to decriminalise in its 2nd cycle UPR in October 2013, the Government stated that matters involving lesbian, gay, bisexual, and transgender persons and adherents of other schools of Islamic thought would be handled carefully and consistent with cultural traditions, religious doctrine and societal norms, and domestic laws and regulations.31

During its 3rd cycle of the UPR carried out in November 2018, Malaysia received 11 SOGIESC recommendations (responses will be provided by March 2019). Canada, Chile, France and Iceland called for the decriminalisation of consensual same-sex sexual acts in the country. Uruguay, Argentina, Austria, Canada, France, Germany and the Netherlands focused violence and discrimination suffered by the LGBTIQ community in the country. Portugal proposed to “implement anti-bullying campaigns in schools addressing all forms of bullying, including based on actual or perceived sexual orientation, gender identity or gender expression”.32 The State provided no relevant comments on the SOGIESC situation during the Session.

Treaty Bodies

During the country’s fifth periodic review, the Committee on the Elimination of Discrimination against Women (CEDAW) urged Malaysia to undertake awareness-raising measures to eliminate discrimination and negative stereotypes against LBTI women, especially by amending all discriminatory laws, including the provisions of the Penal Code and Syariah laws that criminalise same-sex relations between women and cross-dressing and by expediting measures to discontinue all policies and activities which aim to “correct” or “rehabilitate” LBTI women.33

Special Procedures

The Special Rapporteur on the right to health visited Malaysia in 2015 and expressed serious concern about the support given by public institutions to “corrective therapies”.34 He called on Malaysia to “put an end to State-led programmes that expose and punish LGBT children, and ensure that they enjoy safe and enabling spaces in schools, and other public and private institutions.”35

In 2011, several mandates36 received complaints concerning the alleged banning of the fourth annual Seksualiti Merdeka Lesbian, Gay, Bisexual and Transgender (LGBT) festival in Kuala Lumpur. The organisers were allegedly summoned for questioning by the police as well.37

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30 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
33 Concluding observations on the combined third to fifth periodic reports of Malaysia, CEDAW/C/MYS/CO/3-5, 14 March 2018, para. 40.
34 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Malaysia, A/HRC/29/33/Add.1, 1 May 2015, para. 90.
35 Id., para. 111.
36 The mandates who received such reports are: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.
37 For more information, see AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) MYS 11/2011.
Provisions in force

- **Penal Code** (Law No. 6/2014).

  **Section 411. Unlawful sexual intercourse.**
  (a) Unlawful Intercourse. A person commits an offense if: [...]
  (2) he engages in sexual intercourse with a person of the same sex.
  (f) Definitions: [...]
  (2) “Same-sex intercourse means”:
  (A) Insertion by a man his sexual organ or any object into the anus of another man for sexual gratification. Or the insertion into another man’s mouth the penis of a man or
  (B) Insertion of a woman’s organ or any object into the vagina or anus of another woman for sexual gratification.

  The offenses in this Section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term of between 6 months and 8 years (when same-sex involving incest or adultery).

  **Section 412. Unlawful sexual contact.**
  (b) Offense Defined. A person engaging in sexual contact with a person of the same is committing an offense. [sic]
  (c) Prohibition. “prohibited sexual contact” means indecent acts other than the offenses prescribed under Section 411 (a) of this Code, with a person of same sex, or with a person of the opposite sex other than with a person to whom he is married, or with an animal, for obtaining sexual gratification.

  The offenses in this Section range from Class 1 misdemeanours to Class 3 felonies that carry a jail term of between 6 months and 8 years (when same-sex involving incest or adultery).

  **Section 410. Offences against the family.**
  Unlawful Marriage. A person commits an offense if: [...]
  (8) two persons of the same sex enter into a marriage;

  The offenses in this Section are Class 1 misdemeanours which carry a jail term of 1 year or less but more than 6 months.
Human rights situation

Until a new Penal Code came into force in July 2015, consensual same-sex sexual conduct went unregulated in the Maldives under the civil law. But the existing Sharia code has been transposed into the civil code by this Act, and it criminalises same-sex sexual acts for both men and women.

Law No. 6/2014 sets out its range of offences and defences according to a Sharia scheme. This scheme then embraces the entire population and not just those of the Muslim faith. Less than two months after the new Penal Code came into force, arrests of gay men have been reported.1

Testimony in a 2015 Kaleidoscope Trust’s publication portrays the Maldives as highly hostile to LGBTI persons.2

In 2012, Ismail Hilath Rasheed, an openly gay blogger and former editor of the Maldivian newspaper Haveeru, was slashed in his neck.3 Hilath survived the attack and told journalists that his assailants had named three senior political and religious figures during the attack, and that they had been promised “entry to heaven” for murdering someone who “defended freedom of religion and gay rights”.4

In 2014, a man who did drag was granted refugee status in New Zealand on the basis that he faced persecution in Maldives on the basis of his sexual orientation.5 According to media reports, a spokesman for the President’s Office, Ibrahim Muaz, had claimed that “the threat they speak of is in actuality our law and regulations. That will not change.”

In August 2015, two men were arrested and accused of “homosexuality activity” at their home on the island of Dhaandhoo.6 According to local LGBT group Rainbow Warriors, it was the first time that the police had arrested people for private, consensual same-sex sexual activity.

National Human Rights Institution

The Human Rights Commission of the Maldives does not appear to have addressed issues related to SOGIESC.

UN voting record

In 2011, Maldives voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.7

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.8

Again in 2016, Maldives voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.9

At the session of Third Committee of the UN General Assembly held in November 2016, Maldives voted against the LAC amendment to remove Operative Paragraph 2,10 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Maldives voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

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1 “Maldives: Lenient no more, island nation arrests 2”, Erasing 76 Crimes, 1 September 2015.
4 “An All-Out Assault on Democracy: Crushing Dissent in the Maldives” Human Rights Watch, 16 August 2018.
5 “Maldives resolute in wake of refugee’s story”, GayNZ.com, 11 June 2014.
10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in November 2010, recommendations to Maldives were to decriminalise, protect against violence and remove discrimination based on sexual orientation and gender identity in national laws. Maldives rejected all of these recommendations.\(^\text{11}\)

In a report submitted to Maldives’ 2nd cycle UPR in May 2015, the International Service for Human Rights (ISHR) says, “[u]ncodified Muslim Sharia Law criminalises homosexual conduct, thus making the Maldives a very insecure place to advocate for the rights of persons who identify themselves as LGBTI.”\(^\text{12}\)

In finalising its 2nd UPR process in September 2015, the Maldives rejected (‘noted’) two recommendations made to it concerning discrimination and decriminalisation.\(^\text{13}\)

Treaty Bodies

In 2012, the Human Rights Committee expressed concern about discrimination against people on the basis of their sexual orientation as well as the social stigmatisation and social exclusion of these groups.\(^\text{14}\) It urged the state to decriminalize sexual relations between consenting adults of the same sex and combat the stigmatisation and marginalisation of homosexuals in society, as well as accelerate the enactment of anti-discrimination legislation and ensure that it includes a prohibition of discrimination on the basis of sexual orientation.

In April 2016, the Committee on the Rights of the Child recommended the State to “amend its legislation in order to eliminate any discrimination against”, among others, lesbian, gay, bisexual, transgender or intersex children and “to use legislative, policy and educational measures, including sensitization and awareness-raising, to end stigmatization” of such children.\(^\text{15}\)


\(^{14}\) Concluding observations adopted by the Human Rights Committee at its 105th session: Maldives, CCPR/C/MDV/CO/1, 31 August 2012, para. 8.

\(^{15}\) Concluding observations of the Committee on the Rights of the Child on the combined fourth and fifth periodic reports of Maldives, CRC/C/MDV/CO/4-5, 14 May 2016, para. 27.
**Provisions in force**


  **Carnal intercourse against the order of nature**

  **Section 377.**

  Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Human rights situation**

According to activists, LGBT people, especially transgender people, are targeted under Section 35c of the Police Act, also known as the "Darkness Law", which allows authorities to detain someone whose face is covered or otherwise disguised.

In 2016, a transgender woman was abused by the police and raped while held in a male prison after she was detained under this law. Due to the restrictive political landscape, citizens have little recourse against police abuse or to challenge the constitutionality of such laws.

In December 2018, activists criticised the film industry for spreading misinformation about the LGBT community by perpetuating harmful stereotypes.

In 2019, Pride Week was held in Yangon, with a pride boat parade and a "drag olympics". This followed the success of the Proud LGBT Festival in previous years, with over 5,000 participants attending in 2018.

In past years, LGBT NGOs, such as Colour Rainbow, have been able to organise events (for example, a queer film festival and International Day Against Homophobia, Biphobia and Transphobia (IDAHOT) celebrations).

**National Human Rights Institution**

The National Human Rights Commission was established in 2011 and given force in 2014. One commissioner attended the UN Asia-Pacific conference on Human Rights, Sexual Orientation and Gender Identity in 2015. It has been reported that though the commission is set up as an independent body, it does not appear to operate as such. Furthermore, some members of the commission are allegedly homophobic.
UN voting record

Myanmar was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC SOGI resolutions in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Myanmar abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,10 and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Likewise, Myanmar abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Sexual orientation and gender identity were not mentioned in Myanmar’s 1st cycle UPR in November 2010.

In its 2nd cycle UPR in November 2015, two recommendations were made to repeal Section 377 by Australia and Spain. It appears that the delegation offered no response to these, other than ‘noting’ (rejecting) them.11

Myanmar’s next UPR is in November 2020.

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10 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.

# OMAN

## Provisions in force


  **Erotic acts with a person of the same sex**

<table>
<thead>
<tr>
<th>Article 223.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anyone who commits erotic acts with a person of the same sex shall be sentenced to imprisonment from six months to three years.</td>
</tr>
<tr>
<td>The suspects of homosexual or lesbian intercourse shall be prosecuted without a prior complaint, if the act results in a public scandal.</td>
</tr>
<tr>
<td>The suspects of lesbian intercourse among ascendants, descendants or sisters shall only be prosecuted upon a complaint from a relative or a relative by marriage fourth-degree removed.</td>
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</tbody>
</table>

  **Disgracing crimes**

<table>
<thead>
<tr>
<th>Article 33.</th>
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<tbody>
<tr>
<td>The following are deemed as disgracing crimes: [...]</td>
</tr>
<tr>
<td>II. All misdemeanours stated hereafter; [...]</td>
</tr>
<tr>
<td>7. Homosexual and lesbian intercourses; [...].</td>
</tr>
</tbody>
</table>


  **Legal barrier to freedom of expression**

<table>
<thead>
<tr>
<th>Article 25.</th>
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<tbody>
<tr>
<td>It is prohibited to [...] call people to embrace or promote anything deemed in contravention of the principles of the Islamic religion.</td>
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</table>

  **Legal barrier to freedom of expression**

<table>
<thead>
<tr>
<th>Article 28.</th>
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<tbody>
<tr>
<td>It is prohibited to publish anything that might prejudice the public code of conduct, moral norms or divine religions.</td>
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</table>

  **Punishment for unlawful publications**

<table>
<thead>
<tr>
<th>Article 35</th>
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<tr>
<td>Without prejudice to any severer penalty stipulated in any other law, anyone who acts in violation of Article (25) of this law shall be punished by imprisonment for a period not exceeding “three” years or a fine not exceeding “two thousand Omani Riyals” or by both penalties.</td>
</tr>
</tbody>
</table>

- **Ministerial Resolution No. 10 (2007) on Executive Regulations to the Telecommunications Law.**

  **Legal barrier to freedom of expression**

<table>
<thead>
<tr>
<th>Article 42.</th>
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<tr>
<td>The beneficiary shall be prohibited from using telecommunications service that contain data or information which meant the following: [...]</td>
</tr>
<tr>
<td>3. In contrary to the public ethic system.</td>
</tr>
<tr>
<td>4. Infringe the religious practice or upset others.</td>
</tr>
<tr>
<td>5. Promote any subject or product breaching the law.</td>
</tr>
</tbody>
</table>
Human rights situation

In 2010, two LGBT websites, "Community Queer" and "Muscat Confidential" were temporarily blocked for publishing content that was considered immoral. In September 2013 the English-language newspaper The Week was shut down for one week after printing an article about the country’s LGBT community. Under pressure from the government, the newspaper removed the article from its website, though the print issue continued to circulate.

In 2015, the Ministry of Information was purportedly taking legal action against a French radio station based in Oman that hosted a gay Omani activist who spoke about the challenges of being gay in the country.

According to a 2018 Human Rights Watch report, a small group of activists have sought to create spaces for community-building, although they face challenges in doing HIV awareness work due to a restrictive legal environment.

National Human Rights Institution

The Oman Human Rights Commission does not appear to have done any work in relation to sexual orientation or gender identity.

UN voting record

Oman was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Oman voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Oman voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR, Sweden made two recommendations that Oman ‘noted’ (i.e. rejected): one to decriminalise same-sex sexual relations, and the other to abolish discrimination based on SOGI.

Oman’s 2nd cycle UPR was in November 2015. Only one civil society submission mentioned decriminalising “homosexuality”, and both Mexico and Brazil made recommendations for Oman to repeal (or not apply) its legislation. The State ‘noted’ (rejected) these recommendations.

Oman’s next UPR review commences in November 2020.

Special Procedures

In 2015, the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concern that the Penal Code made it de facto illegal for individuals to peacefully gather to claim the rights of LGBT people. Oman was urged to repeal legislation that criminalizes same-sex sexual acts and to ensure non-discrimination and equality.

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2 "Oman’s government sues newspaper over story about gays", Reuters, 5 September 2013.
4 Fahad Al Mukrashi, "Interview with gay Omani lands radio station in hot water", Gulf News, 29 October 2015.
6 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate. For more information, see: Out Right. ISHR. ILGA and ARC International. Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Provisions in force

- Penal Code (Act XLV of 1860).
  
  **Carnal intercourse against the order of nature**
  
  **Section 377. Unnatural offences.**
  Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to a fine.
  
  **Explanation:** Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

- Prevention of Electronic Crimes Act (2016).
  
  **Legal barrier to freedom of expression**
  
  **Section 34(1). Unlawful Online Content.**
  The Authority shall have the power to remove or block or issue directions for removal or blocking of access to an information through any information system if it considers it necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court or commission of or an incitement to an offence under this Act.

Human rights situation

LGBT people report facing significant hostility within Pakistani society, including harassment and acts of violence if they disclose their sexual orientation or gender identity. Often, individuals face pressure and violence from their family members to conform to heteronormative expectations of marriage.¹

In June 2011, the US embassy in Islamabad sponsored and held the first pride parade in the country (within the US Embassy compound). This attracted strong criticism from religious bodies.

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In September 2013, the first website blocked by the Pakistan Telecommunications Authority was queerpk.com, a site set up to help members of Pakistan’s gay and transgender community socialise and share experiences. According to a spokesperson, it was shut down because “its content was against Islam and norms of Pakistani society”. The moderator of the site was unwilling to challenge the ban out of fear.

In January 2014, a television programme accused the Pakistani gay community of “being part of a conspiracy hatched by Christians”. According to Kaleidoscope Trust, in April 2014, a serial killer confessed to killing three gay men because of their sexual orientation, yet Pakistani media depicted the serial killer as “the epitome of righteousness”.

Section 294, on obscene acts, is reportedly often deployed to target male and trans sex workers. In fact, in 2016, there were multiple reports of violence against transgender women. In May 2016, a transgender activist was killed after being shot eight times and suffering mistreatment at the hospital.

In August 2017, a transgender person was shot dead by a group of shooters who opened fire on a number of transgender people standing in the street from a vehicle. The shooting occurred after the vehicle had driven past a previous time, with men throwing eggs at the group of trans women. In January 2018, two members of TransAction Pakistan: Transgender Community Alliance were attacked in separate incidents.

In June 2016, a group of clerics declared marriage between transgender persons permissible in Islam and in November, a group of transgender activists started raising funds to build a mosque for transgender people, who are often excluded from religious participation.

In January 2017, the Lahore High Court instructed the government to include the transgender community in the upcoming census in March. However, in August 2017, activists rejected the census findings that the population of transgender people was 10,000 as “inaccurate and misleading”; instead, they say that there are more than a million transgender persons across the country.

In April 2018, the Gender Guardian, a school for the education and vocational training of trans people, was opened in Lahore. In May 2018, the National Assembly passed the Transgender Persons (Protection of Rights) Bill, 2018 aimed at ensuring rights of transgender persons. The law allows transgender people to register to obtain a driver’s license and passport, as well as to change their gender in the national records. Discrimination and harassment of transgender persons is also prohibited under the law.

In September 2018, the Lahore High Court ruled that public hospitals in Punjab province must provide separate facilities for transgender patients to safeguard their right to privacy and protect them from discrimination and prejudice.

Progress on gender identity issues

In June 2016, a group of clerics declared marriage between transgender persons permissible in Islam and in November, a group of transgender activists started raising funds to build a mosque for transgender people, who are often excluded from religious participation.

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In September 2018, the Lahore High Court ruled that public hospitals in Punjab province must provide separate facilities for transgender patients to safeguard their right to privacy and protect them from discrimination and prejudice. In December 2018, the first trans pride was held in Lahore.
National Human Rights Institution

Pakistan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Pakistan has been particularly vocal at the Human Rights Council and at various UN fora in its refusal to embrace SOGI within the scope of the various human rights Treaty Bodies, and in its promotion of the ‘traditional values of humankind’ resolutions at the Human Rights Council.18

In 2011, Pakistan voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.19 In June 2012, at the 19th session of the HRC, at the reading of the report, Pakistan led a walkout by member States of the Organisation of Islamic Cooperation, which was unprecedented behaviour in that forum.20 They were objecting to “attempts to create” “new standards” regarding SOGI that “seriously jeopardise the entire international human rights framework”.

In 2014, Pakistan again voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.21

Throughout 2016, Pakistan took the lead in opposing the appointment of a United Nations SOGI mandate holder.22 However, in that year, Pakistan was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.23

At the session of Third Committee of the UN General Assembly held in November 2016, Pakistan voted against the LAC amendment to remove Operative Paragraph 2,24 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Pakistan voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

There were no direct mentions of SOGI in either of Pakistan’s UPR outcome documents in May 200825 and October 2012.26 Only in 2008 were there civil society submissions on the issue (it appears that of the 38 civil society submissions made in 2012, none had a SOGI context).27 However, there were recommendations concerning the protection of human rights defenders and the training of public employees (judges, police, etc) in international human rights standards in their 2nd cycle UPR.

During its 3rd cycle of the UPR carried out in November 2017, Pakistan received seven SOGIESC recommendations. It accepted two of them, whilst noting (functionally rejecting) all remaining five.

The State accepted recommendations from Albania calling for Pakistan to “ensure that the 2017 law presently being reviewed on the recognition of the rights of intersex and transgender persons pays necessary attention to both women and men transgenders”; and from Spain, urging the State to “rapidly adopt and implement the two draft bills recently presented before the National Assembly to ensure the rights of transgender persons”. However, it noted recommendations from Chile asking the State to “adopt legislative measures to

18 Human Rights Council, Resolution 16/3: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind, A/HRC/RES/16/3, 8 April 2011.
20 “African, Arab Delegates Walk out of UN Gay Rights Meeting”, DW, 7 March 2012.
24 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Pakistan referred to SOGIESC issues during the session, focusing on the improvements of the situation of trans people. The State expressed that "for the first time ever transgenders were counted in the recently concluded census and are now being issued national identity cards by the National Database Regulatory Authority through inclusion of the third gender category".29

**Treaty Bodies**

In 2017, the Human Rights Committee (CCPR) expressed concern about the criminalisation of same-sex relations and the lack of information on effective measures to prevent and punish all forms of discriminations against lesbian, gay, bisexual, transgender and intersex persons.30 It urged the state to decriminalise consensual same-sex relations and adopt a comprehensive anti-discrimination legislation that prohibits discrimination on the basis of sexual orientation and gender identity.31

In 2016, the Committee on the Rights of the Child (CRC) expressed extreme concern about the widespread discrimination against lesbian, gay, bisexual and transgender children.32 It called on the state to take all appropriate measures, such as comprehensive public education programmes, to combat and prevent discrimination and negative societal attitudes and mobilize political, religious and community leaders to support efforts to eradicate traditional practices and attitudes that discriminate against these children.33

**Special Procedures**

In March 2016, several mandates34 received information about alleged threats and attempted assassination of Adnany, a human rights defender and transgender activist.35 They expressed grave concern at the recurrent threats and shooting of Adnany and the initial denial of medical treatment on the basis of gender discrimination by the hospital she was sent to after she was attacked.

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28 "UPR-Pakistan", ILGA Website, 16 November 2017.
29 "UPR-Pakistan", ILGA Website, 16 November 2017, Section C.
30 Concluding observations on the initial report of Pakistan, CCPR/C/PK/CO/1, 23 August 2017, para. 11.
31 Concluding observations on the initial report of Pakistan, CCPR/C/PK/CO/1, 23 August 2017, para. 12.
32 Concluding observations on the fifth periodic report of Pakistan, CRC/C/PAK/CO/5, 11 July 2016, para. 18.
33 Concluding observations on the fifth periodic report of Pakistan, CRC/C/PAK/CO/5, 11 July 2016, para. 19.
34 The mandates were: the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
35 For more information, see PAK 6/2016.
QATAR

Provisions in force

- Penal Code (Law No. 11 of 2004).

**Copulating with a male**

**Article 285.**

Whoever copulates with a male over sixteen years of age without compulsion, duress or ruse shall be punished with imprisonment for a term up to seven years. The same penalty shall apply to the male for his consent.

The penalty shall be life imprisonment or a prison term not exceeding fifteen years if the offender is one of those previously mentioned in the second Paragraph of Article 279 of the present Law.

The second paragraph of article 279 states that the sentence shall be capital punishment if the "perpetrator from the ascendants of the victim, or the guardian, or those undertaking the bringing up or looking after the victim, or is a person having authority thereupon, or the servant thereof or the servant of the aforesaid in this Article.

**Instigation to sodomy or immoral actions**

**Article 296.**

Whoever commits the following offences shall be punished with imprisonment for a term of no less than one year and no more than three years: 

- (3) Leading, instigating or seducing a male by any way to commit sodomy or dissipation;
- (4) Inducing or seducing a male or a female in any way to commit illegal or immoral actions.

Human rights situation

In addition to the penal provisions, Qatar also runs Sharia courts, where technically it is possible that Muslim men could be put to death for same-sex sexual behaviours. However, it does not appear that any person has been executed for this reason or at all. Nevertheless, the ‘chill factor’ of these provisions, are covered by UNHCR guidance of 2002 that explains norms that do not confirm with international human rights law can be seen to be persecutory “per se”. The offence of “Zina” renders any sexual act by a married person outside of marriage punishable by death, while sexual acts by non-married persons are punishable by flogging – both are offences, no matter if they were same-sex or different-sex.

As the host for the Fifa 2022 World Cup, the country has come under significant scrutiny from Fifa’s anti-discrimination taskforce. Little information on enforcement appears to be available after the 1995 case in which a US citizen

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4. Owen Gibson, "Fifa urged to pressure Russia and Qatar over anti-gay legislation", The Guardian, 8 September 2013.
received 90 lashes for same-sex sexual activity and the 1997 deportation of 36 gay Filipinos.5

In 2013, Qatar was one of the countries in the Gulf Cooperation Council that was exploring a ban on gay/lesbian/bi and transgender foreigners from working in the region first proposed by Kuwait.6

In 2016, Doha News published an opinion piece by a Qatari man on the challenges of being gay which led to significant debate.7 A response piece was published that criticised the news outlet for allowing the topic of “homosexuality” in Qatar be discussed.8

In July 2018, it was reported that articles relating to gay and transgender rights in the print version of the New York Times had been censored in the country.9

National Human Rights Institution
The National Committee for Human Rights does not appear to have done any work in relation to sexual orientation or gender identity.

UN voting record
In 2011, Qatar voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.10

In 2014, it was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.11

In 2016, Qatar again voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.12

At the session of Third Committee of the UN General Assembly held in November 2016, Qatar voted against the LAC amendment to remove Operative Paragraph 2,13 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Qatar voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review
In its 1st UPR in February 2010, only Sweden made a recommendation regarding SOGI to Qatar (which was ‘noted’): “To ensure that LGBT persons are not discriminated against and, as an immediate step, to amend the provisions of the penal code criminalizing consensual same-sex sexual acts and to ensure that no one is punished for such activity under Sharia law”. This recommendation was repeated at the Interactive Dialogue session, but the State gave no response to either.14

At its 2nd cycle UPR in mid-2014, only one mention of LGBT workers was made in relation to the upcoming World Cup, to which it appears the State made no response at all.15

Qatar’s next UPR review is scheduled for May 2019.

5 Brian Whitaker, “Qatar is more boring than backward”, The Guardian, 3 December 2010.
6 Habib Toumi, “Gulf homosexual ban was ‘just a proposal’: Kuwait chief”, Gulf News, 20 October 2013.
13 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Provisions in force

There is no codified Penal Law in Saudi Arabia. However, the country applies strict Islamic Sharia law. According to the Sura 7:80/81, sexual intercourse between men is outlawed. All sexual relations outside of marriage are illegal and the penalty for a married man is generally understood to be death by stoning.

There is a morality law enforcement agency called the “Committee for the Propagation of Virtue and the Prevention of Vice” that arrests and detains people who violate the traditional teachings of Wahhabism, including same-sex sexual behaviour and diverse gender expression. They operate in-person and online, and are known to be particularly vicious towards LGBT people.


Legal barrier to freedom of expression

Article 6.

Any person who commits one of the following cybercrimes shall be subject to imprisonment for a period not exceeding five years and a fine not exceeding three million riyals or to either punishment:

1. Production, preparation, transmission, or storage of material impinging on public order, religious values, public morals, and privacy, through the information network or computers; […]

3. The preparation, publication, and promotion of material for pornographic or gambling sites which violates public morals.

Human rights situation

There are no LGBT groups or organisations operating in Saudi Arabia, and opportunities for people to meet have been severely restricted. LGBT people are also persecuted for their identities. In 2010, a gay Saudi diplomat sought asylum in the US after he was discovered to be gay and friends with a Jewish woman. In November 2014, a man was sentenced to three years in jail and fined for engaging in “immoral acts”. He had posted nude pictures of himself on social media and sought to arrange to have sex with other men. Authorities in Saudi Arabia arrested several people on “suspicion of homosexuality” in raids on two parties in the city of Jeddah in June 2015. In January 2016, four men were also allegedly arrested for living as “married couples” together in a flat. In March 2016, it is reported that a doctor in Jeddah was arrested by the Committee for Promotion of Virtue and the Prevention of Vice for flying the rainbow flag, although he had been unaware of its meaning. Also in March 2016, from Jeddah, ominous attention has been brought to online communications amongst sexual and gender

4 Alexandra Zavis, “Gay Saudi diplomat seeking asylum says ‘they will kill me openly’”, Los Angeles Times, 15 September 2010.
7 Habib Toumi, “‘Married’ gay couples arrested in Saudi raid”, Gulf News, 26 January 2016.
minorities. However, in May 2016, regarding the death penalty for same sex sexual relations, a leading cleric noted, “[b]yly condemning homosexuals to death they are committing a graver sin than homosexuality itself.”

The Saudi authorities raided a resort south of Saudi capital, Riyadh in February 2017, and detained 35 Pakistani citizens, describing them as “faggots”, and releasing photographs of some of the individuals who were cross-dressing. It is reported that two members of the group were brutally killed by the authorities, a claim that the State denies.

In January 2018, police arrested several young men who were allegedly involved in a “gay wedding” video filmed and posted online. In March 2018, a gay teenager allegedly committed suicide after his father had threatened to kill him for coming out as gay to his family.

National Human Rights Institution

Saudi Arabia does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

At the United Nations, Saudi Arabia has continually refused to accept that the human rights framework includes SOGI issues. In 2011, it voted against the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI. Again in 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011. In 2016, Saudi Arabia again voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

At the session of Third Committee of the UN General Assembly held in November 2016, Saudi Arabia voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, it voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Most notably, Saudi Arabia has never received recommendations on SOGI issues in any of its 3 UPR cycles.

Treaty Bodies

In 2016, the Committee of the Rights of the Child (CRC) noted that LGBT children are subject to persistent discrimination and urged the State to combat such discrimination.

8 Senior Saudi Cleric: Homosexuality Should Not Be Punished, Middle East Eye, 3 May 2016.
17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
Provisions in force


Section 377 criminalising “carnal knowledge against the order of nature” has been already repealed by the Penal Code (Amendment) Act 2007, No. 51, which came into force on 1 February 2008. However, the following provisions remain in force:

- Gross indecency (committing, abetting or attempting)

  Section 377A. Outrages on decency.
  Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.

- Obscene acts

  Section 294.
  Whoever, to the annoyance of others:
  (a) does any obscene act in any public place; or
  (b) sings, recites or utters any obscene song, ballad or words in or near any public place,
  shall be punished with imprisonment for a term which may extend to 3 months, or with fine, or with both.

- Internet Code of Practice (1997).
  Issued by the Infocommunications Media Development Authority in exercise of the powers conferred by section 6 of the Broadcasting Act (Cap. 28).

- Legal barrier to freedom of expression

  Section 4(2)(e)
  In considering what is prohibited material, the following factors should be taken into account: [...] whether the material advocates homosexuality or lesbianism.

Human rights situation

In 2018, an annual rally in support of LGBT equality, Pink Dot, celebrated its 10th run since it was first organised in 2009 at Hong Lim Park, a designated park for conducting public assemblies. However, in 2017, the law was amended to prohibit non-Singaporeans from participating in public assemblies and demonstrations at the park as well as prohibit foreign sponsorship or funding for events held there.

Following the Indian Supreme Court decision to strike down its anti-sodomy law in September 2018, several public figures in Singapore called for the repeal of Section 377A, and a petition to repeal

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1 Cheow Sue-Ann, “Pink Dot movement marks 10 years”, The Straits Times, 22 July 2018.
2 Melissa Zhu, “Govt has made position on Pink Dot support clear: MHA on foreign firms’ appeal”, Channel NewsAsia, 16 June 2017.
the law garnered around 45,000 signatories. However, the government said that there was no plan to repeal the law despite an ongoing review of the Penal Code.³

In 2018, a group of teenagers launched a petition to the media authorities after a romantic comedy about a gay youth, Love, Simon, was rated R21 (only for over-21 year olds) which prevented them from watching the film.⁴ At the beginning of 2019, another teenager was asked by his school to remove photos of him kissing his male partner on social media after he was cyberbullied and attacked online.⁵ This was raised by a coalition of women’s organisations, which recommended the government to "review media policies so that LGBT content is not censored for representing LGBT experiences or pro-LGBT points of view".⁶

In 2017, the T Project, which runs a homeless shelter for transgender people, was rejected in its application to register as a non-profit organisation, although no reason for the rejection was given by the approving authority.⁷ According to Project X, transgender female sex workers are particularly vulnerable in Singapore and face discrimination in employment and healthcare, as well as police violence.⁸

In January 2019, it was reported that confidential information of over 14,000 people living with HIV was leaked from the Ministry of Health, which activists say put LGBT people who have not disclosed their status in a particularly vulnerable position.⁹

Statements by public officials
Following India’s Supreme Court ruling on the unconstitutionality of Section 377, Law and Home Affairs Minister K. Shanmugam said that whether a similar provision in Singapore will be repealed “is a matter for Parliament to decide”.¹⁰

At the annual Singapore Summit, Education Minister Ong Ye Kung claimed that there was no discrimination against LGBT people “at work, housing and education” in Singapore. He added that while it is in Singapore’s culture to be inclusive, “on the issue of LGBTQ, it is also an issue of social mores and societal values”.¹¹

In 2017, Prime Minister Lee Hsien Loong, said that he would not get rid of Section 377A: “My personal view is that if I do not have a problem, this is an uneasy compromise, I am prepared to live with it until social attitudes change. This is a society which is not that liberal on these matters. Attitudes have changed, but I believe if you have a referendum on the issue today, 377A would stand.”¹²

Existing legal challenges
Consensual same-sex sexual acts
Two lawsuits have been filed to challenge the constitutionality of Section 377A of the Penal Code.¹³ These followed from an earlier attempt to challenge the provision in 2014 where the Court of Appeal held that Section 377A of the Penal Code was constitutional and did not infringe constitutional rights.¹⁴

Single-parent adoption
In December 2018, the High Court allowed a gay man to adopt his biological son conceived through surrogacy, based on best interest of the child. The lower court had refused to grant the adoption order on the basis that commercial surrogacy was prohibited under the law.¹⁵

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³ Alfred Chua, “Activists submit online petition, but Govt has ‘no plans’ to repeal S377A”, Today Online, 30 September 2018.
⁵ Sulaiman Daud, “S’pore student gets online hate for photo of kiss with male partner, JC ‘advised’ him to take it down”, Mothership.sg, 31 January 2019.
⁸ Lisa Ja’affar, Vanessa Ho, Michelle Lee and Sherry Sherqueshaa, Stakeholders Report by Sex Workers in Singapore (2017), 11.
⁹ “HIV data leak a ‘criminal act that should be condemned’: Action for AIDS”, Channel NewsAsia, 30 January 2019.
¹⁰ Charmaine Ng, “Amending 377A Unlike courts, Parliament will take into account views of public”, Mothership.sg, 31 January 2019.
¹¹ “PM Lee discusses gay rights and succession planning on BBC’s HARDTalk”, Channel NewsAsia, 9 June 2017.
¹² Shaffiq Alkhatib, "LGBT rights advocate files case against Attorney-General, stating Section 377A of Penal Code is void", The Straits Times, 22 January 2019; Lydia Lam, “Court challenge filed on 377A arguing that gay sex law violates human dignity”, Channel NewsAsia, 12 September 2018.
¹³ Lim Meng Suang v Attorney-General [2014] SGCA.
**Appeal against annulment of same-sex marriage**

A same-sex couple was granted the right to appeal the Registry of Marriages’ annulment of their marriage. However, the couple withdrew their appeal after their application for an anonymising order was denied, and they underwent severe pressure due to the public scrutiny.

**National Human Rights Institution**

Singapore does not have a National Human Rights Institution in accordance with the Paris Principles.

**UN voting record**

Between 2011 and 2016, Singapore was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the SOGI resolutions adopted by the Council.

At the session of Third Committee of the UN General Assembly held in November 2016, Singapore voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Singapore abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

In January 2016, at its 2nd cycle UPR, Singapore received 12 recommendations, 11 of which called for repeal of Section 377A, and one of which focused on bias in media representation of LGBTI persons and issue, and another which called for general non-discrimination. Singapore “noted” (effectively rejected) all 12 recommendations.

Singapore’s next UPR review is in early-2021.

**Treaty Bodies**

In 2011 the Committee on the Elimination of Discrimination against Women called on Singapore to launch a strategy to eliminate patriarchal attitudes and stereotypes, including those based on sexual orientation and gender identity. In 2017, the Committee again urged Singapore to ensure that LGBTI women are effectively protected against all forms of discrimination in law and in practice and to undertake educational to combat stereotypes.

**Special Procedures**

In December 2013, two mandates expressed concern about the prosecution of an LGBT rights activist for contempt of court.

In July 2017, several mandates received information concerning amendments adopted to the Public Order Act which significantly restricted the right to freedom of assembly, particularly in relation to Pink Dot annual festival.

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17 Kirsten Han, “About that ROM/same-sex couple case”, Medium, 16 May 2018.
19 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
22 Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/SGP/CO/5, 21 November 2017, para. 41.
23 These are: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders.
24 For more information, see UA G/SO 214 (67-17) G/SO 214 (107-9) SGP 4/2013.
25 The mandates are: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the IE on protection against violence and discrimination based on SOGI.
26 For more information, see AL SGP 3/2017.
SRI LANKA

Provisions in force

- **Penal Code (1885)** (as amended by the Penal Code (Amendment) Act, No. 22 of 1995).

**Against the order of nature**

**Article 365. Unnatural offences.**

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years [...] 

*Explanation* – penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

**Gross indecency**

**Article 365A. Acts of gross indecency between persons.**

Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both.

**Human rights situation**

Although the 1995 amendments broadened the scope of the law to be gender-neutral, the government has guaranteed that the law appears not to be actively enforced. However, a 2016 report by Human Rights Watch found that the presence of the law creates a significant ‘chill factor’ on LGBT people who continue to be subject to extortion and violence. In addition, it noted that the police has used several criminal offenses and regulations to target LGBTI people, particularly transgender women and MSM involved in sex work. These include a law against “cheating by personation,” and the vaguely worded Vagrants’ Ordinance that prohibits soliciting or committing acts of “gross indecency,” or being “incorrigeble rogues” procuring “illicit or unnatural intercourse.”

Additionally, activists have highlighted that the retention of these laws prevent LGBT people from accessing justice for violence and discrimination.

In November 2017, the Sri Lankan government released the National Human Rights Action Plan for 2017-2021, which was criticised by LGBT activists for failing to include SOGI as a basis for protection against discrimination. The proposed measures relating to sexual orientation and gender identity were purportedly removed because of potential “social and cultural implications.” This led to an online petition that called on the government to repeal laws that entrench discrimination and perpetuate violence against the LGBT community.

However, in the same month, the Deputy Solicitor General Nerin Pulle’s pledged at the 2017...
Universal Periodic Review to “ensure that no provision in the law would be applied to persons of the LGBTIQ community in a discriminatory manner”.7

In November 2018, the Sri Lanka president accused his political opponent of rejecting national values for a “butterfly life” and claimed that his decisions were led by a “butterfly caucus”.8 The Sinhalese term for “butterfly” is used as a derogatory term alluding to LGBT people. This led to a protest in Colombo by LGBT activists protesting the president’s “insidious references degrading the LGBTIQ community” as well as a media statement condemning the president’s statements.9

In 2018, the 14th Colombo Pride was organised, with a rainbow bus parade, an LGBTIQ film festival and other events.10

Statements by public officials

In a January 2017 interview the Minister for Justice Wijeyadasa Rajapaksa, basing his argument on the religious nature of Sri Lankan society, said regarding 365 and 365A, “under no circumstance are we going to change that law”.11 Elsewhere, he called “homosexuality” a “mental disorder”, a comment that sparked public outcry.12 In August 2017, he said that lesbianism “equals sadism” and advocated the rape of lesbians by convicted sexual offenders to “cure” them. He added, “Lesbianism is at least an act of gross indecency and unnatural”.13

In 2013, the then President Mahinda Rajapaksa denied a spousal visa to the Norwegian ambassador’s same-sex wife. In a discussion with representatives from the Bodhu Bala Sena, he explained that the country’s “Sinhala Buddhist identity would come to an end if we allow these actions.”14

National Human Rights Institution

In 2017, the chairperson of the Sri Lanka Human Rights Commission (HRC), Deeptika Udageda, came out in favour of decriminalising homosexuality. She noted that the Commission has received many complaints about threats and discrimination on the basis of sexual orientation and these could not be justified on grounds of “culture”. “If all segments of the society are not incorporated or allowed to have their natural behaviour, there is a serious problem in that society,” she added.15

UN voting record

In 2011, 2014 and 2016 Sri Lanka was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolution issued by the Council.16

At the session of Third Committee of the UN General Assembly held in November 2016, Sri Lanka voted in favour of the LAC amendment to remove Operative Paragraph 2,17 and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Sri Lanka voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At Sri Lanka’s 2nd cycle UPR in November 2012, only two States (Argentina and Canada) made specific recommendations regarding

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9 “Sirisena Should Be Held Responsible For Homophobic Incidents In Sri Lanka In Coming Days: Sri Lankan LGBTQI+ Community”, Colombo Telegraph, 6 November 2018.
14 “President disturbed by the Norway ambassador’s marriage”, Lanka News Web, 27 June 2013.
17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
decriminalisation in the Penal Code. Sri Lanka noted (rejected) them.\textsuperscript{18} During its 3\textsuperscript{rd} cycle of the UPR carried out in November 2017, Sri Lanka received 10 SOGIESC recommendations. It supported three of them, whilst noting (functionally rejecting) the remaining seven. The State accepted recommendations from Argentina, Italy and Portugal focusing on ending the discrimination suffered by the LGBTIQ community in the country. However, Sri Lanka rejected recommendations from Australia, Brazil, Canada, Honduras, the Netherlands, Sweden and Uruguay calling for the decriminalisation of consensual same-sex sexual acts (in particular, by revoking Sections 365 and 365A of the Penal Code).\textsuperscript{19} During the Session, Sri Lanka stated that the country “is in the process of taking measures to guarantee right to non-discrimination, inter alia, on the grounds of sexual orientation and gender identity”. It particularly focused on the commitment to reform the Penal Code.\textsuperscript{20}

\textbf{Treaty Bodies}

In 2014, the Human Rights Committee noted that the State had confirmed that article 12 of its Constitution prohibits discrimination on the grounds of sexual orientation and gender identity. However, it recommended that the State “amend sections 365, 365A and 399 of its Penal Code to ensure full compliance with articles 2 and 26 of the Covenant”. It also called on the State to “consider amending article 12 of its Constitution to state explicitly that sexual orientation and gender identity are prohibited grounds for discrimination [and] also strengthen measures to protect against violations of LGBTI rights and strengthen awareness-raising and training measures on such rights”.\textsuperscript{21}

In 2017, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about how the criminalisation of consensual same-sex acts results in women being completely excluded from legal protection as well as information that the law enforcement officers are allowed to arbitrarily detain them.\textsuperscript{22} It urged Sri Lanka to decriminalise and abide by the obligation of non-discrimination under the Convention.\textsuperscript{23} It also urged the state to “give due consideration to the proposal made by the subcommittee on fundamental rights of the Constitutional Assembly to include sexual orientation and gender identity as a prohibited ground for discrimination”.\textsuperscript{24}

In 2018, the Committee on the Rights of the Child (CRC) urged the state to “adopt a proactive and comprehensive strategy containing specific and well-targeted actions, including affirmative social actions to eliminate discrimination against children in marginalized or vulnerable situations”, which includes LGBTI children.\textsuperscript{25} It also specifically recommended the state to “combat discrimination against LGBTI children, including by decriminalizing consensual same-sex acts, prohibit harassment of transgender children by law enforcement personnel, and bring perpetrators of violence, including of sexual abuse of LGBTI children, to justice”.\textsuperscript{26}

The CRC also expressed grave concern about “the lack of legal recognition of male rape and under-reporting of sexual abuse of boys because of stigmatisation, criminalisation of homosexuality, and feeling ashamed of so-called "emasculisation"."\textsuperscript{27}

\begin{itemize}
\item \textsuperscript{19} “UPR-Sri Lanka”, ILGA Website, 17 November 2017.
\item \textsuperscript{20} “UPR-Sri Lanka”, ILGA Website, 17 November 2017, Section C.
\item \textsuperscript{21} Concluding observations of the Human Rights Committee on the fifth periodic report of Sri Lanka, CCPR/C/LKA/CO/5, 21 November 2014, para. 8.
\item \textsuperscript{22} Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/LKA/CO/7, 8 April 2011, para. 24.
\item \textsuperscript{23} Id., para. 25.
\item \textsuperscript{24} Concluding observations on the eighth periodic report of Sri Lanka, CEDAW/C/LKA/CO/8, 9 March 2017, para. 11.
\item \textsuperscript{25} Concluding observations on the combined fifth and sixth periodic reports of Sri Lanka, CRC/C/LKA/CO/5-6, 2 March 2018, para. 16(b).
\item \textsuperscript{26} Id., para. 16(c).
\item \textsuperscript{27} Id., para. 23.
\end{itemize}
Provisions in force

- **Penal Code (1949).**

<table>
<thead>
<tr>
<th>Unnatural sexual intercourse</th>
<th>Article 520.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any unnatural sexual intercourse shall be punished with a term of imprisonment of up to three years.</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Indecency</th>
<th>Article 517.</th>
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</thead>
<tbody>
<tr>
<td>Any act against public decency mentioned in Article 208(1) [any act carried out in a public or open area where one could possibly see, intentionally or accidentally, the act] is punishable with imprisonment of three months to three years.</td>
<td></td>
</tr>
</tbody>
</table>

Human rights situation

Following the civil war that started in 2011, Syria has become a dangerous place, with frequently complex responses to consensual same-sex sexual activity.¹ Persecution of LGBT people has occurred even prior, with multiple raids carried out in 2010 on private gay parties,² that resulted in the arrest of more than 25 men. The plight of LGBT people in Syria prior to the 'Arab Spring' was described in a news report as "the weakest link in the region", with honour killings and the absence of any advocacy movement.³

A submission to the 2016 UPR noted that "LGBT identified individuals are persecuted and stigmatized socially and legally, where they are denied equal opportunities to education and work through the denial of employment in public services and sometimes in private establishments. They are also persecuted by the law through security trailing and detention, where many men have been beaten, tortured, and raped – individually and in groups – at checkpoints due to their sexual orientation".⁴

In 2014, in a report of the Independent International Commission of Inquiry submitted to the UN Human Rights Council, it was reported that "men were tortured and raped on the grounds of their sexual orientation at government checkpoints in Damascus".⁵ The report cited two cases: in 2011, six [perceived] 'homosexual' men were beaten viciously with electric cables by security agents and threatened with rape; in October 2012, a man was stopped by security because his partner's brother was a member of the FSA. The man was taken to a rural area, where cigarettes were stubbed on his body and he was gang raped.

In 2015, the UN Security Council discussed violence against LGBTI people committed by the Islamic State (ISIS).⁶ A gay Syrian refugee, addressed the Council in person and highlighted the struggles faced by LGBT people in the country. He had been detained in 2012 at a government checkpoint and mocked by soldiers for being gay.

In 2015, a news report described the plight of LGBT people in the country, where many who were

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¹ Counter Extremism Project, ISIS's Persecution of Gay People (2017); "The secret, hypocritical gay world of Islamic State". The Express Tribune, 11 December 2016.
³ Ahmed Danny Ramadan, "The Dark Closet", Foreign Policy, 14 June 2011.
⁴ AWASUR, PHRO Joint Submission (2016).
⁶ Lucy Westcott, "Gay refugee addresses UN Security Council in historic meeting on LGBT rights", Newsweek, 25 August 2015.
assumed or perceived to be gay being abducted, tortured and killed by different factions in the ongoing civil war. Government, ISIS and al-Nusra (the Syrian branch of al-Qaeda). Methods of torture are gruesome and aimed at inflicting the maximum amount of pain and suffering on the victims.

A 2017 report by the UNHCR also reported sexual violence against LGBT people, where four out of seven refugees reported being sexually violated while in detention. In addition, many continue to face persecution, exploitation and discrimination in their countries of asylum, such as Lebanon and Jordan.

In 2017, it was reported that a group of international volunteers have formed an LGBT military unit known as “The Queer Insurrection and Liberation Army” (TQILA), as part of the International Revolutionary People’s Guerrilla Forces (IRPGF), an anarchist group taking part in the fight against Isis. This has however been criticised by a postcolonial scholar-activist for reifying the imperialist narrative of the “war on terror.” In 2018, a news report on a gay Syrian refugee in Canada mentioned attempts by ISIS to “change” LGBT people.

National Human Rights Institution

Syria does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, 2014 and 2016, Syria was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.

At the session of Third Committee of the UN General Assembly held in November 2016, Syria voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Syria voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR, in 2011, Amnesty International was the only NGO that made a submission about the repeal of Article 520. No States made recommendations on this issue, and there is no reference to SOGI in the concluding documents from the first cycle.

Only two civil society submissions were made to Syria’s 2nd UPR in November 2016, including this observation by MADRE: “Women and girls can be killed because of mere suspicion of an affair or romantic liaison, a false accusation, or for being raped or sexually assaulted. Victims of “honor” killings also include LGBT individuals. In its preliminary Interactive Dialogue, the Syrian delegation has made no mention of the multiple societal and official attacks and persecution of sexual or gender minorities in its responses.

Syria’s 3rd UPR will take place in October 2021.

7 "It can’t get any worse than being gay in Syria today", The Sydney Morning Herald, 15 October 2015.
10 Razan Ghazzawi, "Decolonising Syria’s so-called ‘queer liberation’", Al Jazeera, 5 August 2017.
11 "I was reborn here": Gay Syrian refugee says Canada has welcomed him”, CBC News, 21 December 2018.
13 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
16 Human Rights and Gender Justice (HRGJ) Clinic, City University of New York School of Law et al., Human Rights Violations Against Women and Girls in Syria (2016), para. 10.
Provisions in force


Section 135: Homosexual acts.

(1) Homosexual acts, i.e. sexual intercourse between men, shall be punished with a term of imprisonment of up to two years. [...]

Human rights situation

In Turkmenistan, “homosexuality” is widely considered a mental disorder in the country, including by law enforcement, medical institutions, and judicial officials. As such, punishment for same-sex sexual acts between men, or perceived “homosexual” behaviour, can also include placement in psychiatric institutions to be ‘cured’ of their sexual preferences.  

A 2008 cable released by Wikileaks reported that government officials claim that “there were no gay people in the country” and the topic of homosexuality was a taboo topic that was seldom discussed.  

A 2013 Amnesty International report stated that it has received credible information about law enforcement officers who targeted gay men for harassment and extortion. Gay men were also made to “denounce” other gay men by revealing their identities.  

In 2015, the documentary “Turkmenistan: Forbidden Homosexuality” premiered at the International Documentary Film Festival in Oslo. The film is reported to document the story of a young man from Turkmenistan accused of homosexual acts and sentenced to prison who tells his experience with the Turkmen law enforcement system, from the moment of detention to release, including accounts of threats, insults, torture and sexual violence. The testimony also makes reference to medical doctors in a forensic medical examination, exposing the suspects to degrading anatomical procedures.  

In this same line, according to research conducted by Human Rights Watch in 2016, law enforcement officials and medical personnel subject people who are detained for same-sex sexual acts to forced anal examinations with the purported objective of “finding ‘proof’ of homosexual conduct”.

National Human Rights Institution

Turkmenistan does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

In 2011, 2014 and 2016, Turkmenistan was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the three SOGI resolutions.

3 Amnesty International, Turkmenistan: An “era of happiness” or more of the same repression? (2013), 25.
4 Туркменистан: Запрещённый гомосексуализм. В Осло состоялась премьера нового фильма АНТ (“Turkmenistan: Forbidden homosexuality”. In Oslo, the premiere of the new film ANT), Alternative News of Turkmenistan, 16 September 2015.
At the session of Third Committee of the UN General Assembly held in November 2016, Turkmenistan did not vote the LAC amendment to remove Operative Paragraph 2.7 and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Turkmenistan did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st UPR in December 2008, Turkmenistan rejected two recommendations (Sweden and Czech Republic) to decriminalise, without offering any rationale for that refusal.8 Again at its 2nd UPR cycle in 2013 review, it rejected Slovenia’s recommendation, which referred to other international human rights mechanisms: “Decriminalise sexual relations between consenting adults of the same sex, as recommended by the Human Rights Committee”.

During its 3rd cycle of the UPR carried out in May 2018, Turkmenistan received eight SOGIESC recommendations. It noted (functionally rejected) all of them. Argentina, Iceland and Uruguay called the State to decriminalise consensual same-sex sexual relations. Furthermore, Honduras, Argentina, Czechia, Iceland, Italy and Uruguay urged the State to adopt a legislative framework to fight against the discrimination and violence suffered by the LGBTIQ community in the country.9 The State made no references to SOGIESC issues in its remarks during the session.

Treaty Bodies

In 2012, the Human Rights Committee said that, “[t]he State party should decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation in line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatisation of homosexuality and send a clear message that it does not tolerate any form of discrimination against persons based on their sexual orientation or gender identity”.10 In 2017, the HRC again urged for the decriminalisation of same-sex sexual relations as well as the protection of LGBT people from discrimination and violence.11

In 2018, the Committee on Economic, Social and Cultural Rights (CESCR) similarly recommended the decriminalisation of same-sex intimacy and expressed concern about the strong stigmatisation against LGBTI people.12

Special Procedures

In 2016, several mandates13 expressed concern that the new “Law on combating the spread of diseases caused by HIV” will negatively impact the right to health of men who have sex with men.14


Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


“UPR-Turkmenistan”, ILGA Website, 11 May 2018.

Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, CCPR/C/TKM/CO/1, 19 April 2012.

Concluding observations on the second periodic report of Turkmenistan, CCPR/C/TKM/CO/2, 20 April 2017, para. 9.

Concluding observations on the second periodic report of Turkmenistan, E/C.12/TKM/CO/2, 31 October 2018, para. 16.

These are the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

For more information, see TKM 1/2016, 10 June 2016.
UNITED ARAB EMIRATES

Provisions in force

All sexual acts outside of heterosexual marriage are banned in the United Arab Emirates. No article in Federal Penal Code specifically discusses consensual same-sex relations, although various scholars translate Article 356 to criminalise such conduct (see below).  

However, it is through the Sharia code that the death penalty theoretically can apply to same-sex sexual relations through the offence of Zina, which applies to sexual relations outside of marriage of any sort. However, it appears that the law is used in rape cases only although in some cases courts have gone beyond codified laws and imposed harsher sentences of stoning and flogging for Zina crimes.  

Apart from federal law, consensual sodomy is also criminalised in the emirates of Dubai and Abu Dhabi. Article 80 of the Dubai Penal Code punishes sodomy with a penalty of up to 14 years imprisonment, while article 177 of the Abu Dhabi Penal Code punishes such acts with a penalty of up to ten years imprisonment.

- **Penal Code** (enacted by Federal Law No. 3 of 1987 Concerning Promulgating Penal Code).

  **Article 356.**
  Without prejudice to two preceding articles, the crime of voluntary debasement shall be penalized by detention for a minimum term of one year [...].

  According to Article 68, unless the law provides otherwise, the term of the temporary imprisonment may not be less than three years and not more than fifteen years.

- **Law on Combating Cybercrimes** (Law No. 5 of 2012).

  **Article 35(4)**
  Without prejudice to the provisions of the Islamic Sharia, shall be punished by imprisonment and a fine not less than two hundred fifty thousand dirhams and not in excess of one million dirhams or either of these two penalties whoever commits through the computer network or any information technology means or a website any of the following crimes:

  (4) Condoning, provoking or promoting sin.

The Internet Access Management Regulatory Policy also explicitly prohibits internet content that “motivates, supports, promotes or publishes opinions that include aggression to public manners or involves corrupting youth or calling for embracing or promoting destructive principles such as homosexuality”.

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Human rights situation

Several cases of State persecution of LGBT persons have been reported in the country. In 2005, the police raided a villa and arrested 26 men believed to be attending a gay wedding. The men were subjected to invasive anal examinations in an effort to prove their “homosexuality” as well as violence to force them to confess to “homosexual” conduct. Human Rights Watch received reports of forced anal testing still going on in 2017 as well.

In 2011, a counselling conference held at a university discussed the issue of boyat (a term which refers to women who dress and behave like men), which was considered “culturally undesirable” by the speakers. In 2012, a Belgian man was jailed for a year after he was convicted of having consensual same-sex acts.

In February 2012, a video made by Emirati filmmakers on how to cure “homosexuality” was taken down by YouTube after international pressure.

In 2013, two men were jailed for three years for same-sex prostitution, and one of them was also charged with “breaching public modesty” by publishing his photos wearing women’s undergarments and in full make-up.

In August 2017, two Singaporean men were arrested for cross-dressing and sentenced to one year imprisonment before their sentences were reduced to a fine and deportation after diplomatic talks. Similarly, in October 2017, a 27-year-old Scottish man was sentenced to three months in prison for inappropriately touching another man at a bar in Dubai. However, he was pardoned the next day by Sheikh Mohammed bin Rashid, Vice President and Ruler of Dubai, and allowed to leave the country.

In October 2018, the Knowledge and Human Development Authority in Dubai investigated a complaint from parents over a textbook used in a private school that depicted families with same-sex parents. In December 2018, a man purportedly hung himself after his colleague blackmailed him with compromising photos of him performing oral sex on another man.

National Human Rights Institution

United Arab Emirates does not have a National Human Rights Institution in accordance with the Paris Principles.

Existing legal challenges

Change of gender marker

In May 2017, several transgender men applied to court to change their gender markers on State records. However, the Federal Appeal Court rejected the request in March 2018. The plaintiffs have appealed.

UN Voting Record

In 2011, United Arab Emirates was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which...
requested the OHCHR to produce the first report on SOGI.\textsuperscript{17}

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to update the report produced in 2011.\textsuperscript{18}

In 2016, United Arab Emirates again voted against the adoption of Resolution 32/2 which created the mandate of the independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.\textsuperscript{19}

At the session of Third Committee of the UN General Assembly held in November 2016, United Arab Emirates voted against the LAC amendment to remove Operative Paragraph 2,\textsuperscript{20} and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, United Arab Emirates voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

### International advocacy and supervision

#### Universal Periodic Review

In 2013, the UAE received two recommendations regarding SOGI in its 2\textsuperscript{nd} cycle UPR: “Protect the human rights of all individuals, including LGBT individuals, and take appropriate steps to help ensure that protection is provided to the victim and perpetrators are identified and prosecuted” (from the United States), and “Repeal the criminalization of sexual relations between persons of the same sex” (from Argentina). It ‘noted’ both and appears to have made no comment at any session on these issues.\textsuperscript{21}

During its 3\textsuperscript{rd} cycle of the UPR carried out in January 2018, the United Arab Emirates received two SOGIESC recommendations. It noted (functionally rejected) both of them. Iceland called upon the State to “take policy measures to promote tolerance and non-discrimination on the grounds of sexual orientation”, while the United States urged the United Arab Emirates to “take appropriate steps to protect lesbian, gay, bisexual and transgender persons and ensure that protection is provided to victims of sexual assault and perpetrators are identified, prosecuted, and held accountable”.\textsuperscript{22}

The State made no comments on the SOGIESC situation in the UAE during the interactive sessions.

\textsuperscript{17} Human Rights Council, Resolution 17/19: Human rights, sexual orientation and gender identity, A/HRC/RES/17/19, 14 July 2011.


\textsuperscript{20} Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


\textsuperscript{22} “UPR-United Arab Emirates”, ILGA Website, 25 January 2018.
UZBEKISTAN - CRIMINALISATION

UZBEKISTAN

Provisions in force


Voluntary sexual intercourse of two male individuals

Article 120. Besoqolbozlik (Homosexual Intercourse).

_Besoqolbozlik_, that is, voluntary sexual intercourse of two male individuals, shall be punished with imprisonment up to three years.

Human rights situation

- Additional information on the situation in Uzbekistan is provided at the end of this entry in a “Local Perspective Essay” written by an anonymous Uzbek activist for ILGA World.

A 2015 shadow report by the Central Asian Gender and Sexuality Advocacy Network (CAGSAN) stated that, "state actions and laws, as well as state inaction, have led to an environment of hostility, repression, and danger for the Uzbek LGBT community".\(^1\)

The report highlighted the case of a gay couple in 2011 that had to flee the country after they were "repeatedly harassed, attacked and arrested".\(^2\) The report also mentioned multiple other cases of blackmailing and arbitrary detention in the preceding few years.\(^3\)

In December 2017, a gay couple was arrested and tortured for having sex. The police told the media that they had conducted anal examinations to confirm that the men had engaged in "repeated sexual intercourse".\(^4\)

In July 2018, a transgender woman fled to Belarus after she was tortured by the police in Uzbekistan.\(^5\) She had decided to leave the country after she was raped in police custody.\(^6\) In fact, the issue of arbitrary arrest and torture of LGBT people was highlighted in a statement by the Organization for Security and Co-operation in Europe at the Human Dimension Implementation Meeting 2018.\(^7\)

Statements by public officials

In 2016, President Islam Karimov claimed that homosexuality was "vulgar" and insinuated that there was something wrong mentally with homosexual people.\(^8\) In a 2013 leak of a 2006 cable, it was reported that he said that Western democracy "would violate Uzbekistan's moral purity... because it allows for or fosters the practice of homosexuality".\(^9\)

National Human Rights Institution

Uzbekistan does not have a National Human Rights Institution in accordance with the Paris Principles.

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2. Id., 4-5.
3. Id., 5-7.
UN voting record

In 2011, 2014 and 2016, Uzbekistan was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the three SOGI resolutions adopted by the Council. At the session of Third Committee of the UN General Assembly held in November 2016, Uzbekistan voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Uzbekistan voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 2nd cycle UPR in 2013, Uzbekistan 'noted' (rejected) two calls to decriminalises same-sex sexual acts (Netherlands and Uruguay), and two others to enact non-discrimination legislation (Spain and Argentina). The State’s response to these calls was unambiguous: “On questions regarding the decriminalization of homosexuality, the Criminal Code forbids consensual sexual relations between men, but this does not apply to women. There are no plans in the near future to repeal this law which reflects traditions that have developed over more than 1,000 years. Uzbekistan in this respect shares the position of the Muslim countries expressed during the discussions of this issue within the Human Rights Council”.

During its 3rd cycle of the UPR in 2018, Uzbekistan received 12 SOGIESC recommendations, of which it accepted just one. The State indicated that “like the other Member States of the Organisation of Islamic Cooperation, Uzbekistan wished to preserve ‘family values’ and was therefore not planning to amend Article 120 of the Criminal Code”. It should be noted that the only recommendations that Uzbekistan rejected referred to SOGIESC issues. Uzbekistan accepted one recommendation from Uruguay proposing to “legally define and include in the Criminal Code the crime of domestic violence and gender-based violence, taking into account sexual orientation and gender identity”. However, the State rejected recommendations from Argentina, Canada, Italy, Spain and Uruguay calling for the decriminalisation of consensual same-sex sexual acts; and from Chile, Iceland, Mexico, the Netherlands, Honduras and Spain asking for measures to fight against the discrimination against the LGBTIQ community.

Treaty Bodies

In 2010, the Human Rights Committee (CCPR) expressed concern about reports that individuals have been harassed, physically attacked, or discriminated on the basis of their sexual orientation and urged the state to decriminalise consensual sexual acts between adult males and provide effective protection against violence and discrimination based on sexual orientation.

In August 2015, the Committee noted that for the State to align with Convention obligations, its legal framework needs to ensure, inter alia, full protection from discrimination, including with regard to SOGI. It also reiterated a previous recommendation concerning SOGI-based stigmatization, hate speech and discrimination.

Special Procedures

In 2018, the Special Rapporteur on Freedom of Religion or Belief noted that “the State does not acknowledge the existence of the LGBTI community”. The Rapporteur also took note of reports of harassment and entrapment of LGBTI people by law enforcement officials.

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11 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
13 Id., para. 88.
14 “UPR-Uzbekistan”, ILGA Website, 11 May 2018, Section C.
15 Concluding observations of the Human Rights Committee - Consideration of reports submitted by States parties under article 40 of the Covenant - Uzbekistan, CCPR/C/UZB/CO/3, 7 April 2010, para. 22.
The Human Rights Situation in Uzbekistan

By an anonymous Uzbek activist for ILGA World.

In the context of criminalisation in Uzbekistan, when gay and bisexual men suffer discrimination and other violations of their rights, they cannot go before a court or to a police station without running the risk of being accused under article 120 of the Penal Code. In effect, when LGBT persons are victims of crimes, they rarely go to the authorities and, when they do, they evade explaining the exact cause or being seen as LGBT to avoid worsening their situation. As a result there is an enormous underreporting of crimes, especially those of violence against sexual minorities, which condemns “homosexuality” in general, without distinction of the involved person’s gender.

Further still, it is difficult to request the services of a lawyer when accused under article 120. The main reason for this is that these cases have no chances of winning. Additionally, due to the prevailing prejudice in society, involvement in cases of this nature can affect one’s professional reputation.

Although it is sex between adult men that is explicitly criminalised, women who have sex with women are also indirectly affected by article 120. This is due to the social effect of this provision which condemns “homosexuality” in general, with the sexual orientation or gender identity of LGBT persons.

Article 120 is also utilised for political ends, or as a form of extortion. There are cases in which it is utilised against protest or demand for the protection of rights. For example, in October 2015, a teacher from the city of Andijan complained about the lack of electricity and was threatened with being arrested for protesting. A month later he was accused of “homosexual.”

As in other parts of the world, criminalising provisions allow law enforcement agents to blackmail, extort, threaten and physically and sexually assault with total impunity. To date, there is only one known case of police officials who were punished and later dismissed from the force for violating the rights of LGBT persons, and this was only due to the fact that the cases gained visibility on local social networks.

The employees of HIV/AIDS care centres have tacit instructions of informing law enforcement of the cases of men who have sex with men and health workers have different attitudes with the LGBT population when patients externalise their sexual orientation or gender identity.

Uzbek society is deeply homophobic, which is a legacy of the soviet education system, nationalist sentiment, and now the growing Islamic influence in a country where sexuality is strictly taboo. In line with this, media coverage related to the LGBT community is rare, sensational and wholly negative.

Naturally, in this context, the majority of LGBT Uzbek population lead a double life, socially hiding their sexual orientation or gender identity, with the only exception of close friends. In the cases where the sexual orientation or gender identity of a person is public, it is generally subject to social processes that are very difficult to endure. Not least in their places of work where they are extorted, beaten, harassed and discriminated.

In a familial context, knowledge of sexual orientation or gender identity of LGBT persons has a strongly negative response, given that it is considered a shame for the entire family, especially in rural areas. As a result, LGBT people are beaten, locked away and hidden in their houses, forced to an arranged marriage or expelled from their homes. There have been cases of “corrective” treatments and rapes. In this context, “self-help” continues being the most accessible and effective resource.
## Provisions in force

### Penal Code (1994).

**Homosexuality (Sodomites: men and women)**

<table>
<thead>
<tr>
<th>Article 264.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homosexuality is the contact of one man to another through his posterior; both sodomites whether males or females are punished with whipping of one hundred strokes if not married.</td>
</tr>
<tr>
<td>It is admissible to reprimand it by imprisonment for a period not exceeding one year, punishment by stoning to death if married.</td>
</tr>
</tbody>
</table>

**Lesbianism**

<table>
<thead>
<tr>
<th>Article 268.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lesbianism is intercourse between one female and another. Anyone engaged in this act with another shall be punished with imprisonment for a period not exceeding three years. [...]</td>
</tr>
</tbody>
</table>

### Law on the press and publications (Law No. 25 of 1990).

**Legal barrier to freedom of expression**

<table>
<thead>
<tr>
<th>Article 103.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons employed in radio, television and written journalism and especially those employed in responsible positions in radio and television journalism, owners and editors-in-chief of newspapers, owners of printing presses and publishing houses and journalists, shall be bound to abstain from printing, publishing, circulating or broadcasting:</td>
</tr>
<tr>
<td>(a) Anything which prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds, [...]</td>
</tr>
<tr>
<td>(d) Anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage, [...]</td>
</tr>
<tr>
<td>(e) Anything which undermines public moral or prejudices the dignity of individuals or the freedom of the individual by smears and defamation, [...]</td>
</tr>
<tr>
<td>(j) Advertisements containing texts or pictures which are inconsistent with Islamic values and public ethics, to defame or libel individuals, attack the rights of others or mislead the public...&quot;</td>
</tr>
</tbody>
</table>

**Punishment**

<table>
<thead>
<tr>
<th>Article 104.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Without prejudice to any more severe penalty under another law, any person who contravenes the provisions of this law shall be subject to a fine not exceeding ten thousand riyals or a period of imprisonment not exceeding one year.</td>
</tr>
</tbody>
</table>
Human rights situation

Prior to the civil war, the government had already been hostile towards the LGBT community. In 2004, a court sentenced three journalists to imprisonment for publicly discussing same-sex sexual relations, and for interviewing men who had been jailed for consensual same-sex acts.¹

During the uprising in 2011, Alaa Jarban, a student leader in the country’s youth movement, came out publicly in a blogpost which resulted in threats of violence and his filing for refugee status in Canada.²

In 2012, a government-funded cultural magazine, Al Thaqafiya, was shut down for publishing a review of an Egyptian film that contained a scene depicting female same-sex intimacy.³ In addition, according to a security source, at least 300 gay men have been arrested in 2012 and 2013.⁴

The situation in Yemen has become progressively worse for sexual and gender diversity since the takeover of much of the country by the Houthi militia in 2013. Multiple reports of men suspected of being gay killed or wounded by militants from the Al Qaida-affiliated Ansar Al Shari were published.⁵ Though these acts of violence were reported to the police, there was purportedly no action taken.⁶ In 2015, four gay men were again murdered in Aden after the Yemen-based Al Qaeda in the Arabian Peninsula (AQAP) took control of parts of the city.⁷

Statements by public officials

In response to demands that the government repeal laws which subjugates LGBT people, Fouad al-Ghaffari, an aide to Yemen’s minister of human rights, reiterated the country’s official position: “We don’t have gays in Yemen”.⁸

National Human Rights Institutions

Yemen does not have a National Human Rights Institution in accordance with the Paris Principles.

UN voting record

Yemen was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, Yemen voted against the LAC amendment to remove Operative Paragraph 2,⁹ and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session in December 2016. Additionally, Yemen did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 2nd cycle UPR in January 2014, there were no SOGI recommendations made by States to Yemen. In fact, it appears that there was only one passing mention of SOGI in the 18 civil society and other submissions.¹⁰

Yemen’s 3rd UPR review is in process at time of writing. Amongst the 23 civil society submissions to Yemen’s UPR, only the Equal Rights Trust (substantial content) and UNHCR (one line) make mention of LGBT situations.¹¹

References

⁹ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
¹¹ “Civil society and other submissions”, UPR-info website.
CRIMINALISATION

ASIA

NON-UN MEMBER STATES AND SUBNATIONAL ENTITIES

STATE-SPONSORED HOMOPHOBIA 2019
CERTAIN PROVINCES IN INDONESIA

Provisions in force

Same-sex sexual relations between consenting adults are not prohibited under the Indonesian Penal Code (which finds root in the Netherlands Indies Penal Code). At the provincial level, there are areas and municipalities that criminalise same sex sexual relations through local Ordinances.

- [ACEH] Aceh Regulation No. 6/2014 [Provincial Ordinance] on criminal offenses under Syariah law, 2014 (into effect on 23 October 2015). The law stipulates a punishment of 100 lashes and/or up to approximately eight years in prison. The regulation applies to local residents and to foreigners in the province for the crime of Liwat (male penetration) and Musahaqah (female same-sex sexual activity) in article 63 and 64.

- [SOUTH SUMATRA] Provincial Ordinance No. 13/2002 on the Eradication of Immoral Behaviour classifies and penalises same sex relations as "immoral behaviour".

Human rights situation (National)

In recent years, there has been no abatement in the anti-SOGI demands of Muslim clerics as reported by Human Rights Watch March 2015.1

On 3 March 2016, Indonesia’s Parliamentary Commission for Defense, Foreign Affairs and Information (known as Commission I) recommended "measures for the [Indonesian Broadcasting Commission, or KPI] to tighten controls over broadcasting LGBT-related content, as well as sanctioning strict punishment for violation of LGBT content delivery" – representing another repressive legal vehicle targeting LGBT people. ²

In January 2018, it was reported that a parliamentary commission has been drafting proposed revisions to the national criminal code which would include measures to criminalise extramarital sex, same-sex relations, and co-habitation.³

In February 2018, the Health Ministry reportedly said that it was publishing a medical guide that classified "homosexuality" as a mental disorder.⁴ In November 2018, the city council of Pariaman in West Sumatra passed a regulation that banned "acts that are considered LGBT" on the basis that such behaviour could "disturb public order".⁵

HRW and other reports in 2016 and 2017 document a worsening socio-political environment for LGBT advocacy and development, a situation that also has economic consequences for the State.⁶ Reports throughout 2016 and early 2017 indicate a heightened threat from both State and non-State actors to LGBTI human rights defenders and their work.⁷ A report by Front Line Defenders

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1 "Dispatches: Challenging Indonesia’s Intolerant Muslim Clerics", Human Rights Watch, 17 March 2015.
4 "Indonesia classifies homosexuality as ‘mental disorder’", India Today, 3 February 2018.
5 "Draft proposals in Indonesian parliament aim to ban extramarital sex", Reuters, 30 November 2017.
in December 2017 also found that LGBTI human rights defenders were facing increasingly “frequent, personal and violent” threats.8 A new government “heresy” app, which allows the public to report complaints of “deviant beliefs”, is also perceived as intensifying anti-LGBT crackdowns.9

There have been multiple reports in 2017 and 2018 of men sentenced to up to 100 lashes for engaging in same-sex intimacy in Aceh.10 In 2017, more than 10 men arrested at a raid of a spa were charged under anti-pornography laws and sentenced to up to three years in jail.11 In April 2017, 14 men were arrested by a police raid at a hotel in Surabaya and detained on “anti-pornography” charges; several men were also publicly outed as living with HIV.12

In December 2017 and January 2018, there were a number of raids dubbed “Operation Anti Moral Illness” against Waria people (transgender women) in Aceh.13 In November 2018, there were multiple attacks against these groups again in Lampung and Bekasi.14

In January 2017, the police in South Sulawesi shut down an annual sports and cultural event for Waria and Bissu people, who are culturally gender-nobinary communities in the region.15 In May 2017, a university in West Sumatra was reported to have imposed an official policy of prohibiting LGBT students from enrolling.16 In September 2017, 12 women were evicted from their homes on the basis that their cohabitation and their “unfeminine” appearance was “against the teaching of Islam”.17

In January 2018, Google removed gay dating app ‘Blued’ from its online store in the country in response to government demands.18 Two men were arrested in October 2018 in West Java for running a Facebook account called “Gay Bandung Indonesia” and charged with breaking electronic information law by creating and transmitting pornographic content.19 Following that incident, a circular was issued in Karawang to “prohibit LGBT practices”.20 In response, Human Rights Watch expressed their concerns to the Governor of West Java province, in a letter that documented the range of anti-LGBT incidents.21

Several jurisdictions within Indonesia have enacted laws and regulations that severely restrict human rights and/or stigmatise LGBT people. Among them:

- **Batam City:** City Ordinance No. 6/2002 about Social Ordinance, Social Order. Article 9 forbids the setting up of LGBT associations (explicitly mentioned).
- **Banjar:** District Ordinance No. 10/2007 on Social Order (Banjar, South Kalimantan Province) mentions “abnormal” homosexual and heterosexual acts (in addition to “normal” ones) in its definition of “prostitute”. No explanation is given for “normal” or “abnormal” acts. It also prohibits the formation of organisations “…leading to immoral acts”, that are “…unacceptable to the culture of [local] society”.
- **Tasikmalaya:** City Ordinance on the Development of a Value System in Social Life Based on the Teachings of Islam and Local Social Norms (No. 12/2009) in Tasikmalaya, West Java: prohibits adultery and prostitution, both heterosexual and homosexual.
- **Padang Panjang:** Local Regulation [City Ordinance] about Prevention, Eradication and Action toward Social Ills (No. 9/2010) in Padang Panjang, West Sumatra: its definition

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10 “Indonesia’s Aceh: Two gay men sentenced to 85 lashes”, BBC News, 17 May 2017; “Four detained in Indonesia’s Aceh for alleged gay sex, face 100 lashes”, Reuters, 3 April 2018; Euan McKirdy, “Gay men, adulterers publicly flogged in Aceh, Indonesia”, CNN, 15 July, 2018; “Indonesia’s Aceh lashes men 100 times each for sex crimes”, New Straits Times, 12 December 2018.
18 “Google yanks gay dating app from Indonesia online store”, The Straits Times, 31 January 2018.
19 “Indonesian police arrest two men linked to LGBT Facebook page”, Reuters, 21 October 2018.
includes same sex relationships within its scope (paid, or not paid for).

- **Palembang**: Local Regulation [City Ordinance] Palembang City No. 2/2014 about the Abomination of Prostitution, Chapter V. Prohibition Provisions, Article 8: outlaws "homosexual" "prostitution".

- **Pariaram**: Regional Regulation on Peace and Order of Kota Pariaram No 10/2018: Article 25 regulates the activities transgender women and those whose activities disturb public order. Article 26 meanwhile prohibits the activities of women and men who commit immoral (asusila) acts between the same sexes.

At the national level there are stigmatising Regulations that apply nationwide. For example, Government Regulation 61/2014 on Reproductive Health stipulates a "Healthy sexual life [...] free from sexual orientation dysfunction or deviance, [...] and in accordance with ethics and morals".

**Statements by public officials**

In 2016, the Defence Minister labelled the LGBT movement as a form of proxy war to undermine the country’s sovereignty. He said, “It’s dangerous as we can’t see who our foes are, but out of the blue everyone is brainwashed, now the (LGBT) community is demanding more freedom, it really is a threat.”

In a 2017 report by the Ministry of Health, it was claimed that “homosexuality was against the ethos of the country.”

In October 2018, the Governor of West Java pledged that he was committed to “eradicate such things” in response to media queries on the presence of the LGBT community on social media.

These views contrast with the President’s attitude. In a 2016 response to questions on the threat of violence against LGBT people, President Joko Widodo told BBC that “the police must act. There must be no discrimination against anyone.”

Further, in a 2017 public statement, the Religious Affairs Minister called for LGBT people to be "embraced and protected, not just shunned and ostracized", urging the public to "bring them back to the right path".

**National Human Rights Institution**

In 2016, Komnas HAM had urged the government to strengthen regulations to protect LGBT people from discrimination and violence. However, in early 2019, the National Commission on Human Rights (Komnas HAM) stated that West Sumatra’s plan to ban LGBT behaviour in the province was not in violation of any human rights.

**Existing legal challenges**

**Criminalisation of same-sex activity**

In December 2017, the Constitutional Court rejected the application by a conservative group to make consensual same-sex sexual acts and non-marital sex illegal by a narrow margin of 5-4.

**UN voting record**

In 2011, Indonesia was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Council.

In 2014, it voted against the adoption of Resolution 27/32, the second SOGI resolution adopted by the Council, which requested the OHCHR to update the report produced in 2011. In 2016, Indonesia again voted against the adoption of Resolution 32/2 which created the mandate of the IE-SOGI.
At the session of Third Committee of the UN General Assembly held in November 2016, Indonesia voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Indonesia voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

At its 2nd UPR in May 2012, Indonesia was specifically asked to address violence against SOGI human rights defenders against whom threats were on the increase. Indonesia responded to Spain’s call to repeal laws that criminalise same-sex acts by saying, “[t]he recommendations do not reflect the actual situation in the Provinces they refer to”. During its 3rd cycle of the UPR in May 2017, Indonesia received 12 SOGISC recommendations. It accepted two of them and rejected the remaining ten. Indonesia accepted a recommendation from Norway, asking to “take further steps to ensure a safe and enabling environment for all human rights defenders, including those representing the LGBT community and other communities”. The other accepted recommendation urged Indonesia to prioritize progress on equality and non-discrimination, including in relation to LGBT persons. The State rejected a recommendation from Iceland asking to repeal the provisions of the Aceh Islamic Criminal Code which criminalize sexual relations among consenting adults.

**Treaty Bodies**

In 2014, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) expressed concern about laws which discriminate against women, sex workers, and LGBT persons in provinces, districts and autonomous regions and made recommendations on how to rectify these violations.

**Special Procedures**

In 2013, the Special Rapporteur on adequate housing visited Indonesia, where she heard testimonies from LGBT individuals who were discriminated in the housing sector and urged Indonesia to review and repeal national and regional laws which perpetuate discrimination.

In 2016, several mandates received reports on the precarious situation of LGBT people and human rights defenders in Aceh province.

In 2018, several mandates expressed serious concern regarding the alleged arbitrary arrests, detention and ill-treatment of twelve waria, or trans women, in Aceh. They also noted the absence of response to the joint allegation letter in 2016.

In 2018, the Special Rapporteur on the right to health visited Indonesia and urged the State to repeal laws criminalizing persons living with HIV including those that criminalize consensual same-sex sexual acts.

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33 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


35 SOGISC issues during Indonesia’s 2nd UPR review, 19 September 2012.


37 Concluding observations on the initial report of Indonesia, E/C.12/IDN/CO/1, 19 June 2014.

38 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Indonesia, A/HRC/25/54/Add.1, 26 December 2013, para. 81.

39 The mandates who received such reports are: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

40 For more information, see AL IDN 2/2016.

41 The mandates are Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of internally displaced persons; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

42 For more information, see UA IDN 1/2018.

43 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Indonesia, A/HRC/38/36/Add.1, 5 April 2018, para. 128.
PALESTINE (GAZA)

Provisions in force

- The British Mandate Criminal Code (Ordinance No. 74 of 1936).

**Carnal knowledge against the order of nature**

Section 152(2).
Any person who:

(a) has carnal knowledge of any person against the order of nature; or [

(c) permits a male person to have carnal knowledge of him or her against
the order of nature,

is guilty of a felony, and is liable to imprisonment for ten years.

**Human rights situation**

The British Mandate Criminal Code was in force in Jordan until 1951 and in Israel until 1977, before they adopted their own Penal Codes. In the West Bank (including East Jerusalem) the Jordanian Penal Code of 1951 (modified in 1960) is in force, having no prohibition on sexual acts between persons of the same sex.

Since the 2007 governance of Gaza by Hamas, the Gazan legislative body has attempted to amend or replace the British Mandatory Penal Code but the proposed code failed to pass the Gazan legislature.

In 2013, a news report interviewed gay men living in the Palestinian territories, who shared that they risked family and social ostracisation if they came out. A 2018 news report also discussed how gay men in Gaza led double lives, to avoid backlash from their families and Hamas.

In 2015, a group of Palestinian protesters destroyed a gay pride flag painted on a West Bank separation barrier. Though the original artist had intended for the artwork to be a reminder of the "absence of tolerance and freedoms" in Palestinian society due to Israeli occupation, the protestors explained that they destroyed it because it was "shameful" to promote gay rights.

In 2016, Hamas executed one of its commanders, Mahmoud Ishtiwi, after he was detained for a year for "moral turpitude", which is a euphemism used to refer to homosexuality. In 2017, a Palestinian novelist was stranded in Qatar after the West Bank authorities confiscated all copies of his latest book and issued an arrest warrant for him.

In 2018, controversy erupted over a television comedy which featured a scene where a male actor made sexual advances at young men as part of a "candid camera" segment.

**National Human Rights Institution**

The Independent Commission for Human Rights does not appear to have done any work in relation to sexual orientation or gender identity.

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1 Pursuant to United Nations General Assembly resolution 67/19 of 29 November 2012, Palestine is a non-member observer state of the United Nations.
4 "Rainbow Flag on West Bank Barrier Touches Nerve for Palestinians", Haaretz, 30 June 2015.
5 "Hamas Commander, Accused of Theft and Gay Sex, Is Killed by His Own", New York Times, 1 March 2016.
7 Khaled Abu Toameh, "Palestinians: No Place for Gays", Gatestone Institute, 12 June 2018.
CRIMINALISATION

OCEANIA

STATE-SPONSORED HOMOPHOBIA 2019
KIRIBATI

Provisions in force


**Buggery**

Section 153. Unnatural Offences.
Any person who:
(a) commits buggery with another person or with an animal; or
(b) permits a male person to commit buggery with him or her,
shall be guilty of a felony, and shall be liable to imprisonment for 14 years.

**Attempted buggery**

Section 154. Attempts to commit unnatural offences and indecent assaults.
Any person who attempts to commit any of the offences it specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.

**Gross indecency**

Section 155. Indecent practices between males.
Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.

Human rights situation

- Additional information on Kiribati is provided at the end of this entry in a "Local Perspective Essay" written by Tabeio Tamton for ILGA World.

Despite the criminalisation of same-sex intimacy, the Employment and Industrial Relations Code 2015 prohibits discrimination on the basis of sexual orientation. A study by UNDP also found that most men who have sex with men have been accepted by their families, although they would not bring their partners home as that would be "too confronting" to their family members, and long-term relationships are rare. The first LGBT NGO in Kiribati was founded in September 2016: Boutokaan, Inaomataia ao Mauriia Binabinaine Association (BIMBA) amongst its other aims, focuses on the decriminalisation of same-sex sexual conduct and broader law reform in the country.

**National Human Rights Institution**
Kiribati does not have a National Human Rights Institution in accordance with the Paris Principles.

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2 "Kiribati: Are the winds of change blowing?", Joy, 1 November 2016.
UN voting record

Kiribati was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, Kiribati voted in favour of the LAC amendment to remove Operative Paragraph 2, and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Kiribati voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Kiribati rejected two recommendations to decriminalise in its 1st cycle UPR in May 2010.

In its 2nd cycle UPR in January 2015, Kiribati received recommendations from France, Slovenia, Chile, Canada and Uruguay to decriminalise same-sex sexual relations, and to ensure SOGI is a ground that is protected in anti-discrimination legislation. In the final Working Group report for Kiribati, there is no mention of the State’s reasons for rejecting (‘noted’) all SOGI-related recommendations. Kiribati’s 3rd UPR begins in January 2020.

A LOCAL PERSPECTIVE

Fighting for Equality in Kiribati

By Tabeio Tamton for ILGA World.

Kiribati is small island state with a group of 33 coral atoll islands, distributed among 3 groups which are Gilbert, Line and Phoenix Island Groups, located in the Central Pacific region. The ethnic group within the Pacific Region archipelago is Micronesia and it was once colonized by Great Britain in the 1890s until its independence in 1979. Sadly, it is also one of the countries that still criminalises same-sex sexual acts in its legal framework which include the Constitution and Penal Code that were established during the colonization period. However, to date there has been no known arrest made to people of diverse sexual orientation and gender identity, as enforcement of these laws and regulations.

Homosexuality is still a “taboo” in the country and local communities regard it as “immoral”. Additionally, with the arrival of Christianity in Kiribati some of the teachings from the Bible were used to condemn homosexuality and hence the additional hatred and prejudice to lesbian, gay, bisexual and transgender (LGBT) people. In Kiribati, the word “binabinaine” refers to men who are more feminine than others and as such it is inclusive of gay men, bisexual men and transwomen.

BIMBA—the first LGBT civil society organisation (CSO) in the country— was officially established in 2016 as a civil society organisation to support human rights and health of gay and bisexual men and transgender women. Gay men usually grow up facing a number of physical, verbal and mental abuse from people within our families, schools, work and local community in general. A few of us were fortunate enough to survive all the hardships and torments and now we have the hope of becoming a group who can bring about change to the local LGBT community, especially from within our families and communities in general. Many among us need a voice to have their sexual orientation and gender identity not only recognized but respected first and foremost.

The laws that criminalise same-sex sexual acts contribute to the abuse and discrimination toward the members of our community and therefore, we all dream and long for a day when those laws will be gone, and we can proudly walk on the white sandy beaches as a proud gay person without being called a criminal.

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4 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.


8 Tebeio Tamton is from Beru, a small island located in the southern part of the Gilbert Group from both his paternal and maternal links. He is an openly gay man, a father, a civil servant and a Founding Member of BIMBA Inc. (Boutokaan Inaomataia ao Maurilia Binabinaine Association).
PAPUA NEW GUINEA

Provisions in force


**Penetration against the order of nature**

Section 210. Unnatural Offences.

1. A person who:
   (a) sexually penetrates any person against the order of nature; or
   (b) sexually penetrates an animal; or
   (c) permits a male person to sexually penetrate him or her against the order of nature, is guilty of a crime.
   
   **Penalty**: Imprisonment for a term not exceeding 14 years.

2. A person who attempts to commit an offence against Subsection (1) is guilty of a crime.
   
   **Penalty**: imprisonment for a term not exceeding seven years.

**Gross indecency**

Section 212. Indecent Practices between Males

1. A male person who, whether in public or private:
   (a) commits an act of gross indecency with another male person; or
   (b) procures another male person to commit an act of gross indecency with him; or
   (c) attempts to procure the commission of any such act by a male person with himself or with another male person, is guilty of a misdemeanour.
   
   **Penalty**: Imprisonment for a term not exceeding three years.

Human rights situation

A 2011 study found that the police authorities are one of the main sources of violence and discrimination against men who have sex with men and transgender people. In 2012, a Member of Parliament called on the country’s next government to decriminalise same sex sexual relations. This followed the government’s refusal to do so at the UN UPR in 2011. However, this suggestion was rejected by the new government and strongly resisted by Christian religious leaders.

In 2014, another Member of Parliament said he was considering legislative interventions to recognise the rights of sexual minorities though the issue of same-sex marriage was out of the question.

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5. “PNG MP wants gay, lesbian rights”, One PNG, 23 April 2014.
Kapul Champions, the first local registered gay, bisexual and transgender human rights NGO in the country came into being in 2013 and, in 2015, submitted its own report for the UPR. In a UPR shadow report, Human Rights Watch stated that gay asylum seekers in Papua New Guinea were often sexually abused or assaulted, or otherwise shunned, by other men. In a 2016 UPR submission, Kaleidoscope Trust and the Sexual Rights Initiative stated that LGBTI people faced problems in terms of discrimination, access to justice, health services and employment.

In 2015, a man was prosecuted and pleaded guilty to indecent acts between males (see State v. Sevese). In that matter, the sentencing judge found that “homosexual acts or this type of behaviour is quite prevalent in society” despite the lack of reported cases, and sentenced the accused to a suspended sentence, mandatory counselling and community work.

In 2016, an openly gay man was allegedly killed by a relative in his family home.

In 2017, the International Labour Organisation recommended the government address cases of discrimination faced by LGBT people, among others, in light of the country’s ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Statements by public officials

In 2012, Prime Minister Peter O’Neill stated that there were “strong feelings against homosexuality in the country”, which has “yet to accept such sexual openness”.

National Human Rights Institution

The Ombudsman Commission of Papua New Guinea does not appear to have done any work on sexual orientation or gender identity.

UN voting record

In 2011, 2014 and 2016, Papua New Guinea was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Papua New Guinea abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Papua New Guinea abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In its 1st cycle UPR in June 2011, Papua New Guinea rejected two recommendations to decriminalise and one to include “sexual orientation” in non-discrimination legislation.

In its 2nd cycle UPR in July 2016, Papua New Guinea did not accept five SOGI related recommendations, four of which referred to the decriminalisation of same-sex sexual activity, and included a footnote explicitly stating that “LGBT [sic] is currently not a priority of the Government” (see fn. 53). During the interactive dialogue, the delegation stated that the rights of lesbian, gay, bisexual, transgender and intersex persons, “needed to be understood by the population” and that a “national consultation process was required in order to address the issue in a comprehensive way”.

Papua New Guinea’s next UPR is in 2021.
Provisions in force

- **Crimes Act** (2013)

### Sodomy

<table>
<thead>
<tr>
<th>Section 67. Sodomy.</th>
</tr>
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<tbody>
<tr>
<td>(1) A person who commits sodomy is liable:</td>
</tr>
<tr>
<td>(a) where the act of sodomy is committed on a female, to imprisonment for a term not exceeding 7 years; or</td>
</tr>
<tr>
<td>(b) where the act of sodomy is committed on a male, and at the time of the act that male is under the age of 16 years and the offender is of or over the age of 21 years, to imprisonment for a term not exceeding 7 years; or</td>
</tr>
<tr>
<td>(c) in any other case, to imprisonment for a term not exceeding 5 years.</td>
</tr>
<tr>
<td>(2) Sodomy is complete upon penetration.</td>
</tr>
<tr>
<td>(3) It is no defence to a charge under this section that the other party consented.</td>
</tr>
</tbody>
</table>

### Attempted sodomy

<table>
<thead>
<tr>
<th>Section 68(a). Attempts to commit sodomy.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person is liable to imprisonment for a term not exceeding 5 years who: attempts to commit sodomy.</td>
</tr>
</tbody>
</table>

### Facilitation of indecent acts

<table>
<thead>
<tr>
<th>Section 71. Keeping place of resort for homosexual acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person is liable to imprisonment for a term not exceeding 7 years who:</td>
</tr>
<tr>
<td>(a) keeps or manages, or knowingly acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or</td>
</tr>
<tr>
<td>(b) being the tenant, lessee or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or</td>
</tr>
<tr>
<td>(c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part of the premises with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part of the premises is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of the indecent acts.</td>
</tr>
</tbody>
</table>
Human rights situation

In 2013, Samoa enacted the Crimes Act 2013, amending Section 58D of the Crimes Ordinance 1961, which decriminalised ‘indecent acts’ between males. Furthermore, the Labour & Employment Relations Act of 2013 banned discrimination against employees or applicants for employment based on sexual orientation (among other grounds).

However, this progress is eclipsed by the fact that sodomy provisions survived the 2013 amendment. Criminalisation of same-sex consensual act between adults was kept on the books despite the recommendation to decriminalise made by the Samoa Law Reform Commission (Recommendation 12). As organisations point out, the existence of the law means that Samoa’s criminal provisions can still be used to target gay and bisexual men, and potentially transgender and intersex persons.

In 2013, Samoa voted in favour of the Asian and Pacific Ministerial Declaration on Population and Development, which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter.

Fa’afafine and fa’afatama are a type of “social and communal gender fluid based status given to feminine males and butch females within the Samoan cultural context.” After the arrival of Christianity, this group has become marginalised and face discrimination and challenges for their gender identity. The Samoa Fa’afafine Association regularly organises beauty pageants and other activities to promote the rights and welfare of the community. The group has stated that marriage equality is not a priority for them or the larger Samoan community.

In June 2016, a Samoan publication was criticised for “insensitive” and “unethical” reporting on the death of a fa’afafine person, Jeanine Tuivaiki. In response, the Samoa Fa’afafine Association organised a media consultation to promote fair and inclusive news coverage on its community. In January 2017, a fa’afafine filed a complaint against her employer at the Department of Human Resources alleging that he sexually harassed her by asking her to “let us see if you’re a woman”.

Statements by public officials

In 2017, Prime Minister Tuilaepa Sailele Malielegaoi repeatedly declared that same-sex marriage would never be legalised in the country because it is a Christian country.

In September 2017, Prime Minister Malielegaoi said in a radio interview that his government would never allow “heathenistic practices” like same-sex marriage in Samoa. In December 2017, he further called same-sex marriage an abomination and a “Sodom and Gomorrah practice”, which would never be allowed in a true Christian country like Samoa.

National Human Rights Institution

In June 2016, in response to complaints regarding the insensitive reporting on the death of fa’afafine person, Jeanine Tuivaiki, the office of the Ombudsman published a public statement recommending improvements to media reporting on the fa’afafine community.

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2 Kaleidoscope Australia Human Rights Foundation et al., Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in Samoa (2015).
4 Samoa Faafafine Association, UPR Submission (2016).
7 “Same-sex marriage not a priority for Samoa Fa’afafine Association”, Radio NZ, 13 December 2017.
11 “Tuilaepa rules out abortion and same sex marriage in Samoa”, Radio NZ, 1 September 2017; “Tuilaepa says no to same sex marriage in Samoa”, Radio NZ, 12 December 2017.
12 “Tuilaepa rules out abortion and same sex marriage in Samoa”, Radio NZ, 1 September 2017.
13 “Tuilaepa says no to same sex marriage in Samoa”, Radio NZ, 12 December 2017.
In November 2018, the Ombudsman Maiava Iulai Toma praised the Samoa Fa'afafine Association for championing human rights in Samoa. He said, "They are a legitimate group of our society in which NHRI Samoa has a genuine interest to promote and to protect their human rights. SFA (Samoa Fa'afafine Association) has always taken a cautious approach with its advocacy work where it has kept a firm eye on local context and ensured that its work is consistent and upholds the cultural and religious values of Samoa."15

UN voting record

In 2011, 2014 and 2016 Samoa was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.16

At the session of Third Committee of the UN General Assembly held in November 2016, Samoa voted in favour of the LAC amendment to remove Operative Paragraph 2,17 and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session in December 2016. Additionally, Samoa did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

At its 1st cycle UPR in May 2011, Samoa rejected three recommendations to decriminalise same-sex sexual activity from Canada, France and Norway. However, Samoa’s rejection is worthy of note: Paragraph 22 of the report of the Working Group reads: "Samoa noted the gaps and weaknesses in its legislative framework on upholding equality and non-discrimination based on sexual orientation, and that relevant legislation was being reviewed by the Samoa Law Reform Commission. Samoa indicated that Fa‘afafine, gays and lesbians were integral members of Samoan society and were heirs to family chiefly titles and lands through extended family consensus, as done for all men and women of its society. However, sexual orientation was a sensitive issue in Samoa given the religious and cultural beliefs of mainstream society. Nonetheless, Samoa was confident that education, awareness and sensitisation would pave the way for societal acceptance and prevention of discrimination that might arise out of sexual orientation".18

In its 2nd cycle UPR, Samoa received seven SOGI-related recommendations, six of which were rejected and only one accepted (to reduce violence against women and girls and violence based on sexual orientation and gender identity).19 During the interactive dialogue the delegation touched upon “discriminatory practices on sexual matters”, stating that Samoa had worked to increase awareness among the population, stressing that issues like this one are especially difficult to face, as they involve “cultural and religious sensitivities”.

Samoa’s next UPR will take place in May 2021.

Special Procedures

In May 2018, the Working Group on the issue of discrimination against women in law and in practice noted that there is a lack of knowledge about the gender-based violence faced by the fa‘afafine, fa‘afatama and lesbian communities.20 It recommended the State to “provide age-appropriate, comprehensive and inclusive sexuality education [that] pays particular attention to gender equality, sexuality, gender identity, including non-conforming gender identities”.21

17 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
21 Id., para. 97.
SOLOMON ISLANDS

SOLOMON ISLANDS

Provisions in force


**Buggery**

**Section 160. Unnatural offences.**

Any person who:

(a) commits buggery with another person or with an animal; or

(b) permits a male person to commit buggery with him or her,

shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

**Attempted buggery**

**Section 161. Attempts to commit unnatural offences.**

Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault indecent assaults upon any male person shall be guilty of a felony, and shall be liable to imprisonment for seven years.

**Gross indecency**

**Section 162. Indecent practices between persons of the same sex.**

Any person who, whether in public or private—

(a) commits any act of gross indecency with another of the same sex;

(b) procures another of the same sex to commit any act of gross indecency; or

(c) attempts to procure the commission of any act of gross indecency by persons of the same sex,

shall be guilty of a felony and be liable to imprisonment for five years.

Human rights situation

Though the Law Reform Commission proposed the decriminalisation of consensual same-sex intimacy in 2011, it made no mention of this recommendation in its 2013 Second Interim Report on Sexual Offences. The 2011 report also noted that there has only been two prosecutions involving adults who sexually abused children. In 2016, the Equal Rights Trust published a report on discrimination and inequality in the Solomon Islands that includes a section on sexual orientation discrimination (p. 104 onwards).

The oppressive environment in which LGB people live in the islands is reflected in testimonies gathered in focus groups. Participants spoke of verbal, physical and sexual abuse in public places.

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2 *Id.* 107.
and lack of protection from police officers, as well as discrimination in employment.

In August 2017, a news report featured an interview with a Solomon Islander who revealed how gay people get verbally and physically abused for being gay, with some even getting threatened that they would be arrested.4

**Statements by public officials**

In a 2018 public speech, the Governor General of the Solomon Islands quoted provisions criminalising same-sex activity to reiterate that “our present criminal law is against same-sex marriage and associated conduct”.5

**National Human Rights Institution**

The Solomon Islands Ombudsman does not appear to have done any work on sexual orientation or gender identity.

**UN voting record**

Solomon Islands was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016. At the session of Third Committee of the UN General Assembly held in November 2016, Solomon Islands did not vote the LAC amendment to remove Operative Paragraph 2,6 and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Solomon Islands did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

Although the Solomon Islands accepted Norway’s recommendation to decriminalise same-sex sexual activity between consenting adults in its 1st cycle UPR in May 2011, in the same session it ‘noted’ (rejected) three other recommendations that advised exactly the same thing (from Slovenia, France and Spain).7 The Working Group report states: “The delegation reported that the cultural context of society did not condone same-sex relationships. Any commitment to removing Penal Code provisions criminalising sexual relations between consenting adults of the same sex must be subject to consultations. However, there had not been any submissions to the Law Reform Commission in their review of the Penal Code to repeal those sections.”7

In its 2nd cycle UPR, the Solomon Islands’ rejected six recommendations regarding decriminalisation and anti-discrimination legislation inclusive of SOGI.8 In a cursory response, the delegation responded that much still remained to be achieved with regard to sexual orientation and gender identity, but this would take time, resources and commitment.

The next UPR for the Solomon Islands commences 2021.

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5 “Same sex marriage cannot populate the world, the Governor General says”, SIBC, 8 June 2018.
6 Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.
**Provisions in force**


**Sodomy**

Section 136. Sodomy and bestiality.

Whoever shall be convicted of the crime of sodomy with another person or bestiality with any animal shall be liable at the discretion of the Court to be imprisoned for any period not exceeding ten years and such animal shall be killed by a public officer.

**Attempted sodomy**

Section 139. Attempted sodomy, indecent assault upon a male.

Whoever shall attempt to commit the said abominable crime of sodomy or shall be guilty of an assault with intent to commit the same or of any indecent assault upon any male person shall be liable at the direction of the Court to imprisonment for any term not exceeding 10 years.

**Evidence**

Section 140. Evidence.

On the trial of any person upon a charge of sodomy or carnal knowledge it shall not be necessary to prove the actual emission of seed but the offence shall be deemed complete on proof of penetration only.

**Whipping**

Section 142. Whipping for certain offences.

Whenever any male person shall be convicted of any offence against sections [...] 136 and 139 of this Act, the Court may, in its discretion in lieu of or in addition to any sentence of imprisonment authorised under this Act, order the person so convicted to be whipped in accordance with the provisions of section 31 of this Act.

**Human rights situation**

Despite vitriolic rhetoric by religious groups, the local LGBT organisation Tonga Leitis Association (TLA) has been active on the ground urging the government to repeal sodomy laws still in force. According to acting-Attorney General, ‘Aminiasi Kefu, there has never been a conviction where consenting adults were charged for committing sodomy. In 2013, Tonga voted in favour of the Asian and Pacific Ministerial Declaration on Population and Development, which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter. In May 2015, the Pacific Sexual Diversity Network (PSDN) held its first conference (“Our Voices, Our Communities, Our Rights!”) in Tonga, with the

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2 Indira Stewart, “LGBT community calls for change in conservative Tonga”, RNZ, 9 October 2016.

support of the State and the Tongan royal family.\textsuperscript{4} Ninety-six delegates (73 of whom work for LGBT CSOs or individual activists from 12 Pacific Islands) attended.\textsuperscript{5}

Tonga has traditionally recognised gender diversity in relation to the \textit{fakaleiti}, a term that describes a person who is assigned male at birth, but who takes on a feminine gender role.\textsuperscript{6} These individuals have often been called upon to serve the royal family and churches though they have faced increasing stigma and prejudice due to rising religious fundamentalism in the country as well as the criminalisation of cross-dressing.\textsuperscript{7}

In a 2015 study, 99% of respondents said they believe that gender-diverse people are respected for their gender identity while only 22% said that gender-diverse people were especially discriminated against in society.\textsuperscript{8} However, according to a leading transgender activist, Joey Mataele, “acceptance stops at the bedroom door”.\textsuperscript{9} Mataele founded the Tonga Leitis Association, an organisation that advocates for Leitis in Tonga as well as the annual Miss Galaxy Queen Paegant to celebrate the diversity of the leitis and LGBTQ+ Tongans.\textsuperscript{10}

In 2018, cyclone Gita caused serious damage to a drop-in centre and shelter operated by the Tonga Leitis Association.\textsuperscript{11} In response the group launched a campaign to raise funds for the reconstruction of its shelter.

\textbf{Statements by public officials}

In 2018, Israel Folau, a star rugby player of Tongan descent in Australia, sparked controversy after he posted on social media saying that all gay people would end up in hell if they do not repent.\textsuperscript{12}

In response, the Honorable Frederica Tuita Filipe, daughter of Tonga’s Princess Royal, urged Folau to reconsider his comments, stating: “My silence was my attempt at respecting our different interpretations, but I fear by doing that I’m encouraging the marginalisation of a group of people I love and serve as much as any other Tongan. I’ve seen how forgiveness, love and inclusion bring people closer to God. I hope the trials you face give you the strength to open your heart and mind to differing views.”\textsuperscript{13}

\textbf{National Human Rights Institution}

The Commissioner for Public Relations (Ombudsman) does not appear to have done any work on sexual orientation or gender identity.

\textbf{UN voting record}

In 2011, 2014 and 2016 Tonga was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any of the SOGI resolutions.\textsuperscript{14}

At the session of Third Committee of the UN General Assembly held in November 2016, Tonga did not vote the LAC amendment to remove Operative Paragraph 2,\textsuperscript{15} and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Tonga did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

\begin{flushright}
\textsuperscript{4} Kaleidoscope Trust et al., \textit{Speaking Out} (2015).
\textsuperscript{5} PSDN, \textit{Our Voices, Our Communities, Our Rights!} (2015).
\textsuperscript{6} Sara Vui-Talitu, “A time to shine for Tonga’s silenced leitis”, Radio NZ, 19 May 2018.
\textsuperscript{7} Yara Murray-Atfield, “Leitis: Tonga’s transgender community fights for visibility from the conservative Pacific Kingdom”, ABC News, 16 April 2018.
\textsuperscript{9} Umberto Bacchi, “After cyclone, transgender Tongans hope movie will help build acceptance”, Reuters, 14 April 2018.
\textsuperscript{10} Louis Staples, “Leitis in Waiting chronicles the lives of Leitis, the sparkling transgender community in the Pacific”, Dazed, 31 May 2018.
\textsuperscript{12} Sara Vui-Talitu, “NZ’s Pacific community reacts to Folau’s anti-gay comments”, Radio NZ, 20 April 2018.
\textsuperscript{13} Jesse Jones, “Tongan Royal asks Israel Folau to stop his anti-gay speech”, Star Observer, 11 May 2018.
\textsuperscript{15} Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, \textit{Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly} (2017), 4.
\end{flushright}
International advocacy and supervision

Universal Periodic Review

Interestingly, in its 1st cycle UPR in May 2008, having received three other States’ recommendations to decriminalise same-sex sexual relations (all of which were ‘noted’), Bangladesh used the opportunity of the UPR to recommend that Tonga retain its criminalising law—a recommendation that is anathema to international human rights standards—but Tonga also rejected this advice.16 The delegation noted “[o]n the issue of the right to privacy… [she] indicated that Tonga is an inclusive society with tolerant Christian values that require respect across differences”.

In January 2013, at its 2nd cycle UPR Tonga accepted a Level 3 (“to consider”) recommendation regarding, “strengthening measures to eliminate all discriminatory treatment” based on SOGI from Argentina.17 However, it then went on to reject a further five recommendations to decriminalise same-sex sexual relations between consenting adults. The delegation did not address the six SOGI recommendations directly in its response to the UPR, but in a response to its ratification of Convention on the Elimination of Discrimination Against Women (CEDAW) mentioned that one of its reservations may be about same-sex marriage. Tonga’s next UPR will be in October 2017.

During its 3rd cycle of the UPR carried out in January 2018, Tonga received 12 SOGIESC recommendations. It noted (functionally rejected) all of them. Argentina, Canada, Germany, Honduras, Montenegro, Portugal, Timor Leste and the United States called upon the State to decriminalise consensual same-sex sexual relations. Furthermore, Argentina, Canada, Mexico, Chile and the Netherlands urged the State to take measures to fight against the discrimination suffered by the LGBTIQ community.18

Referring to decriminalisation and the SOGIESC situation, the State alleged that “Tonga’s historical cultural and religious beliefs, although tolerant, do not recognize this legal relationship status.” 19

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19 “UPR-Tonga”, ILGA Website; 19 January 2018, Section C.
Provisions in force


### Buggery

#### Section 153. Unnatural offences.

Any person who:

- commits buggery with another person or with an animal; or
- permits a male person to commit buggery with him or her,

shall be guilty of a felony, and shall be liable to imprisonment for 14 years.

#### Attempted buggery

#### Section 154. Attempts to commit unnatural offences and indecent assault.

Any person who attempts to commit any of the offences specified in the last proceeding section [sic], or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.

#### Gross indecency

#### Section 155. Indecent practices between males.

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.

Human rights situation

In 2013, Tuvalu voted in favour of the Asian and Pacific Ministerial Declaration on Population and Development, which included several references to SOGI-related issues, such as violence and discrimination against LGBT people, and included policy directions on the matter. In fact, in its oral statement, Tuvalu’s delegation stressed that the country turned a new page in its efforts to address key population issues and that it was addressing human issues that are inclusive in nature, upholding the human rights of every individual in this region.

However, the 2016 US Department of State Report on Human Rights still indicates that social stigma or intimidation may prevent reporting of incidents of discrimination or violence based on sexual orientation. This was also reiterated in the 2017 report, though there does not appear to have been any prosecution for consensual same-sex sexual intimacy at all. According to a small-scale research study into sexual behaviours of transgender people and men who have sex with men, low self-esteem was commonly felt.

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Section 5 of the Labour and Employment Relations Act 2017 prohibits discrimination at the workplace, including on the basis of sexual orientation.5

Culturally, Tuvalu also recognises the *pinapinaaine*, which refers to a man who might regard himself as, or be regarded by others as, a woman.6 However, there has been little research conducted on this group.7

**UN voting record**

In 2011, 2014 and 2016, Tuvalu was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of any SOGI resolution.8

At the session of Third Committee of the UN General Assembly held in November 2016, Tuvalu voted in favour of the LAC amendment to remove Operative Paragraph 2,9 and against the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Tuvalu did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

**International advocacy and supervision**

**Universal Periodic Review**

Despite the Czech Republic’s 1st cycle UPR recommendation to Tuvalu to decriminalise, as an act that would foster tolerance and assist with dealing with HIV, the delegation made reference to the difficulties of Constitutional change which, “will need to be carefully considered”, rather than the legislative amendments that were being sought.10

Again, at its 2nd cycle UPR in June 2013, Tuvalu repeated the phrase “carefully considered” in relation to legislative repeal. It rejected recommendations from the United States and the United Kingdom to decriminalise consensual same-sex sexual activity, and responded by saying that, people with different sexual orientation did not suffer social discrimination but the question of legal protection in the law was controversial and would need to be carefully considered.11

During its 3rd cycle of the UPR carried out in May 2018, Tuvalu received 13 SOGIESC recommendations. It supported two of them, whilst noting (functionally rejecting) all remaining eleven.

Argentina, Australia, Canada, Honduras, Iceland, Italy, Spain, the United Kingdom and the United States called upon Tuvalu to decriminalize consensual same-sex sexual relations (in particular, by amending Sections 153-155 of the Penal Code). New Zealand asked for Tuvalu to “continue to take steps to actively promote the equal rights of all individuals regardless of gender, religious beliefs, sexual orientation, age, disability or other status, including by ratifying the International Covenant on Economic, Social and Cultural Rights”.12

Tuvalu referred to the SOGIESC issue during its final Session, expressing that “sexual orientation is an issue we are trying to cope with, to understand better, because it’s not practiced in the Tuvalu cultural setting, but we are committed to addressing that in a manner that is acceptable and follows the international norms”.

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9. Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly (2017), 4.
COOK ISLANDS (NEW ZEALAND)

Provisions in force


### Sodomy

**Section 155. Sodomy.**

1. Everyone who commits sodomy is liable-
   1. (a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years;
   2. (b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is of over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years;
   3. (c) In any other case, to imprisonment for a term not exceeding seven years.

2. This offence is complete upon penetration. [...] 

4. It is no defence to a charge under this section that the other party consented.

### Indecent act

**Section 154. Indecency between males.**

1. Everyone is liable to imprisonment for a term not exceeding five years who, being a male:

   - (b) Does any indecent act with or upon any other male; or
   - (c) Induces or permits any other male to do any indecent act with or upon him. [...] 

3. It is not defence to a charge under this section that the other party consented.

Human rights situation

The Cook Islands is a New Zealand associate, and as such, its laws are only applicable to the islands, and not to New Zealand.

In 2015, the LGBT organisation Te Tiare Association [the only LGBT group in the country] was pushing for decriminalisation in light of developments at the international level.1

Even though representatives of the local traditional royal family have spoken against criminalisation of same-sex intimacy, it is reported that the political establishment was not as yet entirely on board.2

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1 "Gay Rights Campaign ‘Misunderstood’, Cook Islands News, 31 August 2015.

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The Prime Minister has also said that same-sex marriage was not an issue that needed to be dealt with “until it becomes one”.³

According to Solicitor General David James, there does not appear to have been any prosecution or conviction of any person for sodomy at all.⁴

In August 2017, it was reported that the country was planning to decriminalise sodomy following a planned overhaul of the 1969 Crimes Act.⁵ In July, a public consultation had been held at which Te Tiare Association’s (TTA) submission was given prominence.⁶

Notably, Christian leaders have also come out in support, noting that though it is “not right”, it should not be treated as a criminal offence.⁷ However, the Crimes Bill 2017 remains on hold and does not appear to have advanced in the legislature.⁸

International advocacy and supervision

Treaty Bodies

In July 2018, the Committee on Elimination of Discrimination against Women (CEDAW) commended the Cook Island’s “efforts to improve its policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality”, including the prohibition of discrimination based on “sexual preference” under the Public Service Code of Conduct Policy.⁹

However, it expressed concern regarding the “intersecting forms of discrimination against lesbian, bisexual and transgender women” and urged the government to address this through legislative changes and awareness-raising activities.¹⁰

³ “Puna says same-sex marriage not an issue in Cooks”, Radio New Zealand, 18 August 2015.
⁴ Rashneel Kumar, “Decriminalizing Homosexuality In Cook Islands Does Not Affect Same-Sex Marriage”, Pireport, 2 August 2017.
⁵ “Cook Islands may legalise homosexuality”, Radio NZ, 7 August 2017.
⁷ Rashneel Kumar, “Not right in God’s sight”, Cook Island News, 2 August 2017.
⁸ Rashneel Kumar, “Election delays two important bills”, Cook Island News, 23 April 2018.
⁹ Concluding observations on the combined second and third periodic reports of the Cook Islands, CEDAW/C/COK/CO/2-3, 25 July 2018, para. 5.
¹⁰ Id., paras. 43-44.
DE FACTO CRIMINALISATION

STATE-SPONSORED HOMOPHOBIA 2019
Consensual same-sex sexual acts are not explicitly prohibited under Egyptian law. However, the law on prostitution and the law against debauchery, among others, have been used liberally to imprison gay men in recent years.1

**De facto barrier to freedom of association and expression**

**Article 86 bis.**

Imprisonment shall be the inflicted penalty on whoever establishes, founds, organises, or runs contrary to the provisions of the law, an association, corporate, organization, group, or band, the purpose of which is to call by any method, for interrupting the provisions of the constitution or laws, or preventing any of the State’s institutions or public authorities from exercising its functions, or encroaching on the personal freedoms of citizens or other freedoms and public rights as guaranteed by the constitution or the law, or impairing the national unity or social peace....

The penalty prescribed in the previous clause shall be inflicted on whoever propagates by speaking or writing or by any other method, for the purposes mentioned in the first clause, and also whoever, personally or by an intermediary, holds or acquires written documents, printed matter, or records, whatever their kind, comprising propagation or advocacy of any of the foregoing, if they are prepared for distribution or access by third parties, and also whoever holds of acquires any method of printing, recording, or publicising which is used or prepared for use, even temporarily for printing, recording or diffusing anything of the foregoing.

**Scandalous acts**

**Article 278.**

Whoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds.

**Law No. 10/1961 on Combating of Prostitution.**

**Article 9.**

Punishment by imprisonment for a period not less than three months and not exceeding three years and a fine not less than 25 LE and not exceeding 300 LE [...] or one of these two punishments applies in the following cases:

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(a) Whoever lets or offers in whatever fashion a residence or place run for the purpose of debauchery or prostitution, or for the purpose of housing one or more persons, if they are to his knowledge practicing debauchery or prostitution.

(b) Whoever owns or manages a furnished residence or furnished rooms or premises open to the public and who facilitates the practice of debauchery or prostitution, either by admitting persons so engaged or by allowing on his premises incitement to debauchery or prostitution.

(c) Whoever habitually engages in debauchery or prostitution.

Upon the apprehension of a person in the last category, it is permitted to send him for a medical examination. If it is discovered that he is carrying an infectious venereal disease, it is permitted to detain him in a therapeutic institute until his cure is completed.

It is permitted to determine that the convicted person be placed, upon completion of his sentence, in a special reformatory until the administrative agency orders his release. This judgment is obligatory in cases of recidivism, and the period spent in the reformatory is not allowed to be more than three years. [...]

Law 175/2018 on Cyber Crimes

Article 25.

Anyone who publishes online content that threatens society’s and family’s values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds.

Human rights situation

Additional information on the situation in Egypt is provided at the end of this entry in a "Local Perspective Essay" written by an anonymous group/collective working on LGBTQI issues in the MENA Region.

In 2016, Egyptian novelist Ahmed Naji was sentenced to two years in jail following the publication of a "sexually explicit" [heterosexual] excerpt from his novel 'The Use of Life' in State-owned literary magazine Akhbar al-Adab. Following the 2017 crackdowns, four men were sentenced to three years in prison each by the Haram Misdemeanor Court. 16 others were also jailed though they were freed on bail, pending an appeal. The parliamentary commission on religion also announced plans to ban the "promotion of atheism", partially on the basis that it can lead to "mental imbalances" and "homosexuality".

A 2016 Human Rights Watch report has found that forced anal examinations have been used in investigations of same-sex sexual conduct. The Egyptian Initiative for Personal Rights published a 2017 report, detailing a five-fold increase in arrests and prosecution since 2013.

In January 2019, a television host was sentenced to one-year imprisonment for contravening the Supreme Council for Media Regulations’ decision “banning the appearance of homosexuals or..."
promotion of their slogans” and contempt of religion by interviewing a gay man on his show.8

National Human Rights Institution
The National Council for Human Rights, set up in 2003, has been repeatedly criticised as a government mouthpiece.9 In 2018, in response to criticisms of its human rights record, Prime Minister Mostafa Madbouly set up a new Permanent Higher Committee on Human Rights.10 However, neither body appears to have done any work in relation to sexual orientation or gender identity.

UN voting record
Egypt, along with otherOrganisation of Islamic Cooperation (OIC) member countries at the UN, has long denied that SOGI is a status envisaged in the body of international human rights treaties, and have aggressively campaigned against any such inclusion.

In 2011, Egypt was not a member of the Human Rights Council and, therefore, did not participate in the vote for the adoption of Resolution 17/19, the first SOGI resolution adopted by the Human Rights Council, which requested the OHCHR to produce the first report on SOGI.11 Neither did it have a vote in the 2014 Resolution 27/32 (on updating the 2011 report),12 nor on the 2016 Resolution 32/2 which created the Independent Expert on SOGI mandate).13

However, at the session of Third Committee of the UN General Assembly held in November 2016, Egypt voted against the LAC amendment to block the first SOGI resolution.14 and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Egypt voted against the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review
Egypt’s 1st cycle of the UPR was carried out on 17 February 2010, and it noted (functionally rejected) all three SOGIESC recommendations. Switzerland called on Egypt to “apply national legislation to individuals without discrimination based on their belonging to a religious minority or on sexual orientation”; Czechia urged the State to “review national legal provisions, as e.g. those criminalising “habitual debauchery”, which are open to abuse for persecution and intimidation of persons of minority sexual orientation or gender identity or of persons with HIV/AIDS”; and Canada proposed to “fully implement Article 2 of the Universal Declaration of Human Rights, which provides that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” and to recognize that ”sex” also includes sexual orientation”. The State provided no comments during the session referring to SOGIESC issues.

Egypt’s 2nd cycle UPR began in November 2014. Of the 28 NGO submissions to this session, only four mentions sexual orientation directly.15 However, there is no mention of sexual orientation in the State’s formal responses to its 2nd UPR.16

Special Procedures
In 2014, several mandates17 expressed concern regarding the alleged arrest, detention, conviction...
and sentencing of four individuals on the sole basis of their sexual orientation and/or gender identity. 

In 2015, several mandates again expressed concern regarding the alleged arbitrary arrest, detention, torture and public stigmatisation of 26 men who were tried on charges related to their alleged sexual orientation.

In 2017, these mandates and others reiterated their concerns about the alleged unlawful arrests, detention, and incrimination of persons based on actual or perceived SOGIE, and/or their actual or perceived expression and advocacy for protection of LGBT rights.

In 2018, the UN Special Rapporteur on the right to housing expressed her shock at the “most harrowing and traumatic stories” from LGBT people regarding their “experiences of extreme discrimination in accessing housing and security of tenure”. She observed that LGBT people often cannot rent accommodation and if they are able to, live in constant fear of being found out about their gender or sexual identity.

**A LOCAL PERSPECTIVE**

*Rights of LGBTQ People in Egypt: Between State, Society, and de facto Criminalisation*

*By an anonymous group/collective working on LGBTQI issues in the MENA Region for ILGA World.*

Currently, there is no outright legal criminalisation of same-sex relations in Egypt. However, Egypt’s practices consistently sanction same-sex relations using vague legal articles. In that sense, Egypt *de facto* criminalises same-sex relations. This criminalisation depended mostly on the law on combating “prostitution,” which earlier reports by ILGA and various activists have consistently highlighted, depending upon recorded arrests, court files, and testimonies of targeted LGBTQI individuals.

The application of *de facto* criminalisation is, however, not limited to the practice of same-sex relations. The period from September 2017 to December 2018 witnessed an expanded legal application of *de facto* criminalisation of expressions of diverse sexual orientation and gender identity and expression. This can only be understood from the lens of societal backlash appropriated and led by different State institutions, following the visibility and exposure that was caused by the events of Mashrou’ Leila’s concert and its aftermath in September 2017.

In a few hours following the Mashrou’ Leila concert, pictures of various people raising rainbow flags went viral on social media and made their way to the very conservative mainstream media outlets in Egypt. This garnered almost no positive coverage in those outlets. The media adopted a rhetoric that incited violence against LGBTQI individuals, with the Supreme Media Regulatory Council issuing an order preventing “the appearance of homosexuals” or “promoting their slogans” on media, and other TV presenters calling on the State to act. A few days after this media campaign, the moral police started to round-up individuals either from dating applications such as Grindr and Hornet - through online entrapment, or from certain public areas allegedly known for being a hot spot for gay men.

Furthermore, the National Security Police hunted down two individuals who reportedly raised the flags during the concert. Another individual was later arrested in early October 2017 for posting supportive content of Mashrou’ Leila’s concert and its aftermath in September 2017. In a few hours following the Meshrou’ Leila concert and its aftermath in September 2017, the National Security Police hunted down two individuals who reportedly raised the flags during the concert. Another individual was later arrested in early October 2017 for posting supportive content of Mashrou’ Leila’s concert and its aftermath in September 2017.

At least 80 arrests from...
dating applications and public areas were recorded in relation to the crackdown following the concert.

The act of raising the rainbow flag, in that sense, instated a sense of temporary visibility for the LGBTQI community that abruptly shook heteronormative societal norms and State institutions. While the instant outcomes of the backlash manifested in hate speech, incited violence, and led to several arrests in the short-term, its reach has longer-term legal and social implications as well.

One of the most dangerous social implications was that the practice of online entrapment on dating applications was not only perpetrated by State actors, such as the Moral Police. It also became a vessel for violence perpetrated by non-State actors: an increased number of cases of entrapment of gay or bisexual men on dating applications by gangs and random perpetrators was recorded by various groups and activists working on the ground. Recorded cases involved different forms of assaults, blackmail, and/or robbery. No survivors of online entrapment by non-State actors chose to take a legal path against perpetrators, in part out of a justified fear it will backfire against them in police stations when officers discover exactly how they met the perpetrators.

Other long-term implications for the backlash can be outlined in two legal updates. The arrest of individuals for raising the rainbow flags was the first recorded incident in which defendants were facing charges for publicly expressing support for LGBTQI communities based on article 86 bis of Egypt’s penal code, which is the same article used in trying members of the Muslim Brotherhood organisation for terrorism charges. The deployment of these legal articles resembled a significant departure from the targeting of LGBTQI individuals based on “promoting debauchery” charges.

The second long-term effect can be seen in the language adopted in new laws that stressed on “family values” in their articles. Article 25 of Law 175/2018 on Cyber Crimes, which was ratified in August 2018, states that “anyone who publishes online content that threatens society’s and family’s values shall be punished for at least six months of prison and a fine of at least fifty thousand pounds.” In addition, Article 35 of the same law threatens with “maximum-security prison” for all crimes in the law if they were found to “threaten social peace,” which is a vague term leading to legal uncertainty.

Up until now, there are no recorded incidents in which these articles have been used to prosecute LGBTQI individuals for expression of their identities. However, the incorporation of “family values” and “social peace” in this law resonates with the same rhetoric that was adopted by the media and State institutions in the aftermath of Mashrou’ Leila’s concert. This resonance is a sufficient reason to fear that the law - which several rights groups described as catastrophic for freedom of expression - might be used to crack down on thriving Egyptian LGBTQI online groups and pages, and threatens progressive online outlets to tone down their already rare positive coverage of SOGI-related issues. In this regard, the Egyptian law resonates Russia’s “gay propaganda law”: the effective target is to criminalise expressions of sexual orientation and gender identity without making any mention of SOGI.

It is, however, important to highlight that the post-rainbow flags crackdown is not a break from societal and State-led targeting of LGBTQI individuals. While the scope and the nature of the targeting were significant in this case, the practice of targeting LGBTQI individuals dates back at least to the Queen Boat incident in 2001, which brought the issue of LGBTQI-related rights in Egypt to the attention of different rights groups internationally.

The scope and the intensity of the post-rainbow flags crackdown can be understood not only as part of the current government’s brutal oppression of differing forms of dissent - political, social, or sexual - but also as part of a societal backlash led and advanced by Sisi’s government against non-conforming practices and identities.

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27 The process of entrapment starts with an undercover police officer from the department of the moral police on the dating application who usually lures other users to meet up for casual sex. The meeting is initially arranged in a public space where the victims are surprised with police forces arresting them. Police reports attach screenshots of the conversations between the undercover police officer and the entrapped defendants as incriminating evidence. The usage of screenshots of a private conversation in all of the cases we worked on as a group was without judge permit which is in violation of article 57 of the Egyptian constitution and article 309 bis of the Egyptian Penal Code.

28 Law No. 58-01/1937, “Promulgating the Penal Code”.


Addendum

By the time this essay was finalized, a draft law has just advanced in the Parliament to replace Law No. 10/1961 on combating prostitution and debauchery, which has been consistently used to sanction same-sex relations despite that there is no outright criminalization in it. The new law aims at making sentences for debauchery charges even more severe, officially criminalize “homosexuality”, and further police citizens’ morality.

For example, article 14 stipulates an extreme minimum prison sentence of 7 years for what the article views as “direct or indirect invitations” for practicing debauchery on social media and digital spaces.\(^{31}\) Such article equates between what is “direct” and “indirect”, allowing for the blurring of what constitutes “invitation” which might lead to arbitrary application of already unfair charges.

The draft law, which is in the Parliament’s Legislative and Constitutional Committee, defines “debauchery” as the act of “committing forbidden sexual crimes”, such as “sodomy and incest.” While “sodomy” may not strictly be an equivalent to “same-sex intercourse” in English, the meaning of the equivalent word in Arabic is the “sexual act between men”.\(^{32}\) It also seems to be the purpose of the law to criminalize consensual same-sex sexual acts based on remarks made by different MPs sponsoring the draft law and the preamble attached to the law.\(^{33}\) The preamble cites, as a reason for proposing the law, the “rise of modern abnormal phenomena in our Eastern and Islamic societies” one of which is “sexual concerts of homosexuals,” which is a phenomenon the preamble describes as “threatening to national security.”

\(^{31}\) Our unofficial translation of article 14: “Whoever announces, whether directly or indirectly, through digital method or social media, any invitation that includes seducing others to practice debauchery or prostitution or draws attention to them, should be sentenced for a minimum of seven years in prison.”

\(^{32}\) See original source here.

\(^{33}\) See source here.
DE FACTO CRIMINALISATION - IRAQ

IRAQ

Following the demise of the Islamic State in Iraq since December 2017, ILGA World has removed Iraq from the list of countries that impose the death penalty for same-sex sexual activity. However, though there is no formal legal prohibition against same-sex sexual intimacy, there have been cases of same-sex couples and individuals prosecuted for same-sex sexual intimacy on the basis of other criminal provisions such as “prostitution” and “public indecency”. There also remains a significant threat of violence against people on the basis of their same-sex desire or gender expression—those perceived as non-heterosexual or gender non-conforming—across the country.

Provisions in force

After the American invasion in 2003 the Penal Code of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations. Notably, even though Article 394 mentions consensual buggery, it applies only if the victim is aged 18 or below. It therefore does not criminalise same-sex sexual acts between consenting adults.

Human Rights Situation

Until December 2017, the Daesh (or ISIS/ISIL) held areas of northern Iraq and northern Syria. It was known to target men and women on account of their gender expression, gender identity and their sexual orientation. The Nusr ('Victory' in Arabic) website, which claims to be the website of the Islamic Caliphate, has a section on Legal Jurisprudence (evidence-based rules and the Penal Code). One of the pages under this section is dedicated to “Punishment for Sodomy”, which states: “The religiously-sanctioned penalty for sodomy is death, whether it is consensual or not. Those who are proven to have committed sodomy, whether sodomiser or sodomised should be killed...”.

According to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, there were multiple executions of both men and women on the basis of their actual or “perceived homosexuality. In August 2016, three women were executed by ISIS in Mosul for this reason, and several reports have emerged of ISIS executing gay and other men by throwing them off buildings, and, if they survived the fall,stoning them to death in a public event. Examples include two men thrown to their deaths in November 2015 in Fallujah and another two men in early 2016 in the city of Rawa and Tel-Afar. The last reported execution by ISIS appears to be in March 2017 in Mosul. Since December 2017, ISIS has lost most of its territory in Iraq following its

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1 For an explanation of why Iraq was included under the “Death Penalty” category see: International Lesbian, Gay, Bisexual, Trans and Intersex Association: Aengus Carroll and Lucas Ramón Mendos, State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition (Geneva; ILGA, May 2017), 128.


3 " آلاف البياءات وظام العفوات", The Nusr.

4 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, A/HRC/38/44/Add.1, 5 June 2018, para 27.

military defeat. In January 2019, it was reported that the building from which many of these executions were carried out was being demolished.

Non-State actors in Iraq including Sharia judges, are also known to order executions of men and women for same-sex sexual behaviour, despite the fact that Iraq’s civil code is silent on same-sex sexual behaviour, and the country’s legal system does not defer to the Sharia court. It is also known that both police and militias have frequently kidnapped, threatened and killed LGBT people, as documented by OutRight since 2014, and charted on their Timeline.

In a report by LGBT advocacy group IraQueer, it was found that there has been at least one annual killing campaign targeting queer individuals carried out by different groups. This included ISIS (10%), armed groups like Asa’eb Ahl Al-Haq (31%) and the government (22%). Non-state actors are also a significant source of violence, with family members making up 27% of the violence committed.

In 2017, a theatre actor was tortured and killed in Baghdad for “looking gay”. A 14-year-old boy was also murdered in 2018 because of his perceived sexual orientation and the entire killing was filmed by the culprit who taunted the victim with homophobic slurs while attacking him. Additionally, it was reported that suspected LGBT community spaces have been burned down or bombed.

However, SOGI-related activism efforts have been documented. IraQueer launched a publicity campaign in Baghdad by putting up posters and banners in support of LGBT equality. Another LGBT group, Rasan, has been organising awareness campaigns about LGBT issues in Sulaymaniyah. Originally founded as an organisation focusing on women’s rights, the group has taken on LGBT issues: one of the activities the group did was painting the city walls with murals promoting LGBT awareness.

National Human Rights Institution

Iraq has a National Human Rights Institution in accordance with the Paris Principles: the High Commission for Human Rights. However, it does not address SOGIESC issues in its work.

UN voting record

Iraq was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Iraq voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Iraq voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Iraq accepted the only recommendation given to it (from France) with SOGI content in 2nd UPR in October 2014: “Guarantee equality of civil and political rights. Avoid all forms of discrimination based on ethnicity, religion, gender or sexual orientation.”
orientation”: this remained unaddressed in the delegation's formal response. 18

The next UPR cycle of Iraq will take place in October 2019.

**Treaty Bodies**

In 2015, the Human Rights Committee (CCPR) included concerns on the stigmatisation and social exclusion of people on the basis of SOGI, and their inability to publicly demonstrate peacefully. The Committee acknowledged, “... diversity of morality and cultures must [...] always be subject to the principles of universality of human rights and non-discrimination”. It urged the State to “vigorously” combat stereotypes, ensure enjoyment of Covenant rights to all, investigate, prosecute perpetrators and compensate victims, collect data on SOGI-related crime, and create anti-discrimination legislation that lists SOGI as a ground for protection”.19

Also in 2015, the Committee Against Torture expressed concern that attacks against LGBT people occur regularly and with impunity, at times leading to death. As such, Iraq should “take effective measures to prevent violence based on real or perceived sexual orientation and gender identity and ensure that all acts of violence are investigated and prosecuted promptly, effectively and impartially, perpetrators brought to justice and victims provided redress”.20

In 2015, the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern that LGBTI persons are particularly affected by discriminatory practices and recommended the Government of Iraq should adopt a comprehensive anti-discrimination legislation in accordance with article 2 of the ICESR.21

In 2015, the Committee on the Rights of the Child (CRC) urged the state to ensure that LGBT children or children who are cared for by LGBT persons, as well as gender non-conforming children, are not subjected to any form of discrimination, by raising the public’s awareness of equality and non-discrimination on the basis of sexual orientation and gender identity.22 It also called on the State to take all necessary measures to protect LGBT and children non-conforming children from all forms of attack; hold perpetrators of attacks fully accountable; and ensure that the sexual or gender identity of the victim is under no circumstances accepted as a mitigating circumstance.23

**Special Procedures**

In 2017 the Special Rapporteur on extrajudicial, summary or arbitrary executions visited Iraq and published a mission report in June 2018.24 On the killings and attacks on LGBT people, the Special Rapporteur recommended the Government of Iraq to “conduct proper investigation and prosecute all those responsible for attacks against, and killings of, LGBTI persons, including by members of Government and affiliated forces as well as armed non-State actors”.25 It also called on the Government to “implement national policies to end the endorsement of and participation in violence or discrimination against anyone, including LGBTI person’s by Government officials, including police and Security Forces”.26

19 Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5, 3 December 2015, para. 11 - 12.
20 Concluding observations on the initial report of Iraq, CAT/C/IRQ/CO/1, 7 September 2015, para. 25.
22 Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4, 3 March 2015, para. 20.
23 Id., para. 28.
25 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, A/HRC/38/44/Add.1, 5 June 2018, para. 84.
26 Ibid.
# The World at a Glance

State-Sponsored Homophobia 2019

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¹ Gaza still criminalises consensual same-sex sexual acts between adults. See "Criminalisation" section.
² Certain provinces in Indonesia criminalise consensual same-sex sexual acts between adults. See "Criminalisation" section.
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DNA: Does not apply.

5% of UN Member States CRIMINALISE consensual same-sex sexual acts
27% of UN Member States DE FACTO CRIMINALISE consensual same-sex sexual acts
38% of UN Member States DO NOT CRIMINALISE consensual same-sex sexual acts

1 UN Member State has provinces with criminalising provisions (Indonesia)
SEXUAL ORIENTATION LAWS IN THE WORLD - 2019

From criminalisation of consensual same-sex sexual acts between adults to protection against discrimination based on sexual orientation

The data presented in this map is based on State-Sponsored Homophobia, an ILGA report by Lucas Ramón Mendos. This map can be reproduced and printed without permission as long as ILGA is properly credited and the content is not altered.
Tab 9
Part One: Tanzania Mainland - Legal and Human Rights Centre (LHRC)

Part Two: Zanzibar - Zanzibar Legal Services Centre (ZLSC)
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Fax: +255222773037
Email: lhrc@humanrights.or.tz
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&

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April, 2019
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Zanzibar Legal Services Centre
Acknowledgement

In preparing the Tanzania Human Rights Report 2018, LHRC & ZLSC received cooperation from different state organs, government institutions and non-state actors in Tanzania Mainland and Zanzibar. LHRC and ZLSC are grateful to the President’s Office – Regional Administration and Local Government, research institutions, regional and district authorities, the Tanzania Police Force and community development departments in Tanzania Mainland for their support and cooperation in preparation of this report.

LHRC & ZLSC would also like to extend their sincere gratitude to LHRC & ZLSC staff for their combined efforts in supporting the preparation of this report. LHRC is especially thankful to the researchers and writers of this report, Mr. Fundikila Wazambi and Ms. Joyce Komanya. ZLSC would like to thank its programme officers for their dedication in ensuring the Zanzibar part of the report is completed who worked hard to obtain data and ensure timely preparation of this report. Special thanks go to all LHRC & ZLSC partners who shared inputs and participated in validating this report.

LHRC & ZLSC further acknowledge the contribution by human rights monitors and paralegals, who provided valuable information through their monthly and quarterly reports. Lastly, but not in order of importance, LHRC is grateful for the continued financial support from its partners: the Embassy of Sweden, the Royal Norwegian Embassy and Ford Foundation.

Adv. Anna Aloys Henga                                      Ms. Harusi Miraji Mpatani
LHRC Executive Director                                     ZLSC Executive Director
About LHRC and ZLSC

The Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-Governmental, non-partisan and non-profit sharing organization envisioning a just and equitable society. It has a mission of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country. The broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of the society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring. LHRC was established in 1995 and its operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar.

Vision: The LHRC envisages a just and equitable society, in which the three arms of the State as well as non-state actors practice accountability, transparency and there is rule of law; and where there is public awareness, respect and engagement for human rights and good governance; where justice and respect for human dignity are reality.

Mission: To empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advice; monitoring and following-up on human rights violations; and advocacy for reforms of policies, laws and practices in conformity with international human rights standards.

LHRC’s Values: Integrity; Equality; Transparency; Accountability; Professionalism; and Voluntarism and Volunteerism.

It is our sincere hope that the readers of this report will be a change agent towards attaining just and equitable society.

The Zanzibar Legal Services Centre (ZLSC) was established in 1992 as a non-governmental, voluntary, independent and non-profit making organisation. It is a body corporate and its major aim is to provide legal services to the poor, women, and children, the disabled, marginalised and other disadvantaged sections of the Zanzibari society. The Centre also aims to popularise knowledge on the law and produce publications in all areas of legal concern to the people of Zanzibar.

Vision: Rights and Access to Justice for all.

Mission: Raising people’s awareness, promoting human rights and good governance.
Core Objectives: Providing free legal aid to the poor; providing free legal representation for clients in need of it; providing legal education to the public and raise awareness about human rights and duties; conducting research in different issues of or related to law and human rights.

Some of the results of research and other interventions have been both attractive and appealing to the government thus helping to shape policies and laws on various issues including the issue of the rights of the child in Zanzibar. The most notable research undertaken by ZLSC is Annual Human Rights Report since 2006.

Prof. Geoffrey Mmari  
Chairperson - LHRC Board

Prof. Chris Peter Maina  
Chairperson - ZLSC
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Part One: Tanzania Mainland - Legal and Human Rights Centre (LHRC)
Introduction

Major Developments in 2018

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<td>Alarming rate of incidents of sexual violence against children</td>
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<td>Minister of Home Affairs ordering police to grant bail even during</td>
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<td>weekends and issues stern warning against police fabrication of cases</td>
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<td>Controversial Online Content Regulations signed into law</td>
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<td>Government to establish gender desks in primary and secondary schools</td>
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<td>in a bid to promote reporting of violence against children and address the problem</td>
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<td>North Mara Gold Mine implicated in grand corruption scandal</td>
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<td>Introduction of controversial Political Parties Bill</td>
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<td>Reports of child-on-child sexual abuse in schools, especially in</td>
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<td>schools</td>
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<td>Senior government officials speaking out against RC misuse of arrest</td>
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<tr>
<td>and detention powers by regional and district heads</td>
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<td>Tanzania further drops in the World Press Freedom Index</td>
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<td>Judicial action to improve access to justice and address violence</td>
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<td>against children</td>
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<td>Acute shortage of classrooms for pupils who passed Standard VII exams</td>
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<td>Abduction of business mogul raising concerns over personal security</td>
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<td>Killings of older people in Tabora, Songwe, Kagera and Rukwa</td>
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<td>Killing of a university student, Akwelina Akwilini, during an</td>
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<td>opposition protest in Dar es Salaam</td>
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<td>National and international stakeholders and partners express concern</td>
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<td>over decline of human rights in Tanzania</td>
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<td>Concerns over by-election costs and political defections become a</td>
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<td>common practice in Tanzania</td>
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<td>Amendment of the Appellate Jurisdiction Act to prohibit striking</td>
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<td>out cases because of procedural irregularities: a positive action</td>
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<td>to enhance access to justice</td>
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Objectives of the Report

The main objective of this report is to shed light on the situation of human rights in Tanzania in 2018, highlighting violations of human rights in the year and efforts made to safeguard basic human rights. Another objective of the report is to make comparisons between the situation in 2018 and that of 2017 in order to determine whether improvements have been made in safeguarding human rights. The report can also be used as an advocacy tool to inform the public of relevant human rights standards, remind state actors of their human rights obligations, promote behaviour change in the society and provide key data on human rights issues.

Methodology

In preparation of this report, the LHRC research team employed a number of methods to collect data, both primary and secondary. Data was collected from various credible sources, including government institutions, bodies and ministries; CSOs; the Judiciary; parliamentary sources and community members. Primary data was collected in 10 regions of Tanzania Mainland, namely: Songea, Mbeya, Iringa, Dodoma, Singida, Tabora, Shinyanga Mwanza, Arusha and Kilimanjaro. The data used in preparation of this report was collected between January 2018 and March 2019. The report covers the period of January to December 2018, thus all collected information relate to incidents or events of the year 2018. Methods employed in obtaining information were face-to-face interviews with key informants, observation and checklists. Targeted respondents were district authorities, community development officers, social welfare officers, representatives of paralegal centres and local NGOs, LHRC paralegals and human rights monitors, and police gender desk officials at the Tanzania Police Force Headquarters.

Secondary data was obtained through desk review, including review and analysis of national, regional, and international legal and human rights documents. The research team also surveyed and analysed reports by different government institutions and local and international NGOs, as well as news reported by newspapers, radio stations and television stations.

Analysis of quantitative data was done through Microsoft Excel and IBM’s Statistical Package for Social Sciences (SPSS). The data is presented in the
report using tables and figures, showing frequency and percentages, summarizing information and trends of on human rights issues and incidents.

**Report Structure**

This report has two parts; Part One and Part Two. Part One depicts the situation of human rights in Mainland Tanzania whereas Part Two depicts the situation in Tanzania Zanzibar. **Chapter One** of the Report provides background information on Tanzania (both Mainland and Zanzibar). **Chapter Two** covers the situation of key civil rights, namely: right to life; freedom of expression; rights to equality before the law and effective remedy; right to liberty and personal security; and freedom from torture. **Chapter Three** is about the situation of political rights, particularly freedom of assembly and freedom of association. **Chapter Four** covers economic rights such as right to property and right to adequate standard of living. **Chapter Five** examines the situation of social and cultural rights, especially the quality and accessibility around rights to education, water and health. **Chapter Six** looks at collective rights, particularly right to development and right to benefit from natural resources, while **Chapter Seven** is on the rights of vulnerable groups, which are women, children, Persons with Disabilities (PWDs), and the elderly. **Chapter Eight** is on Corruption, Good Governance and Human Rights. **Chapter Nine** looks at human rights mechanisms, at domestic, regional and international levels, while **Chapter 10** is on other issues of human rights concern in 2018.

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<td>Witchcraft-related killings</td>
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<td>Tabora</td>
<td>Witchcraft-related killings</td>
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<td>Economic and psychological violence against women</td>
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<td></td>
<td>Child marriage</td>
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<td></td>
<td>Child/teenage pregnancy</td>
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<td>Dar es Salaam</td>
<td>Sexual violence against children</td>
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<td>Mob violence</td>
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<td>Kilimanjaro</td>
<td>Economic violence against women</td>
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<td>Location</td>
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<td>Economic violence against women</td>
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<td>Iringa</td>
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<td>Economic violence against women</td>
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<td>Shinyanga</td>
<td>Witchcraft-related killings</td>
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<td>Child marriage</td>
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<td>Sexual violence against children</td>
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<td>Singida</td>
<td>Sexual violence against children</td>
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<td></td>
<td>Economic violence against women</td>
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<td>Kigoma</td>
<td>Sexual violence against women</td>
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## List of Abbreviations

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<td>ACHPR</td>
<td>African Charter on Human and Peoples Rights</td>
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<tr>
<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
</tr>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
</tr>
<tr>
<td>CAG</td>
<td>Comptroller and Auditor General</td>
</tr>
<tr>
<td>CAG</td>
<td>Controller and Auditor General</td>
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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CCM</td>
<td>Chama cha Mapinduizi</td>
</tr>
<tr>
<td>CDF</td>
<td>Children’s Dignity Forum</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CERD</td>
<td>Convention on the Elimination of all forms of Racial Discrimination</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>CHRAGG</td>
<td>Commission for Human Rights and Good Governance</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<td>CSOs</td>
<td>Civil Society Organizations</td>
</tr>
<tr>
<td>DC</td>
<td>District Commissioner</td>
</tr>
<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<tr>
<td>FGM</td>
<td>Female Genital Mutilation</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
</tr>
<tr>
<td>HRC</td>
<td>Human Rights Council</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>LGAs</td>
<td>Local Government Authorities</td>
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<tr>
<td>LHRC</td>
<td>Legal and Human Rights Centre</td>
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<tr>
<td>MDG</td>
<td>Millennium Development Goal</td>
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<tr>
<td>MoHCDEC</td>
<td>Ministry of Health, Community Development, Elderly, Gender and Children</td>
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<tr>
<td>MPs</td>
<td>Members of Parliament</td>
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<tr>
<td>NBS</td>
<td>National Bureau of Statistics</td>
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<td>NEC</td>
<td>National Electoral Commission</td>
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<td>NEMC</td>
<td>National Environmental Management Council</td>
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<td>NFRA</td>
<td>National Food Reserve Agency</td>
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<td>PCB</td>
<td>Prevention of Corruption Bureau</td>
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<tr>
<td>PCCA</td>
<td>Prevention and Combating of Corruption Act</td>
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<tr>
<td>PLHIV</td>
<td>Persons living with HIV/AIDS</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<td>--------------------------------------------------</td>
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<tr>
<td>PWAs</td>
<td>Persons with Albinism</td>
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<td>PWDs</td>
<td>Persons with Disabilities</td>
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<td>RC</td>
<td>Regional Commissioner</td>
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<td>SDG</td>
<td>Sustainable Development Goal</td>
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<td>TANROADS</td>
<td>Tanzania Roads Agency</td>
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<tr>
<td>TECMN</td>
<td>Tanzania Ending Child Marriage Network</td>
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<tr>
<td>TGNP</td>
<td>Tanzania Gender Networking Programme</td>
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<td>THIS</td>
<td>Tanzania HIV Impact Survey</td>
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<td>THRDC</td>
<td>Tanzania Human Rights Defenders Coalition</td>
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<td>TLS</td>
<td>Tanganyika Law Society</td>
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<td>TMAA</td>
<td>Tanzania Minerals Audit Agency</td>
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<td>TPS</td>
<td>Tanzania Prisons Services</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>URT</td>
<td>United Republic of Tanzania</td>
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<td>UTSS</td>
<td>Under the Same Sun</td>
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<tr>
<td>VAW</td>
<td>Violence against Women</td>
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Executive Summary

Introduction
LHRC and ZLSC have been jointly preparing the Tanzania Human Rights Report since 2006. Before this arrangement, LHRC was producing the report since 2002. Preparation of the report includes collaboration with different stakeholders such as the Government and its institutions, the media, academic institutions, CSOs, researchers and community members as well as LHRC and ZLSC partners.

The Tanzania Human Rights Report 2018 discusses the situation of human rights in Tanzania for the year 2018, analysing the situation of fundamental human rights in Tanzania. The report examines how these rights were enjoyed, protected, promoted or violated in 2018. This report has two parts. Part One depicts the situation of human rights in Mainland Tanzania whereas Part Two depicts the situation in Tanzania Zanzibar. Both parts have 10 chapters as follows: Chapter One of the Report provides a contextual overview of Tanzania. Chapter Two covers the situation of key civil rights, namely: Right to life, Freedom of Expression, Rights to Equality before the Law and Effective Remedy, Right to Liberty and Personal Security and Freedom from Torture and Inhuman or Degrading Treatment. Chapter Three is about the situation of key political rights, namely: Freedom of Assembly, Freedom of Association and Right to Take Part in Governance. Chapter Four examines the situation of economic rights, Right to Property and Right to Work, while Chapter Five covers social and cultural rights namely: Right to Education, Right to Health, Right to Water, Right to Adequate Standard of Living and Right to Culture. Chapter Six focuses on Right to Development and Right to Enjoy and Benefit from Natural Resources as key collective rights. Chapter Seven examines rights of special/vulnerable groups, namely: women, children, persons with disability, elderly and persons living with HIV/AIDS. Chapter Eight explores corruption and how it impacts human rights, while Chapter Nine reviews human rights mechanisms in Tanzania. Lastly, Chapter Ten covers other issues of human rights in 2018.
Methodology
In preparation of this report, the LHRC and ZLSC research teams employed a number of methods to collect data, both primary and secondary. Data was collected from various credible sources, including government institutions, bodies and ministries; CSOs; Judiciary; Parliament, the media and members of the public. The data used in preparation of this report was collected between January 2018 and March 2019. The report covers the period of January to December 2018, thus all collected information relate to incidents, developments or events of the year 2018.

Key Findings
1. Civil and Political Rights
Generally, the situation of civil and political rights slightly worsened in 2018 compared to 2017, owing to increased violations of/restrictions on freedom of expression, right to liberty and personal security, freedom from torture, freedom of association and right to take part in governance.

1.1. Right to Life
The situation of the right to life slightly improved in 2018, compared to 2017. This is due to reduced incidents of reported mob killings, extra-judicial killings, witchcraft-related killings and road accidents and resulting deaths. However, the rate of these incidents is still high and they continue to be a major threat to right to life. For the year 2018, other incidents/actions that threatened right to life included: violations of consumer rights through selling of counterfeit and substandard products; abductions and killings; acts of violence, including sexual and physical violence; killing of police officers in Kigoma; and non-realization of social and economic rights.

Mob violence: On average, 65 people were killed each month across Tanzania Mainland from January to June 2018 by angry mobs. These incidents are more prevalent in urban areas. A total of 385 mob killings were recorded by the Police Force in the first six months of 2018. LHRC documented four such incidents, reported from Mtwara, Geita, Tabora and Singida. Lack of faith in the justice system (police and judiciary) and due to corruption continued to be the major reason for resorting to mob violence. Poor knowledge about legal procedures also a contributing factor.
Extrajudicial Killings and Violence against Law Enforcement Officers: LHRC documented 5 incidents of alleged extrajudicial killings, 4 less incidents than those documented in 2017. These incidents were reported in Dar es Salaam, Mara, Mbeya, Tanga and Tabora. These killings are caused by excessive use of force and torture by law enforcement officials. On the other hand, LHRC documented two incidents of violence against law enforcement officers, reported in Uvinza-Kigoma. In this incident, Inspector Ramadhani Mbini, and another police officer, were killed by civilians when conducting an operation to remove pastoralists in Mpeta Village, Uvinza District.

Witchcraft-related Killings and Violence against PWAs: 106 killings due to witchcraft suspicion were reported in the first half of 2018. LHRC documented incidents of witchcraft-related killings reported in regions such as Tabora, Geita, Morogoro, Songwe, Rukwa, Mwanza, Ruvuma and Shinyanga. LHRC was able to document one incident of attack against a PWA, which was in Singida. Action by the Government, the Commission for Human Rights (CHRAGG) and other stakeholders has contributed to improving the situation of PWAs. However, they continue to live in fear, especially at this period as we head to the general elections in 2020.

Death Penalty: In 2018, LHRC was able to document five death sentences, which are considerably less than those documented in 2017 (15). Currently, there are over 480 death row inmates, majority of them (over 90%) are male.

Road Accidents: Fewer road accidents and deaths (2,220 accidents and 1,051 deaths) reported in the first half of 2018, compared to the same period in 2017 (3,090 accidents and 1,308 deaths).

1.2. Freedom of Expression

In 2018, situation of freedom of expression continued to deteriorate, owing to continued restrictions, which have had a negative impact on civil society, human rights activists, opposition political parties, media and the community at large. These restrictions have been a major factor behind reduced civic space in Tanzania Mainland. Key issues affecting freedom of expression in 2018 were:
Introduction of online content regulations, which are a threat to media freedom, freedom of opinion and right to information: Key concerns with the regulations include: vague and ambiguous definitions and prohibitions; requirement of internet café owners to install video cameras and record activities of internet users and keep recordings for at least a year; severe and uniform punishment for failure to comply with regulations; too much powers granted for the regulatory authority; requirements of registration, license and annual fees; obligation to moderate and filter content; some of the obligations of application services licensees; and some of the obligations of online content hosts.

Harassment of and threats to journalists: LHRC documented at least four incidents of harassment of journalists, including foreign journalists from the Committee to Protect Journalists (CPJ) and beating of a journalist at a sports bonanza in Dar es Salaam.

Amendments to the Statistics Act of 2015: Major concerns regarding the amendments include prohibiting dissemination of statistics that are considered to invalidate, distort or discredit official statistics by the National Bureau of Statistics (NBS), and publishing statistics without the approval of the bureau.

Continued application of laws that contain provisions that arbitrarily restrict freedom of expression, such as Media Services Act of 2016 and Cyber Crimes Act of 2015.

Employers restricting freedom of expression of employees: In 2018, LHRC received several complaints of employees in different sectors, both public and private, not being free to express their opinions deemed ‘unconventional’ by their employers, including what their post on their social media accounts that ‘might reflect badly’ on company, institution or organization.

Working environment forcing journalists into self-censorship and sometimes kill stories: Existence and application of restrictive laws and harassment of journalists and media outlets, including through threats from unknown people, have created a difficult working environment for journalists, forcing them into self-censorship in the course of doing their job. A 2018 Twaweza study indicates that
majority of citizens (62%) feel that freedom of the media to criticize or report government mistakes has diminished.

→ In January 2018, five media outlets were fined by the Tanzania Communications Regulatory Authority (TCRA) for airing content by LHRC about election of councilors in 43 wards that was deemed ‘offensive and unethical.’ The media outlets are Star TV, Azam Two, East Africa TV, Channel 10 and ITV.

→ During the commemoration of the World Press Freedom Day in May 2018, several media stakeholders expressed concern over declining media freedom in Tanzania, contributed by restrictive laws and harassment from authorities, causing them to operate under fear of sanctions. Due to declining media freedom, Tanzania further dropped in the World Press Freedom Index of 2018.

In June 2018, the East African Court of Justice ruled that Tanzania must annul the publication ban placed on a local weekly newspaper, Mawio, banned in 2016. The Court stated that the Tanzanian Government failed to show sufficient justifiable grounds for the ban, and that the action was unlawful and constituted violation of the right of freedom of expression under the Constitution of Tanzania and regional and international human rights conventions ratified by Tanzania.

In 2018, the Kisutu Resident Magistrate Court acquitted the founder of Jamii Forums, Mexence Melo and shareholder, Micke William of charges relating to obstruction of police investigation under the Cyber Crimes Act of 2015.

1.3. Rights to Equality before the Law and Effective Remedy

In 2018, rights to equality before the law and effective remedy were boosted through action by government and non-government actors to improve access to justice and effective remedy. Action includes: amendment of the Appellate Jurisdiction Act; introduction of Legal Aid Regulations; employing technology to increase access to justice; hiring of judicial servants; implementation of Judiciary policy to reduce backlog of cases; introduction of mobile courts; and construction and renovation of court buildings. However, realization of these rights continues to be hampered by
several challenges, including: corruption in the justice system, violation of rights of accused persons, shortage of resources within the judiciary, and high costs of effective legal representation.

Access to justice continues to be faced with a number of challenges. These include limited access to legal aid, corruption within the justice system, inaccessibility of police stations and courts, high costs of effective legal representation, low awareness of relevant laws and procedures amongst community members, shortage of and uneven distribution of lawyers and advocates and prolonged detention of accused persons. Other factors include threats to lawyers seeking to represent clients, especially criminal suspects; interference with the independence of the Judiciary; Prolonged detention of accused persons and criminal suspects languishing in jail as remandees; existence of unethical lawyers, who take advantage of clients; English language problem for some lawyers and magistrates; shortage of judicial staff; corruption within the judiciary; and inadequate allowance for assessors in Primary Courts. According to the Chief Justice, Prof. Ibrahim Hamis Juma, there is a need of 24,643 judicial staff members, but currently there are only 6,096.

In 2018, rights to fair trial and effective remedy continued to be hampered by limited access to courts and delays in dispensation of justice. Recent estimates show that more than 20 million Tanzanians have no access to the High Court. According to the World Bank, delays and prolonged or unnecessary procedures cost Tanzania an estimated US$464 million a year.

Corruption also continues to play a part in hindering full realization of the rights to fair trial and effective remedy, known to be more prevalent in lower courts, which are more accessible to majority of Tanzanians.

1.4. Right to Liberty and Personal Liberty
In 2018, the right to liberty and personal security was mainly affected by arbitrary arrests, including orders of arbitrary arrest and detention by regional and district commissioners; controversial/suspicious killings; and abductions.
Freedom from Arbitrary Arrest and Detention: Reported incidents of arbitrary arrest and detention documented by LHRC include arrest of a journalist in Dar es Salaam; and arbitrary arrest and detention of a university student-Abdul Nondo. In this year, there were also multiple complaints about police fabrication of cases against innocent civilians. Orders of arbitrary arrest and detention by regional and district commissioners were also an issue of key concern in 2018, with attracted media attention.

Right to Personal Security: Incidents of that threatened or violated right to personal security documented by LHRC include: the killing of a land rights activist, Godfrey Luena, in Morogoro; attack and killing of an opposition political party in Dar es Salaam; abduction of a business mogul in Dar es Salaam; and abduction of a university student. Another key issue is the growing trend of abductions and killings of boboda drivers in different parts of Tanzania Mainland. Incidences such as disappearances of politician Ben Saanane in 2016 and journalist Azory Gwanda in 2017 remained without answers in 2018, as did she shooting incident of Tundu Lissu (MP) in 2017.

Right to Bail: Although guaranteed under the Constitution of the United of Tanzania, right to bail, especially bail granted by police was found to be under threat in 2018. Some police officers were accused of extorting money from individuals under police custody or their relatives as a condition for release on bail. Because of this situation, in 2018 the Minister of Home Affairs issued a warning to police officers to refrain from corrupt behaviour and ordered that bail should be granted by police even during weekends.

1.5. Freedom from Torture
In 2018, incidents of torture documented by LHRC include: torture of a journalist at a sports bonanza in Dar es Salaam; torture of a local businessman in Bunju area in Dar es Salaam; beating of a journalist in Tarime-Mara; and torture of children by parents, teachers and guardians.

1.6. Freedom of Assembly
Freedom of assembly continued to be under severe pressure in 2018, particularly through ban of political assemblies for political parties, unless it
is by a Member of Parliament or other political leader within their respective constituency. Though it has no legal basis, several opposition political leaders were arrested in connection with this; and requests for political rallies are usually denied.

1.7. Freedom of Association
Arbitrary restrictions on freedom of assembly had a severe impact on realization of freedom of association in 2018. As the African Commission on Human and Peoples’ Rights held in the case of *the World Organization against Torture et al v. Zaire*, not permitting opposition parties to meet in public or private and harassing them, amounts to violation of their the right to freedom of association. Proposed amendments to the Political Parties in 2018 also further jeopardized freedom of association for political parties.

A survey of by Twaweza, released in 2018 indicates low public awareness of smaller political parties. According to the survey, most citizens are aware of three major political parties in Tanzania, namely CCM (100%), Chadema (97%) and CUF (83%), while knowing little about other parties. The restrictions in the amendments on Political Parties Act will have more negative impact on these other/smaller parties.

Another key development relating to freedom of association in 2018 was introduction of the Non-Governmental Organizations (Amendments) Regulations, 2018, which contains some positive provisions such as ensuring financial transparency and accountability of NGOs and combating corruption and money laundering. However, the reporting requirements under the Regulations are burdensome and some provisions raise the question of practicability, while other are vague - leaving loopholes for misuse of power, hence harassment and arbitrary interference with the freedom of association.

1.8. Right to Take Part in Governance
Right to take part in governance or participate in the government includes the right to vote and be voted for and the right to participate in political life. **Right to Vote and Be Voted for:** In 2018, LHRC was able to observe and document a number of incidents which threatened the right to vote and be
voted for during by-elections in different parts of Tanzania. Violence erupted at some polling stations, leading to physical harm. There were also some complaints about irregularities, including denial of permits for agents.

Right to Participate in Political Life: **Arbitrary restrictions on participation rights**, namely: **freedom of expression**, **freedom of assembly** and **freedom of association**, greatly affected right to participate in political life in 2018, due they contributed to reduced civic space. Proposed amendments to the Political Parties Act further jeopardized the right to participate in political life in 2018. The Political Parties (Amendment) Act, 2018 contained several problematic provisions, including those essentially criminalizing political activities; granting too much powers to the Registrar; and regulation of political coalitions. A 2018 Twaweza study on citizens’ views on politics in Tanzania shows that majority of Tanzanians are not confident in their representation by their Members of Parliament (MPs). According to study findings, fewer than half of all citizens approve of the performance of their MPs (44%) and councillors (45%) since coming to office.

2. Economic, Social and Cultural Rights

These rights are supposed to be realized progressively, depending on availability of resources. However, the pace of their realization continued to be slow, due to a number of challenges.

2.1. **Right to Property**

This right focuses on land, which is defined to include anything erected above it. While enjoyment of the right to property continued to be particularly a key issue of concern for women, the overall situation of this right was found to have improved in 2018. This is attested by several government action to address land-related problems, including land disputes; launch of the Land Management Programme; and strengthening of the security of tenure.

Affordability of land was also highlighted as key issue for majority of citizens, who are poor, owing to high land prices. Another key issue affecting right to acquire and use land in 2018 was corruption and land grabbing. In September 2018, during his visit in Bunda-Mara Region, Hon. President John P. Magufuli issued a warning against investors who grab land of citizens, instead of following relevant procedures for land acquisition for investment.
This followed complaints by Bunda residents about an investor who took their land without compensating them

2.2. Right to Work
Right to Work includes right to gain living by work and right to just and favourable working conditions. Right to gain living by work continued to be affected by the challenge of unemployment and lack of employability skills among university graduates. Other factors include inadequate wages; restrictions on freedom of association and collective bargaining; poor working environment; low awareness about labour laws, rights and duties. Teachers are among the groups mostly affected by these challenges. For women, sexual violence against them at workplaces re-emerged as a key issue in 2018. It was revealed that solicitation of sex bribe to secure employment or promotion continued to be a common practice in 2018.

Furthermore, right to work in 2018 was threatened by introduction of a new pension pay formula, providing for a 25% instead of the previous 75% lump sum pay for retirees; the burden of Pay as You Earn (PAYE) tax and loan board payments, which contributed to some workers within 58 Local Government Authorities receiving less than one third of their basic salaries; unpaid staff claims; inadequate staff appraisal; and delays in promotion; provision of salaries to ghost workers; shortage of staff, leaving burden to other staff to meet performance expectations; and violation of right to work of domestic workers.

2.3. Right to Education
Introduction of a fee-free education policy by the Government has helped to increase access to education (primary and secondary). However, this has created a problem of acute shortage of classrooms for pupils who have completed and passed primary education. Acute shortage of classrooms in this regard was reported in regions such as Shinyanga and Arusha. Other challenge affecting access and quality of education in 2018 were distance from home to school; lack of /shortage of dormitories; violence against children at school and on their way to and from school; insufficient budget; shortage of toilets and toilet holes; shortage of teachers and learning materials; child pregnancy; and child marriage.
2.4. Right to Health
A number of challenges continued to hinder access to health services in 2018, including distance to health facilities, especially in rural areas, and corruption. Quality of health services is compromised by a number of challenges, including insufficient budget, shortage of beds, harassment of and maltreatment of persons seeking health services, shortage of health workforce and shortage of medicines and medical supplies. Shortages of health facilities were reported in regions such as Kigoma, Mwanza (Ukerewe), Tanga (Muheza) and Shinyanga (Kahama). Access to health services is also hindered by lack of coverage of health insurance for the majority of citizens, as only 30% are covered. In 2018, the Minister responsible for health, Hon. Ummy Mwalimu, mentioned that the Government was planning to expand health insurance coverage to 50% of Tanzanians by 2020.

2.5. Right to Water
Right to water is a key socio-economic rights, that needs to be realized on a daily basis. In 2018, limited access to clean and safe water in some parts of Tanzania Mainland, especially in rural areas, greatly affected women and girls – who are usually forced to walk long distances to fetch water. When the women delay coming back from the water source they are usually accused of cheating by their spouses. For girls, lack of access to water affects them in various ways, including creating an uncomfortable learning environment at school. Challenges related to realization of right to water include budgetary constraints; shortage of experts in the water sector; inability of councils to effectively monitor water project funds; failure to complete water projects on time; non-payment of water bills by government institutions; decline in water resources; underinvestment in water projects by private sector; damage to water infrastructure and destruction of water sources; water leakages/loss; and poor management of water projects.

2.6. Right to Adequate Standard of Living
Right to adequate standard of living includes the right to food and right to shelter/adequate housing. These rights are essential for realization of other human rights. Food security was generally not an issue of major concern in
2018. However, right to shelter/adequate housing continues to be a challenge for many Tanzanians, most of them living in houses which are dilapidated. For the people who faced the unfortunate fate of demolition of their houses in 2017, which caused public outcry, they continued to feel the impact in 2018, affecting their realization of the right to adequate standard of living.

2.7. Right to Culture
Right to culture is one of the fundamental human rights that is freely enjoyed in Tanzania; and 2018 was no different. Tanzanians, including ethnic minorities, were generally free to participate in cultural life and enjoy cultural products and identity. The Government continued to promote the Swahili language. People were also free to practice religion and embrace religious culture.

3. Collective Rights

3.1. Right to Development
This right includes participation in contribution to and enjoyment of economic, social, cultural and political development. Political development stalled in the year 2018, owing to arbitrary restrictions of participation rights, affecting peoples’ participation in political development. Participation rights such as freedom of expression, freedom of assembly and freedom of association were negatively affected by government action and enactment of laws and adoption of regulations which infringe on these fundamental rights. Participation rights such as freedom of expression, freedom of assembly and freedom of association were negatively affected by government action and enactment of laws and adoption of regulations which infringe on these fundamental rights.

Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Introduction of fee-free education policy by the government has definitely paid dividends as there has been increased enrolment in primary education and authorities in different parts of the
country are making efforts to vigorously implement the policy. However, increased enrolment has created a challenge of shortage of classrooms to accommodate pupils who pass the national examinations and ready to join secondary education. Revenue collection by the Government is key for the realization of social rights. The Government needs to enable it to provide basic social services such as food, water, clothing, shelter and healthcare for its people, especially the poorer section of the society. Tax avoidance and evasion in 2018 thus contributed to loss of revenue needed to ensure progressive realisation of social and economic rights.

Despite continued improvement in economic development, the main challenge for Tanzania remains translating such growth into poverty reduction in order to boost human development. Majority of the people still live under or slightly above USD 1 per day.

Counterfeit and substandard products also threatened right to development and other human rights in 2018, as well as consumer rights. A 2017 report on state of counterfeit goods in Tanzania by the Confederation of Tanzania Industries (CTI) indicates that counterfeit products contribute to tax revenue loss of about USD 4 million annually. Presence of these counterfeit and substandard products also causes loss of employment; ill-health; loss of consumer trust; loss of market share; and safety risks.

3.2. Right to Enjoy and Benefit from Natural Resources
Key factors which continued to affect realisation of the right to enjoy and benefit from natural resources in 2018 include: corruption within the mining sector; land grabbing; tax evasion; and lack of access to water resources in some areas.

4. Rights of Special/Vulnerable Groups
Special/vulnerable groups discussed in this report are women, children, persons with disability, elderly and persons living with HIV/AIDS.

4.1. Freedom from Violence
Children were the major victims of violence in 2018, followed by women.
In 2018, the Government continued to take several measures, in collaboration with non-government actor, to address the problem of violence against women (VAW), through implementation of the national Plan of Action to End Violence Against Women and Children 2017/18 – 2021/22. However, the situation of women’s rights continued to be negatively affected by different forms of VAW, which are still prevalent in different parts of Tanzania Mainland.

In the year 2018, LHRC documented various incidents of VAW, particularly in the forms of physical violence, economic violence and sexual violence, including beatings, rape, desertion/neglect, exploitation of labour and marital sodomy. More incidents of physical violence were reported in the media compared to the year 2017, including a husband stabbing to death his wife - was a lecturer at University of Dodoma; and a husband hitting his wife with hard object and killing her in Mkuranga-Pwani Region.

Regarding sexual violence, police data indicate that 1,218 women reportedly raped from January to Jun 2018.

Sexual violence was said to be among the major forms of VAW in half of the regions that were visited by LHRC, namely: Songea, Tabora, Mbeya, Singida and Kilimanjaro.

In Kigoma, LHRC and Twaweza were able to document a series of incidents of rape and attempted rape of women in the region going as far back as 2017. These brutal acts are reportedly conducted by a group calling themselves TELEZA.

One of the acts of sexual violence reportedly widely committed against women in 2018 was their spouses forcing them to engage in anal intercourse (marital sodomy).

Sexual corruption was also identified as a major challenge for women in 2018, especially for young women seeking jobs. Reports of women being asked to sleep with prospective bosses in order to secure employment continue to be widespread, with some agreeing in order to be employed or promoted and others are discouraged and give up on employment altogether. In November 2018, a lecturer at the University of Dar es Salaam, Dr. Vincensia Shule, took to her Twitter account to expose sexual corruption at the
university, shortly after the visit of the President of Tanzania, Hon. Joseph Pombe Magufuli.

→ In 2018, LHRC found economic VAW to be a major problem in six out of the ten regions visited. These are Mbeya, Iringa, Shinyanga, Singida, Ruvuma and Kilimanjaro. In Ruvuma, economic violence was said to be more prevalent in Namtumbo.

→ Reasons for violence against women include witchcraft beliefs, jealousy and revenge; payment of dowry; lack of legal awareness; drunkenness among men; poor educational background; and harmful traditional practices.

Another key development which affected women’s rights, sexual and reproductive rights in particular, was the President’s advice for women to abandon family planning and the Ministry of Health, Community Development, Gender, Elderly and Children in Tanzania announcing ban on airing of all family planning advertisements on radio and television pending further announcement.

Children

→ For the year 2018, LHRC found children’s freedom from violence to be the most violated human right, mainly caused by growing incidence of VAC.

→ Incidents of violence against children increased from 4,728 incidents by mid-2017 to 6,376 incidents by mid-2018.

→ Sexual violence against children, particularly in the forms of rape and sodomy, was a major human rights concern in 2018.

→ Reported child rape incidents increased from 759 incidents in the first six months of 2017 to 2,365 from January to June 2018. Sexual violence was also mentioned as a one of the major violation of children’s rights in all 20 districts of 10 regions that LHRC visited in 2018.

→ LHRC’s media survey revealed that 91% of reported VAC incidents were of sexual violence, while 9% were physical and psychological violence.
→ Child-on-child sexual abuse exists and is becoming a major problem, especially at schools. Reports of existence of such abuse were made in 7 out of 10 regions visited by LHRC.

→ Main perpetrators of sexual violence were identified as neighbours and close relatives. Bodaboda drivers and teachers were mentioned among perpetrators and implicated in several acts of sexual violence against children in 2018.

→ Reports of increased sex crimes against children were made in areas such as Mpwapwa-Dodoma, Chunya-Mbeya, Misungwi-Mwanza, Hai-Kilimanjaro and Tarime-Mara.

→ Factors contributing to VAC in Tanzania Mainland include: lack of proper care and parental guidance; lack of parenthood and child care knowledge amongst parents/guardians, leading to poor upbringing; household poverty, leaving children – especially girls – vulnerable to men who offer them money and food; witchcraft-beliefs; low awareness about child rights; family disintegration, whereby mother leaves father with children or father leaves and mother stays with children but children spend most of the time alone at home; drunkenness among men, and in some few cases women; tendency of parents preferring to settle VAC cases out of court ‘to conceal family shape.’ Other factors are: men abandoning their wives and children to marry other, usually younger, women; poor school environment and long distance to school, leaving children vulnerable, especially to bodaboda drivers; peer pressure, especially for the case of child-on-child sexual abuse; and parents/guardians not spending adequate time with their children.

→ Sexual violence against girls and young women puts them at increased risk of HIV infection. This will hamper Tanzania’s efforts to achieve its 90-90-90 HIV infections reduction target and SDGs.

→ Through media survey, LHRC was able to document 13 incidents of physical and psychological violence against children, but many more incidents were reported to the police and social or community welfare departments across Tanzania Mainland. One of the incidents which dominated the media was that of a 10-year-old child who was severely beaten by her teachers at school in Kilosa-Morogoro Region, such that she had to be admitted to Muhimbili Hospital in
Dar es Salaam. In another incident – which drew a lot of public attention in Tanzania - a standard five pupil at Kibeta Primary School Bukoba-Kagera, Sperious Eradius, was severely beaten to death by his teacher, Respicious Patrick (also known as Mtazangira), on 27th August 2018 at the school.

- Child marriage is still widespread and continues to be a major challenge for girls in Tanzania. LHRC was able to document reports of child marriage in Nkasi-Rukwa, Same-Kilimanjaro, and Serengeti-Mara. Drivers of child marriage include bride price, lack of secondary schools, parental force and female genital mutilation (FGM).

- In 2018, the Regional Commissioner of Tabora, Hon. Aggrey Mwanri, and his team made some commendable efforts to address violence against children and child marriage as well as promoting right to education for girls in the region.

- Child pregnancy was an issue of great concern in 2018. LHRC was able to document over 1000 cases of child pregnancy reported in less than 10 regions.

- High rate of child pregnancy incidents is an indicator of unprotected sex among girls. This puts them at increased risk of HIV infection and might hinder effective realization of achieving zero new infections among girls.

**Elderly**

- In 2018, violence continued to be a key issue affecting the elderly persons in Tanzania Mainland. Violence experienced by the elderly included physical violence in the form of witchcraft-related killings. As discussed in Chapter Two of this report, LHRC documented at least 3 incidents of killings of older persons on witchcraft suspicion. These are: the incident involving a 65-year-old man in Kaliuwa - Tabora; the incident involving a 77-year old man was brutally killed by six people, including his own children, in Gairo-Morogoro; and killing of a 70-year old woman in Ileje-Songwe.

- In his ministry’s budget speech for the financial year 2018/2019, the former Minister of Home Affairs, Hon. Dr. Mwigulu Nchemba (MP) noted that from July 2017 to March 2018, a total of 117 older
people were killed in Tanzania Mainland (91 male, 26 female). Tabora leads with 25 killings, followed by Songwe with 12 and Kagera and Rukwa with 10 killings each.

4.2. **Right to Equality and Non-Discrimination**

→ In 2018, LHRC probed into challenges faced by persons with disabilities which prevent them from fully realizing their right to equality and non-discrimination. Among the key challenges mentioned were: inadequate budget allocated to address issues affecting PWDs; income poverty; inaccessibility of buildings due to lack of ramps; lack of learning tools for PWD children at schools (education not inclusive enough); lack of employment opportunities; and social stigma.

**Key Recommendations**

**Civil and Political Rights**

**State actors**

⇒ Given President Magufuli’s stance on death penalty execution, which is further proof of Tanzania’s state of moratorium, the Government should move to declare the state of moratorium. The Law Reform Commission and the Parliamentary Committee on Constitutional and Legal Affairs should push for legal reforms to outlaw death penalty.

⇒ Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.

⇒ The Judiciary and the Prevention and Combating of Corruption Bureau (PCCB) to closely work together to address corruption within the justice system in order to restore public faith in the system and reduce incidents of mob violence. Addressing judicial corruption will also contribute to safeguarding access to justice.

⇒ The Government, through the Ministry of Constitutional and Legal Affairs, should move table amendments of laws that impose arbitrary restrictions on participation rights, especially freedoms of

⇒ The Ministry of Information, Culture, Arts and Sports should review the Online Content Regulations to remove or amend provisions that do not conform to international standards of freedom of expression.

⇒ Regional and District authorities should refrain from misusing their powers of arrest and detention under the Regional Administration Act of 1997.

⇒ The Police Force should ensure its officers refrain from fabricating cases, conducting arbitrary arrests and arbitrarily detaining suspected criminals instead of sending them to court within a specified period of time (usually 24 hours) as required by the law, in order to uphold the right to liberty. Police officers implicated in this behaviour should be held accountable.

⇒ The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in order to safeguard freedom from torture.

⇒ Government actors and police authorities to refrain from arbitrarily interfering with freedoms of assembly and association;

⇒ The Government should sign and ratify the African Charter on Democracy and Good Governance of 2007 in order to strengthen participation in democratic practices and processes;

⇒ The Officer of the Registrar of Political Parties should move to amend the proposed amendments to the Political Parties Act of 1992, by addressing problematic provisions identified by stakeholders and considering the recommendations given;

⇒ There is need to have in place an independent police oversight body to investigate police misconduct and ensure police officers who do not abide by the law are held accountable.

Non-state actors

⇒ CSOs to intensify and enhance collective effort to raise public awareness on legal procedures and civil and political human rights, as
well as encouraging community members to obey the law and respect human rights of others in order to preserve right to life.

⇒ CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals in order to enhance their knowledge and understanding of human rights as a way of safeguarding right to equality before the law and ensuring access to justice.

**Members of the public**

⇒ To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system where they are not happy with the outcome of a case.

⇒ Members of the public are also encouraged to report violations of their civil and political rights to the Commission for Human Rights and Good Governance, which is the national human rights institution mandated with protection and promotion of human rights;

**Economic, Social and Cultural Rights**

**State actors**

⇒ The Ministry of Lands, Housing and Human Settlements Development, should intensify efforts to address land-related conflicts and disputes and devise long-term solutions to this problem, in order to ensure realization of the right to own property. Land management programmes should be properly and cautiously implemented to guarantee long-term solutions.

⇒ The Prime Minister’s Office Labour, Employment, Youth and People with Disability should ensure the Wage Order is regularly reviewed, in accordance with the law, to ensure realization of the right to work and promote adequate wages.

⇒ The Government, through the Ministry of Lands, Housing and Human Settlements Development and the Ministry of Water and Irrigation, should increase investment in irrigation in order to boost the right to work and economic boost.

⇒ The Prime Minister’s Office Labour, Employment, Youth and People with Disability should strengthen mechanisms for protection of labour rights and enhance regular inspection of workplaces to
ensure rights are respected, protected and promoted, including favourable working environment.

⇒ The Ministry of Education, Science and Technology to work with the Prime Minister's Office Labour, Employment, Youth and People with Disability to address the problem of lack of employability skills among majority of university graduates.

⇒ Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO PSM) in collaboration with Treasury to ensure that funds for settling staff claims are released without further delays to avoid accumulation of debts; and ensure no new staff debts are created without having funds.

⇒ Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted soon after being promoted.

⇒ Government to implement CAG recommendation of management of LGAs to ensure that all the retired, absconded, transferred and dismissed employees are timely and effectively removed from payroll; and taking stringent measures should be taken to ensure total recovery of TZS 207,375,726 used to pay nonexistent employees.

⇒ The Government, through the Ministry of Education and Vocational Training, to address key challenges affecting the education sector, such as poor working environment for teachers and shortage of facilities and learning materials. The Ministry should strive to ensure teacher houses are built and teachers are fairly and timely remunerated.

⇒ The Government, through the Ministry of Constitution and Legal Affairs, should move to make corporate social responsibility (CSR) a legal requirement for all sectors, following the amendments to the Mining Act, which saw CSR mandatory for companies in the mining sector.

⇒ Regarding pregnant girls, LHRC continues to urge the Government to reconsider its stance in order to protect right to education for
girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions.

⇒ LHRC calls upon the Ministry of Education and Vocational Training to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.

⇒ The Government, through the Ministry of Finance and Planning, to increase budgetary allocations for health, education and water sectors in order to improve the access and quality of health, education and water services.

⇒ The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the sector of agriculture and increase investment in irrigation farming in order to boost food production and improve accessibility.

⇒ The Ministry of Lands, Housing and Human Settlements Development to ensure increased access to adequate but affordable housing in line with the Development Vision 2025 and the Sustainable Development Goals.

⇒ The Ministry of Water and Irrigation, should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of money.

Non-state actors

⇒ The private sector should collaborate with the Government to invest in water projects in order to increase access to water services. This could also be done as part of corporate social responsibility.

⇒ The private sector and CSOs should support the Government to address key challenges in its health, education and water sector, such as shortage of health and educational facilities. This includes construction or maintenance of relevant buildings and infrastructure, such as toilets/toilet holes and classrooms.

⇒ CSOs should assist the Government in devising strategies on the best ways to address some key challenges in the education, health, water and housing sectors.
⇒ CSOs should collaborate with the Prime Minister's Office Labour, Employment, Youth and People with Disability to raise awareness about labour laws, rights and duties as well as economic rights.
⇒ Investors, both foreign and local, should follow relevant procedures to acquire land in Tanzania, comply with laws and respect human rights of the people where they operate.

**Members of the public**

⇒ Members of the public are encouraged to seek knowledge and access information about their economic rights, including right to work and right to own property, including popular versions on laws relating to these rights prepared by government and no-government actors.
⇒ Members of the public are also encouraged to report violations of their economic rights to relevant authorities, including trade unions and the Commission on Human Rights and Good Governance.
⇒ Members of the public have a duty to protect infrastructure and refrain from the habit of damaging them, especially water infrastructure. They also have a duty to report incidents of damage to the infrastructure.

**Rights of Vulnerable Groups**

**State actors**

⇒ The Government to spearhead enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues;
⇒ Regional and district authorities should work closely with the Police Force to address the problem of violence against women and children in their respective regions and districts.
⇒ The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.
⇒ The Government to improve gender parity and promote gender equality in leadership and decision-making positions in order to increase female representation.

⇒ The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action to amend the Law of Marriage Act 1971.

⇒ The Police Force and Judiciary to increase the pace of investigation and prosecution of cases of violence against children in order to achieve justice for children.

⇒ The Ministry responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities should ensure increased jobs and employment opportunities for PWDs;

⇒ The Government, through the Ministry of Home Affairs, should enhance protection of the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.

⇒ The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy.

⇒ The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, should move to implement the Convention on the Rights of the Child in line with the General Comment No. 21 on Children in Street Situations, prepared by the UN Committee on the Rights of the Child, in order to safeguard rights of street children.

Non-state actors

⇒ CSOs should collaborate with the Government to ensure effective implementation of the Convention on the Rights of the Child in order to safeguard rights of all children, including street children and children with disabilities.

⇒ CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.
Members of the public

⇒ Community members to perform their duties of protecting and safeguarding children’s rights refraining from conducting acts of abuse to children.

⇒ Community members should refrain from discriminating all children, including street children and children with disabilities.

⇒ Community members to refrain from protecting perpetrators of violence against children simply because they need ‘to conceal family shame.’

⇒ Women and children are encouraged to come forward and report acts of violence against them in order to receive relevant assistance, including legal and health services. They are also encouraged to cooperate with the Prosecution and social welfare, including testifying in court, in order to ensure perpetrators of violence are held accountable and justice is achieved.
Chapter 1: Contextual Overview

1.1. Historical Overview

By 10\textsuperscript{th} Century, Tanganyika (now known as Tanzania Mainland), had interacted with other parts of the world. The Bantu-speaking people of Tanganyika were then living with traders from Asia and the Arab world, before the Portuguese came in the 15\textsuperscript{th} Century. In 1880s there was scramble for and partition of Africa in Berlin, Germany. Following this scramble and partition, Tanganyika was placed under the German colonial rule in 1885, but was later taken over by the British after the First World War. After the Second World War, Tanganyika was declared by the United Nations as a trust territory, with the British maintaining control until 1961 when Tanganyika gained its independence. It was the British who named the territory Tanganyika in 1920. It was during the interaction between the natives of Tanganyika (especially along the coast) and Zanzibar with the Arab traders who settled among the natives of the coast that the Swahili culture was developed. Slave trade, to cater for workers in Sultan’s plantations in Zanzibar and labour in Europe and America, was prevalent during the reigns and presence of the Arabs and the Portuguese, most notably the East African Long Distance Trade.

The German colonial rule, which blatantly disregarded human rights of the natives, was met with stiff resistance, leading to uprisings, most notably from the chiefdoms under Chief Mirambo of the Nyamwezi Tribe, Chief Mkwawa of the Hehe, Mangi Meli of the Chagga and Abushiri of Pangani. In 1905, the German colonial administration faced another uprising, popularly known as the Majimaji Uprising, led by a traditional and spiritual leader called Kinjekitile Ngwale. The uprising involved different tribes in southern and eastern Tanganyika. It was believed that Kinjekitile Ngwale could turn bullets into water, hence the phrase “Majimaji Uprising” (\textit{maji} is a Swahili word meaning water). The British did not fare much better in terms of protection and respect of human rights of the natives, hence the struggle for independence began, seeking to realize the right to self-determination.

Struggle for independence was led by the Tanganyika African National Union (TANU) party, born in 1954; and formerly known as Tanganyika African Association (TAA), established in 1929. The struggle intensified in
1950s and during this time there were other parties, such as the United Tanganyika Party (UTP) and the African National Congress (ANC). TANU’s Julius Kambarage Nyerere, who became the father of the nation, peacefully led Tanganyika to independence in 1961, with Nyerere as its first Prime Minister and the Independence Constitution adopted as first constitution. The Governor General was still representing the Queen of England as Head of State until 1962 when Tanganyika became a republic and Nyerere its first president. The second constitution, the Republican Constitution, was adopted, making the President the head of state, head of government, commander in chief of the army and part of parliament, without whose assent a bill could not become law. In 1964, Tanganyika merged with the neighbouring Zanzibar to form Tanzania. Zanzibar had gained its independence from Britain in 1963 and overthrown the Sultan of Zanzibar (from Oman) in January 1964. The third constitution, the Union Constitution, was born, establishing a two-government union led by TANU in Tanzania Mainland (Tanganyika) and Afro-Shirazi Party (ASP) in Zanzibar. In 1965, the Interim Constitution was adopted, bringing an end to multipartism and declaring TANU as the sole political party in Tanzania Mainland and ASP for Zanzibar. The Constitution was enacted by an ordinary Act of Parliament, contrary to principles of constitutionalism and people participation. In 1977, TANU and ASP merged to form Chama cha Mapinduzi (CCM), which proposed and enacted the Permanent Constitution, which we still use to date, the Constitution of the United Republic of Tanzania 1977. Tanzania remained a one-party state until 1992 when multi-party political system was re-introduced through constitutional amendments.

Like many African States, post-colonial Tanzania did not prioritize human rights, seeing them as ‘delaying’ economic development. Process of economic development was considered to be one that did not necessarily promote or respect human rights. But the constitutional amendments of 1984, which saw incorporation of the Bill of Human Rights into the Constitution of Tanzania, gave a new hope of human right-based approach to development and increased protection of human rights in Tanzania. This was a remarkable achievement, a long struggle demanding for its inclusion.
1.2. Geography and Population
Tanzania is located in Eastern part of Africa between longitudes 29° and 41° East, and Latitude 1° and 12° South. Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys. Tanzania is home to Mount Kilimanjaro, the highest free standing mountain in the world and the highest mountain in Africa (referred as the roof of Africa). It is also blessed with availability of beautiful national parks and game reserves that are the most tourists’ attractions. Plenty of animals and different types of birds are said to be found in the parks.

Tanzania has more than 15 national parks, including Ruaha National Park, Serengeti National Park, Katavi National Park, Mikumi National Park, Saadani National Park and Lake Manyara National Park. It is also blessed with several natural water sources. On the Western part there is Lake Tanganyika (the deepest lake in Africa), bordering Zambia, Democratic Republic of Congo (DRC) and Burundi; while Lake Victoria (the largest lake in Africa and the source of the Great Nile River) lies in the northern part of the country, bordering Uganda and Kenya. In the West South lies Lake Nyasa, bordering Zambia, Malawi and Mozambique. There are also plenty of rivers running across the country including the major rivers Rufiji, Ruvuma, Malagarasi, Kagera, Pangani, Wami, Ruvu, Ruaha, Kilombero and Mara.

The Indian Ocean forms the Eastern border of the country with four major ports of Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbegani area). These ports have been vital in boosting the country’s economic growth as well as those of the landlocked neighbouring countries which depend on Tanzania for exportation and importation of goods. In 2016, Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga Port. The pipeline will be vital in transporting oil form from landlocked Uganda to overseas through the Tanga port. Tanzania is also planning to construct a standard gauge railway.

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2 These countries include Uganda, Rwanda, Burundi, DRC, Zambia and Malawi.
line which will connect the landlocked neighbouring countries of Uganda, Rwanda, Burundi and the Democratic Republic of Congo.\(^4\)

Tanzania has a tropical climatic condition with the highland temperatures ranging between 10\(^\circ\)C to 20\(^\circ\)C during the cold and hot seasons respectively. The temperature around the rest of the country does not fall below 20\(^\circ\)C. Normally, it is hot around the months of October to February especially in the coastal regions of Dar es Salaam, Pwani, Tanga, Lindi and Mtwar. Cooler temperature is experienced between the months of May and August, particularly in the highlands areas where temperatures may fall below 10\(^\circ\)C.

Rainfall distribution is divided into unimodal and bimodal areas.\(^5\) The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.\(^6\) The bi-modal regions experience short rainfall (vuli) in the months of October to December and heavy rainfall season starts around the end of March to early June.\(^7\) Unimodal regions experience heavy rainfall around November to April. Therefore, due to availability of sufficient rainfall, food security and availability have been satisfactory in recent years. Food crops produced in Tanzania are sold to the neighbouring countries as the internal market cannot absorb all available food crops.

The country’s climatic condition further attracts generation of alternative energy such as solar energy and wind energy. There is reliable sunshine and speed wind that can generate energy throughout the year. For instance, wind resource is encouraging energy generation throughout the Rift Valley,


\(^5\) See [www.meteo.go.tz](http://www.meteo.go.tz), accessed on 10\(^\text{th}\) December, 2017.

\(^6\) Unimodal areas include the following localities: Western regions (Rukwa, Katavi, Tabora and Kigoma); Central regions (Dodoma and Singida); Southern highlands (Mbeya, Iringa, Njombe and Southern Morogoro); and Southern regions and Southern Coast regions (Ruvuma, Mtwar and Lindi). The bi-modal areas include the following: Lake Victoria basin (Kagera, Mara, Mwanza, Geita, Simiyu and Shinyanga); Northern coast and hinterlands (Dar es Salaam, Tanga, Coast, Extreme Northern Morogoro areas, and isles of Unguja and Pemba); and North-eastern highlands (Kilimanjaro, Arusha and Manyara).

\(^7\) Ibid.
in the highland plains and along the coast of the Indian Ocean.\textsuperscript{8} However, there is minimum investment conducted in these areas to further tourism, agriculture and semi-processing industries especially in much needed rural Tanzania.

Further, Tanzania is endowed with abundant natural resources (living and non-living), with minerals such as Tanzanite, Gold, Diamond, Copper and Iron are found in abundant. Large reserves of natural gas have been discovered in southern regions of Mtwara and Lindi. It is estimated that there is a reserve of 1 trillion Cubic metres of natural gas in coastal regions.\textsuperscript{9}

**The Population** of the country is rapidly growing, at the rate of 2.7 per annum. Estimation of the population according to the National Population and Housing Census of 2012 is 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, whereupon women making the majority at 51.3% and male at 48.7%.\textsuperscript{10} In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.\textsuperscript{11} Majority of the country’s population resides in rural areas, where the number of households found is high compared to urban areas. The number of households in rural areas is 6,192,303, which is equivalent to 66.6 percent of the total number of households, and that in urban areas is 3,098,792 households, which is only 33.4 percent. The average household is occupied by 4.7 persons.

There are estimated 662,287 non-citizens living and working in Tanzania.\textsuperscript{12} The number has grown as a result of an increased foreign direct

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\textsuperscript{9} United Republic of Tanzania, *The National Natural Gas Policy of Tanzania 2013*, p. 2.

\textsuperscript{10} URT 2012, *the National Population and Housing Census*.


\textsuperscript{12} Ibid.
investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) is estimated at 421,456.\(^\text{13}\)

The country’s literacy rate is 71 percent, which suggests that education has improved in terms of provision and accessibility in line with the Millennium Development Goals (MDG) on education and the Development Vision 2025. The country has attained gross enrolment in Primary Schools, 94.6 percent, whereby the number of girls enrolled in primary schools has vastly increased compared to the situation in early 1960s up to 1990s.

1.3. Economic Situation

The Gross Domestic Product (GDP) in Tanzania has expanded to 6.80% in the third quarter of 2018 over the same quarter of the previous year. Annually, GDP annual growth rate in Tanzania is averaged at 6.76% from 2012 up to 2018, reaching an all-time high of 11.90% within the first quarter of 2007 and has recorded a low percentage of 2.60 in the third quarter of 2009.\(^\text{14}\) Services sector account for 40% of GDP, while primary sector accounts for 30% of GDP.

\[\text{Figure 1: GDP annual growth rate}\]

\(^{13}\) Ibid.

\(^{14}\) See Tanzania GDP Annual Growth Rate available at https://tradingeconomics.com/tanzania/gdp-growth-annual, accessed on 10\(^{th}\) March, 2019
Economic growth in Tanzania is affected by both internal and external factors. Internal factors include inadequate funds; land ownership conflicts; inadequate participation of the private sector; high rate of population growth; environmental degradation and climate change. External factors that were mentioned to be the reason behind deterioration of the economy and the GDP included regional and global economic and political shocks; natural calamities and spatial politics that can breed wars and conflicts.15

1.4. Political and Governance Systems

Political Background

Governance System
The Tanzanian governing structure comprises of the Executive, the Legislature and the Judiciary, established under Article 4 of the Constitution of the United Republic of Tanzania of 1977.

The Executive
The Executive arm of the state is composed of the President, who is the Head of State, Head of Government and the Commander in Chief of the Armed Forces and the cabinet.16 The Government of the United Republic of Tanzania is in charge of all union matters and all matters of Tanzania Mainland.17 The Cabinet includes the Vice-President, the Prime Minister, the President of Zanzibar and all ministers. The Vice-President assists the President with all union matters. Zanzibar has a semi-autonomous government that has the power over non-union matters in the Isles. Details on Zanzibar are provided in Part Two of this report.


17 Ibid, Article 34.
The Legislature
The Parliament of the United Republic of Tanzania consists of two parts; the President and the National Assembly. The National Assembly consists of Members of Parliament (MPs). The President as part of the Parliament performs his authority for that purpose as vested by the Constitution of the United Republic of Tanzania. The National Assembly is the principle organ of the United Republic with the authority to oversee and advise the Government and all its institutions/agencies in discharging their respective duties or responsibilities.

The Parliament is vested with legislative powers in relation to all Union Matters and also in relation to all other matters concerning Mainland Tanzania. Legislative powers on matters which are not Union Matters are vested in the House of Representative (please refer to Part Two of this report for detailed information on Zanzibar). The laws passed by the National Assembly shall apply also in Zanzibar if they address specifically-designated union matters and have been presented to the Zanzibar House of Representatives by the responsible minister.18

The majority of MPs are elected members from their constituencies.19 Other members are of the special seat category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.20 The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.21 The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.22 The term of office for members of Parliament is five (5) years.

The Zanzibar House of Representatives has jurisdiction over all non-union matters, that is, matters that do not pertain to foreign affairs, citizenship, higher education, and other matters set out by the Constitution as under

18 Ibid, Article 64; and Article 132 (1) and (2) of the Constitution of the Revolutionary Government of Zanzibar 1984.
19 Article 68(1) (a) of the Constitution of the United Republic of Tanzania 1977.
20 Ibid, Article 68 (1) (b).
21 Ibid, Article 68(1) (c).
22 Ibid. Article 68(1) (d).
the power of the entire Union. The House has powers to enact laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and House of Representatives is also five (5) years. The relationship between Zanzibar and the Mainland Tanzania is a relatively unique system of government. More information about Zanzibar can be found in Part Two of this report.

The Judiciary
The Judiciary is a constitutional organ and an arm of the State. The Judiciary is the authority with final decision in dispensation of justice in the United Republic of Tanzania. Tanzania’s legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law. The judicial hierarchy in Tanzania Mainland (in descending order) consists of the following courts: the Court of Appeal, which is the highest court in the country; the High Court of Tanzania; Resident Magistrates Courts; District Courts; and Primary Courts. The adjudicators in the Court of Appeal and High Court are Judges while in other courts are magistrates.

Judges are appointed by the President, in consultation with the Judicial Service Commission of Tanzania. Magistrates are appointed directly by the Commission. The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016, the Economic and Organised Crime Control Act of 1984 was amended to establish the Economic, Corruption and Organised Crime Court (Mahakama ya Mafisadi).

23 The House of Representatives is established under Section 63 and 64 of the Constitution of Zanzibar of 1984. It consists of: elected members from the Constituents; nominated members by the President of Zanzibar, female members (special seats 30% of all elected members) appointed by political parties and represented in the House of Representatives, Regional Commissioners; and the Attorney General of Zanzibar. The matters that are considered to be union matters are set out in the Constitution of the United Republic of Tanzania, 1977 at the 1st Schedule.
27 Ibid, Article 113(1).
28 Section 3 of the Economic and Organized Crimes Act.
Tanzania also has a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.\textsuperscript{29} There is also a special Constitutional Court, which is an \textit{ad hoc} court with a sole function of interpretation of the \textit{Constitution of the United Republic of Tanzania}, 1977 over dispute between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.\textsuperscript{30} The Constitutional Court is composed of members, half of which appointed by the Government of the United Republic of Tanzania and the other half by the Revolutionary Government of Zanzibar. Tribunals have also been established under various laws to adjudicate on other matters, including labour, taxes and land issues.\textsuperscript{31}

Zanzibar has its own judicial system consisting of (in descending order): the Court of Appeal of Tanzania; the High Court of Zanzibar; Regional and District Magistrate Courts; Primary Courts; Kadhi Appeal Courts; and Kadhi Courts. These courts have jurisdiction over cases arising in Zanzibar that involve non-union matters.\textsuperscript{32} The High Court of Zanzibar is the highest court for matters originating from Kadhi Courts and the interpretation of the Constitution of Zanzibar. However, the appeal process for a case originating from a magistrate court is slightly different, as some of the cases may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

\textsuperscript{29} Court Martial, including general court martial, disciplinary court martial and standing court martial, are governed by the provisions of the \textit{National Defence Act}, Cap. 192, [R.E. 2002].

\textsuperscript{30} Article 125 and 126 of the Constitution of the United Republic of Tanzania, 1977.

\textsuperscript{31} Labour Institutions Act 2004 provides for establishment of institutions to adjudicate labour disputes in Tanzania. The Tax Revenue Appeals Act, Cap 408 of [R.E 2006] provides for establishment of Tax Revenue Appeals Board and the Tax Revenue Tribunal to adjudicate tax issues. Land matters are adjudicated by tribunals established under the Court (Land Disputes Settlements) Act, 2002.

\textsuperscript{32} There are 22 union matters. The Court of Appeal is one of the union matters listed in the First Schedule of the Constitution of Tanzania 1977. Other union matters include foreign affairs, security, police, citizenship, immigration, foreign trade, higher education, aviation and statistics.
Chapter 2: Civil Rights

Introduction
Civil rights belong to the first generation of human rights, which is civil and political rights, as documented in the International Covenant on Civil and Political Rights (ICCPR) of 1966. Other than the ICCPR, these rights originated from the Universal Declaration of Human Rights (UDHR) of 1948; and are guaranteed at continental and regional levels under the African Charter on Human and Peoples’ Rights (ACHPR) of 1981, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (popularly known as the Maputo Protocol) of 2003, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990 and SADC Protocol on Gender and Development of 2008. At domestic level, civil rights are provided for in the Constitution of the United Republic of Tanzania since 1984, following incorporation of the bill of rights into the constitution. These rights constitute the most fundamental human rights. This chapter focuses on six key civil rights, namely: Right to Life; Freedom of Expression; Rights to Equality before the Law and Effective Remedy; Right to Liberty and Personal Security; and Freedom from Torture.

2.1. Right to Life
Right to life is fundamental for enjoyment of other human rights, which is why it is the most important human right and guaranteed and protected in all major human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) of 1966, Convention on the Rights of Persons with Disabilities (CRPD) of 2006, Convention on the Rights of the Child (CRC) of 1989, the African Charter on Human and Peoples’ Rights (ACHPR) of 1981, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) of

Every person has the right to live and to the protection of his life by the society in accordance with the law.

**Article 14 of Tanzania Constitution of 1977**
2003, and SADC Protocol on Gender and Development of 2008. This right is also contained in the Universal Declaration of Human Rights (UDHR) of 1948. Domestically, right to life is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977.

In 2018, the overall situation of right to life slightly improved compared to that of 2017. This report focuses on mob violence, extrajudicial killings, violence against law enforcement officers, witchcraft-related killings, violence against PWAs, death penalty and road accidents as key issues affecting right to life in 2018.

However, being the most fundamental human right, violations of other rights usually also threaten right to life, given the interrelation and indivisible nature of human rights. For the year 2018, other incidents/actions that threatened right to life included: violations of consumer rights through selling of counterfeit and substandard products; abductions and killings; acts of violence, including sexual and physical violence; killing of police officers in Kigoma; and non-realization of social and economic rights.

2.1.1. Mob Violence

Mob violence continued to be an issue of human rights concern, as the rate of mob violence is still high. For instance, an average of 65 people was killed each month across Tanzania Mainland due to mob violence in the period of January to June 2018. Incidents of mob violence are more prevalent in urban areas. The figure below shows the number of reported incidents of mob violence recorded by the police from 2014 to 2018.

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33 See Article 6 of ICCPR; Article 10 of CRPD; Article 6(1) of CRC; Article 4 of ACHPR; Article 5(1) of ACRWC; Article 4(1) of Maputo Protocol; Article 4(2) of the SADC Protocol on Gender and Development.
34 Article 3 of UDHR.
**Figure 2: # Mob violence killings, 2014-2018**

*Source: Tanzania Police Force Data*

The table below shows some of the incidents of killings resulting from mob violence recorded by LHRC for the period of January to December 2018.

**Table 1: Incidents of mob violence recorded by LHRC from January to December 2018**

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mtwarra</strong>: A man in Lipwindi Village was killed and torched by an angry mob after attacking and killing a child of a woman who had refused his sexual advances.</td>
<td><em>Nipashe Newspaper</em></td>
<td>8 Feb 2018</td>
</tr>
<tr>
<td><strong>Geita</strong>: A man known by the name Eric, resident of Buhulahula Village, was attacked and killed by an angry mob, accusing him of breaking into a shop and stealing Tshs. 20,000.</td>
<td><em>LHRC Human Rights Monitoring Unit</em></td>
<td>12 Mar 2018</td>
</tr>
<tr>
<td><strong>Tabora</strong>: Three people were held by police in December 2018 for their alleged involvement in killing of one person by angry mob, after he had broken into a teacher’s house.</td>
<td><em>Mwananchi Newspaper</em></td>
<td>29 Dec 2018</td>
</tr>
<tr>
<td><strong>Ikungi, Singida</strong>: A man, Joseph Wilbrod, was killed by an angry mob of neighbours in Kinku Village after stabbing his wife to death.</td>
<td><em>LHRC Human Rights Monitoring Unit</em></td>
<td>25 Aug 2018</td>
</tr>
</tbody>
</table>
It is LHRC’s view that mob violence is mainly caused by lack of faith in the justice system, which is still significantly tainted by corruption. In some cases, however, ignorance of the law fuels mob violence – especially when a populace is not aware of legal procedures such as bail. During an interview with LHRC, the Regional Administrative Secretary of Dodoma CC, Mr. Kessy Maduka, mentioned that delays in the justice system also make people lose faith and decide to take matters into their own hands. He added that police play their part in encouraging mob violence; and that in some cases fellow criminals participate in killing one of their own so that they do not expose them.

2.1.2. Extrajudicial Killings and Violence against Law Enforcement Officers

Tanzania is obligated under regional, continental and international human rights treaties to safeguard the lives of its citizens as well as foreigners, doing so through its law enforcement and security officials. The United Nations Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the
extent required for the performance of their duty. In other words, use of force must be proportionate to the objective intended and use of firearms should be limited to when a suspect is armed and there is possibility of the lives of others being in jeopardy. When law enforcement officials do not observe this principle of proportionality and people die, they commit extrajudicial killings.

In 2018, LHRC was able to record five incidents of extrajudicial killings. These include the death of a university student, Akwilina Akwilini, in Dar es Salaam, purported to be extrajudicial killing. The former student of the National Institute of Transport (NIT) was shot while in public transport after police fired at members/protestors of the major opposition party, CHADEMA, in an effort to disperse them. The Police Force, however, insisted that the police officers acted in self-defense because the protestors were throwing stones, although it was later reported that six police officers were investigated over the incident.

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Mara:</strong> Suguta Chacha (27), was reportedly killed while under police custody in Mara Region. The incident took place in April 2018; and it was reported that the victim was stabbed with a knife by a police officer identified as William Marwa.</td>
<td>LHRC Human Rights Monitoring Unit</td>
<td>28 April 2018</td>
</tr>
<tr>
<td><strong>Mbeya:</strong> A fruit vendor, Allen Mapunda (20), reportedly died a few hours after he was released from police custody. The family members accused the police of torturing him, leading to his death, but the Regional Police Commander insisted he was not killed. The Regional Commissioner ordered the RPC to</td>
<td>LHRC Human Rights Monitoring Unit</td>
<td>19 April 2018</td>
</tr>
</tbody>
</table>

investigate the matter and bring him the report. There were also calls for prompt investigation in Parliament, with the Nzega Constituency MP (CCM), Hon. Hussein Bashe, calling for the Prime Minister’s Office to form an independent inquiry body to investigate such incidents.

**Korogwe, Tanga:** In April 2018, Tanzania Prisons Services (TPS) announced that it had suspended 11 prison officers who were accused of killing a resident of Kirengo Village, Aloyce Makalla (41). The prison officers reportedly went to the late Aloyce’s house and accused him of injuring their fellow officer before attacking and killing him in January 2018.

**Igunga, Tabora:** Jumapili Juma, a father of Selemani Jumapili (22), accused nine police officers of beating his son and causing his death after they had arrested him for allegedly opening business before the required time. He made the accusations during the burial ceremony, which was attended by the Tabora Regional Commissioner.

<table>
<thead>
<tr>
<th>Location</th>
<th>Incident Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
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<td>HABARILEO Newspaper</td>
<td>3 Sep 2018</td>
</tr>
</tbody>
</table>
In February 2018, the Deputy Minister of Home Affairs mentioned, when asked in Parliament, that 105 police officers had faced disciplinary action, including termination, for different reasons, including taking the law into their own hands by torturing/beating suspects while in custody. LHRC commends action taken to ensure law enforcement officials who commit extra-judicial killings are held accountable in accordance with the law.

Nevertheless, LHRC is very concerned with these incidents, which indicate excessive use of force by police officers while apprehending criminal suspects. Law enforcement officers are expected to be models for other members of the public in abiding by the law, not being the first to break them. Tanzania has an obligation to ensure that people who are under police custody are not subjected to torture or inhuman or degrading treatment.

On the other hand, law enforcement officers are known to have experienced violence in the past five years, sometimes resulting into death, over the past few years, including the 2017 killings in Kibiti-Pwani Region. For the year 2018, LHRC was able to document one incident of violence against law enforcement officers, reported in Uvinza District, Kigoma Region. In this incident, Inspector Ramadhani Mbini, and another police officer, were killed by civilians when conducting an operation to remove
pastoralists in Mpeta Village, Uvinza District. This incident was met with wide condemnation, including by LHRC, calling for greater protection of law enforcement officials when conducting dangerous operations.

### 2.1.3. Witchcraft-related Killings and Violence against PWAs

Witchcraft-related killings are killings motivated by beliefs in witchcraft. Such killings continued to be among major threat to right to life in the year 2018, although statistics show a slight decrease in reported incidents. 106 incidents were reported in the first half of 2018.

![Graph showing reported incidents of witchcraft-related killings, 2014-2018](image)

**Figure 3:** # Witchcraft-related killings in Tanzania Mainland, 2014-2018  
*Source: Police data, 2014-2018*

LHRC was able to document incidents of witchcraft-related killings reported in regions such as Tabora, Geita, Morogoro, Songwe, Rukwa, Mwanza, Ruvuma and Shinyanga. The table below shows the incidents of witchcraft-related killings recorded by LHRC in the period of January to December 2018.

**Table 3: Reported incidents of witchcraft-related killings documented by LHRC**

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kaliuwa, Tabora:</td>
<td>HabariLeo</td>
<td>23 Mar 2018</td>
</tr>
<tr>
<td>Ndilu Mbogashi (65)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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36 See HABARILEO Newspaper, 23rd October 2018.

37 LHRC could not obtain the Police Force the number of incidents by December 2018.
A resident of Taba Village in Kaliuwa District, was reportedly killed by an angry mob over witchcraft-suspicion in March 2018. It was reported that a woman, Amina Lufungulu (49), who was sick went to a witch-doctor – who pointed a finger at the late Ndiliu Mbogashi.

**Nyangw’ale, Geita:** A woman in Bukulu Village in Nyangw’ale District was reported to have strangled to death her 6-year-old son, claiming he disguised himself as an old woman during prayers.

**Gairo, Morogoro:** A 77-year old man was brutally killed by six people, including his 3 children, who accused him of bewitching their mother and causing her to be sick and paralyze.

**Shinyanga:** A man named Fikiri Charles (30), resident of Mwadui-Kahama, reportedly confessed to killing 6 women, stating that he inherited the ‘business of killing women’ from his late father, inspired by witchcraft beliefs; and that he is usually paid Tshs. 700,000 or 800,000 for each kill.

**Kishapu-Shinyanga:** Two older persons were reportedly killed in Itilima Village on witchcraft suspicion.

**Ileje, Songwe:** Namanga Mwambene (70), resident of Itumba Village, was beheaded by unknown assailants, who left with her head. The incident was connected to witchcraft beliefs.

**Nkasi, Rukwa:** Three people were arrested by police, accused of attacking and killing six people in Kate Village on witchcraft suspicion. The three suspects were killed by police after attempting to escape police custody enroute to show the police other people who participated in the murders.

**Misungwi-Mwanza:** More than 20 incidents of attacks and killings of the elderly were reported in the district in 2018, motivated by witchcraft beliefs.
beliefs to maximize gains in mining activities.

**Namtumbo, Ruvuma:** In September 2018, an older woman was attacked and raped while in shamba (farm), an act that was motivated by witchcraft beliefs.

On the other hand, efforts by government and non-government actors, led and coordinated by the Commission for Human Rights and Good Governance (CHRAGG) have significantly contributed to decrease in incidents of violence against persons with albinism (PWAs) in recent years. No killings of PWAs have been reported since 2015, but several attacks and attempted abductions were reported in 2017.\(^{38}\) For the year 2018, LHRC recorded one incident of violence against PWAs, which was reported in Singida, whereby unknown people who had visited from Dar es Salaam plotted to kill the man at a traditional liquor bar.

While decrease in incidents of violence against PWAs is good and comforting news, LHRC is concerned with the upcoming elections in Tanzania of 2019 and 2020 as history shows that such incidents increase during election periods. Caution must thus be taken by government and non-government actors to ensure increased protection of PWAs during this period ahead of the upcoming elections. Reported incidents of attempted abductions and attacks for their body parts in 2017, has left PWAs in fear of fully participating in social, economic and political activities.

### 2.1.4. Death Penalty

Death penalty threatens right to life, the most fundamental human right protected under the Constitution of the United Republic of Tanzania of 1977\(^ {39}\), regional human rights instruments\(^ {40}\), and international human rights instruments.\(^ {41}\) Although Tanzania contains death penalty in its criminal law, the last time such sentence was executed was more than 20 years ago,

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\(^{39}\) Constitution of Tanzania, Article 14.

\(^{40}\) Such as the African Charter on Human and Peoples’ Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC).

\(^{41}\) Including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).
hence Tanzania being recognized as an abolitionist state and considered to
be in a state of moratorium. In April 2017, the Parliamentary Constitutional
and Legal Affairs Committee urged the Government to consider community
death sentences to life in prison after a certain period of time. In October
2017, Hon. President John Pombe Magufuli declared that he would not sign
any death warrant to order execution of death row inmates. These are
positive developments in terms of Tanzania joining worldwide movement to
abolish death penalty.

Currently, there are over 480 death row inmates, majority of them (over
90%) are male. Amnesty International, an international human rights
organization, tracks death sentences imposed across the world. Its 2017
report on death sentences and executions around the world released in
2018 indicates a noticeable decrease in death sentences issues in Tanzania
for the year 2017, with more than 5 such sentences imposed.\textsuperscript{42} However,
through media survey, LHRC recorded 15 people who received death
sentences in 2017. As for 2018, LHRC has recorded five (5) incidents of
death sentence, as depicted in the table below.

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moshi: High Court of Tanzania sentenced 5 people to death in connection with killing of a business mogul, the late Erasto Msuya.</td>
<td>Mwananchi Newspaper</td>
<td>23 Jul 2018</td>
</tr>
</tbody>
</table>

\textbf{2.1.5. Road Accidents}

Efforts by the Police Force of Tanzania saw road accidents and fatalities
decrease in 2017, with much fewer accidents and resulting deaths recorded.
In the year 2018, road accidents recorded by the police by June were 2,220,
which are 870 less than those reported in the first half of 2017. Resulting
deaths also decreased by 257. By June 2018, the police force had recorded
2,220 accidents and 1,051 deaths. In December 2018, it was reported in the

\textsuperscript{42} See Amnesty International (2018), DEATH SENTENCES AND EXECUTIONS 2017,
Amnesty International Global Report, at
https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF, accessed
29\textsuperscript{th} January 2019.
media that a total of 3,419 accidents occurred from January to October 2018, which is 1,654 less than those reported during the same period in 2017. Deaths resulting from such accidents also reduced from 2,250 to 1,661. The figure below shows the status of road accidents from 2016 to June 2018.

![Figure 4: Road accidents and resulting deaths, 2016-2018](image)

Negligence/reckless driving continues to be a key factor contributing to road accidents. In some areas, poor road infrastructure also contributes to road accidents. LHRC commends the Police Force for making efforts to reduce road accidents and ensure those responsible for reckless driving are held accountable. Nevertheless, the rate of accidents is still high, despite significant decrease, thus need for more coordinated efforts to address such accidents and preserve human lives.

2.2. Freedom of Expression

Freedom of expression is guaranteed and protected under all major human rights instruments, particularly the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the African Charter on Human and Peoples’ Rights

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44 Ibid.
(ACHPR) of 1981. Tanzania has ratified ICCPR and ACHPR), thus bound by them; and is bound to protect rights which constitute customary international law under the UDHR. This right is defined as freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice. Domestically, it is guaranteed and protected under the Constitution of United Republic of Tanzania of 1977.

Freedom of expression is one of the participation rights - rights essential for enjoyment of the right to participate in governance - others being freedom of assembly and freedom of association. According to the Human Rights Committee, this right ‘is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.’

Freedom of expression includes press/media freedom, right to information and freedom of opinion. This freedom may only be curtailed if restrictions are provided by law and necessary for “respect of the rights or reputation of others” and “for protection of national security or of public order (ordre public), or of public health or morals.” If restrictions do not pass these tests then they are considered to be arbitrary.

In 2018, situation of freedom of expression continued to deteriorate, owing to continued restrictions, which have had a negative impact on civil society, human rights activists, opposition political parties, media and the community at large. These restrictions have been a major factor behind reduced civic space in Tanzania Mainland.

2.2.1. Media Freedom

In the year 2018, LHRC was able to document four incidents/developments which constitute restrictions to media or threaten such freedom. These

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45 Article 19 of UDHR and Article 19(2) of ICCPR.
include introduction of new online content regulations, harassment and threats to journalists, harassment of and threats to journalists, and introduction of amendments to the Statistics Act of 2015.

**New online content regulations: A threat to media freedom, freedom of opinion and right to information**

In March 2018, the Electronic and Postal Communications (Online Content) Regulations 2017 were signed into law, introducing new legal requirements for bloggers, internet users and online media that, to a large extent, threaten freedom of expression. The regulations were signed into law despite objections and criticism from various stakeholders, including the media community and civil society.

**Overview of the regulations**

The Electronic and Postal Communications (Online Content) Regulations, 2018\(^47\) are divided into five (5) parts. Part I covers preliminary provisions; Part II is on powers of the authority (Tanzania Communications Regulatory Authority); Part III provides for general obligations for online content service providers; Part IV covers complaints handling; and Part V is offences and penalty. The regulations are 18 in total. The table below highlights the contents of the regulations.

**Table 5: Contents of the Electronic and Postal Communications (Online Content) Regulations, 2018**

<table>
<thead>
<tr>
<th>Part &amp; Name</th>
<th>Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART I PRELIMINARY PROVISIONS</td>
<td>1. Citation.</td>
</tr>
<tr>
<td></td>
<td>2. Application.</td>
</tr>
<tr>
<td></td>
<td>3. Interpretation.</td>
</tr>
<tr>
<td>PART III GENERAL OBLIGATIONS FOR ONLINE CONTENT SERVICES PROVIDERS</td>
<td>5. Obligations of online content providers and users.</td>
</tr>
<tr>
<td></td>
<td>6. Obligations of application services licencee.</td>
</tr>
<tr>
<td></td>
<td>7. Obligations of online radio, online television</td>
</tr>
</tbody>
</table>

### Tanzania Human Rights Report 2018

**Part One: Tanzania Mainland - Legal and Human Rights Centre (LHRC)**

**Part Two: Zanzibar - Zanzibar Legal Services Centre (ZLSC)**

#### PART IV

**Complaints Handling**

- 16. Complaints handling by online content service provider.
- 17. Referral of complaints to Authority.

#### PART V

**Miscellaneous Provisions**

- 18. Offences and penalty.

The online content regulations contain positive aspects, such as protection of internet and social media users from online criminal activity, fighting hate speech, promoting user responsibility and accountability and protection of children against indecent online content. On the other hand, the regulations contain provisions which may hinder full realization of fundamental human rights, including freedom of expression.

**LHRC’s key concerns with the Online Content Regulations**

- **Vague and ambiguous definitions and prohibitions**

<table>
<thead>
<tr>
<th>PART IV</th>
<th>Complaints Handling</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>Complaints handling by online content service provider.</td>
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<tr>
<th>PART V</th>
<th>Miscellaneous Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.</td>
<td>Offences and penalty.</td>
</tr>
</tbody>
</table>
Some of the words and phrases contained in regulations on definitions (Regulation 3), obligations of online content providers and users (Regulation 5) and prohibitions (Regulation 12) are vague and ambiguous, subject to misinterpretation and abuse and with potential to arbitrarily restrict freedom of expression. Words/phrases such as “hate speech”, “obscene content”, “cultural sensitivities”, “bad language”, “content that causes annoyance”, “morally improper”, “use of disparaging or abusive words”, “content likely to mislead or deceive the public”, and “current standards of accepted behaviour” are not defined or clearly defined and highly subjective, leaving loopholes for arbitrary restrictions on freedom of expression. Another problematic provision in the regulations is that relating to hate speech, defining hate speech to include defamation, a loophole that could be used by powerful individuals and officials to act with impunity. Prohibiting ‘use of disparaging words’ and publishing content that is satirical or fictional in nature without being labeled as such serves to further restrict peoples’ freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.48

requirement of internet café owners to install video cameras and record activities of internet users and keep recordings for at least a year

Under the Online Content Regulations, owners of internet cafes have an obligation to install surveillance cameras to record and archive activities of

48 Article 19 of UDHR and Article 19(2) of ICCPR.
internet users. The recordings must be kept for at least 12 months. Apart from violating right to privacy, this requirement is very costly for internet café users, which may in turn affect citizens’ access to internet and information as the service providers may be forced to charge higher prices. Under the Joint Declaration on Freedom of Expression and the Internet, States are obligated to promote universal access to internet, which is deemed essential in promotion of respect for other rights, including rights to education, work, assembly and association. Consequently, this requirement is not in line with international standards on freedom of expression and contravenes the Joint Declaration on Freedom of Expression and the Internet.

9.- (1) Subject to Regulation 5, every internet café or business center shall have the following obligations:
(d) to install surveillance camera to record and archive activities inside the café.
(2) The images recorded by surveillance camera and the register of users recorded pursuant to sub regulation 1 shall be kept for a period of twelve months

- Severe and uniform punishment for failure to comply with regulations

Another key concern with the regulations is the fact that all offences under them carry a uniform punishment, as stipulated under Regulation 18. The punishment is a fine of not less than Tshs. 5 million or imprisonment of not less than 1 year, or both. Uniformity of punishment, regardless of whether an offence is major or minor, raises a human rights concern in that punishment may not be proportionate to offence. In LHRC’s opinion, the punishment is severe and will mainly serve to instill fear in receiving and

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50 Ibid, General Principle 6(a).
impacting information, thus curtailing freedom of expression on the internet.

18. Any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine of not less than five million Tanzanian shillings or to imprisonment for a term of not less than twelve months or to both.

- **Too much powers for TCRA**

The regulations grant the regulator of online content, TCRA, too much powers, including power to remove prohibited content. This is more likely to cause fear for internet users to exercise their freedom of expression on the internet, given the sweeping censorship powers granted to the regulator. Ideally and in line with principles of natural justice, powers to remove content should be granted to a court of law – which is vested with powers of interpreting the law - and at minimum, the regulations should provide for right to appeal or judicial review, which is currently not the case.

- **Registration, license and annual fees**

The regulations provide for mandatory registration of and licensing, including registration of bloggers – which is not in line with international standards on freedom of expression.51 The regulations also require payment of registration fees, license fees an annual fees. Regarding online content services, the Second Schedule of the Regulations provides for application fee of Tshs. 100,000, initial license fee of Tshs. 1,000,000, annual license fee of 1,000,000 and renewal fee of Tshs. 1,000,000.

In LHRC’s view, the fees are exorbitant for most Tanzanians and deprive potential or new bloggers from exercising their freedom of expression on the internet and limit flow of ideas and information. This requirement also contravene Declaration of Principles on Freedom of Expression in Africa of 2002, which provides for authorities to take positive measures to promote

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51 Mandatory registration of blogs does not meet the restrictions tests of freedom of expression.
diversity, including through availability and promotion of a range of information and ideas to the public.\(^{52}\)

14.- (1) Any person who wishes to provide online content services shall fill in an application form as prescribed in the First Schedule and pay fees as set out in the Second Schedule to these Regulations.

- **Obligation to moderate and filter content**
The regulations put an unfair burden on content providers to moderate and filter content, which serves to restrict flow of information and may lead to removal of legitimate content. They are also required to have in place mechanisms to identify source of content, which amounts to infringement of right to privacy and prevent people to share information anonymously (e.g. whistleblowers). Filtering content – including reviewing every comment before they are published - may take a lot of man-hours and in some cases require technical expertise, which a content provider might not possess. This is particularly more problematic for a content provider receiving a large amount of content, forcing them to either hire more people to review content received or reduce the amount of content that gets published. This obligation leaves loopholes for violations of rights to privacy and freedom of expression.

5.- (1) For the purpose of these Regulations, an online content provider shall have the obligations to-
(d) use moderating tools to filter prohibited content;
(e) have in place mechanisms to identify source of content;
(g) ensure prohibited content is removed within twelve hours upon being notified.

- **Obligations of application services licensees**
The Regulations impose a number of obligations on application services licensees, including ordering a subscriber to remove prohibited content

within twelve hours of receiving a notification from the regulator or a person affected. If the subscriber fails to remove the content in specified period, then the licensee is required to terminate subscriber’s access account. In LHRC’s view these obligations contravene freedom of expression and principles of natural justice. This procedure does not allow the subscriber the right to be heard (defend his content) and the regulator is playing the role of the court of determining legality of the content published. Moreover, the procedure does not provide avenues for appeal or judicial review. Additionally, 12 hours is not sufficient time for subscriber and content provider to take action or comply.

6.-(1) An application services licencee shall, when entering contract with subscribers, incorporate terms and conditions of service which include the right to:
(3) Where the licensee is notified by the Authority or by a person affected by the existence of prohibited content shall, within twelve hours from the time of notification, inform its subscriber to remove the prohibited content.
(4) Upon receipt of notification pursuant to subregulation (3), the subscriber shall, within twelve hours from the time of notification, remove the prohibited content.
(5) Where the subscriber fails to remove the prohibited content within twelve hours, the licensee shall suspend or terminate the subscribers’ access account.

- **Obligations of online content hosts**
Like application services licensees, online content hosts are required under the regulations to remove hosted content upon notification by the regulator, or a person affected by content. In addition, notification may be given by a law enforcement agency. This obligation does not meet international standards on freedom of expression and contravenes principles of natural justice such as right to be heard and defend oneself. The regulator, affected person and law enforcement agency should not play the role of determining legality of a content, as it is the court of law which is best placed to do that. This provision will only encourage powerful individuals to order removal of content they deem prohibited, especially since the prohibitions carry ambiguous and vague terms.
8. Subject to Regulation 5 an online content host shall—
(a) adopt a code of conduct for hosting content;
(b) upon notification by the person affected by the content, the Authority, or
law enforcement agency, remove the hosted content.

African Commission on Human and Peoples’ Rights concerned over the Tanzania’s Online Content Regulations

In July 2018, the African Commission on Human and Peoples’ Rights, which is based in Banjul-Gambia, issued a press release on the growing trend on stringent regulation of the internet in East African States. For Tanzania, the Commission was particularly concerned with the adoption the Electronic and Postal Communications (Online Content) Regulations 2018. Referring to licensing requirements for bloggers, the Commission stated that the regulations “…may negatively impact the ability of users to gain affordable access to the Internet, which goes against States’ commitment to protect the right of every individual to receive information, as well as the right to express and disseminate one’s opinion within the law which is provided under Article 9 of the African Charter on Human and Peoples’ Rights.”

The Commission urged Tanzania “to ensure that regulations do not undermine their commitment to ensure freedom of expression and access to information on the Internet and social media platforms.”

Harassment of and threats to journalists

For the period of January to December 2018, LHRC was able to document at least four incidents of harassment of or threats to journalists. In August 2018, a video of police officers beating a journalist at the National Stadium in Dar es Salaam circulated in the social media. He was allegedly beaten because of trying to enter into a press conference following a football match involving Dar es Salaam-based Simba Sports Club.

54 Ibid.
55 Ibid.
In November 2018, two journalists from the Committee to Protect Journalists (CPJ), Angela Quintal and Muthoki Mumo, were reportedly arrested and detained by immigration officials at Southern Sun Hotel in Dar es Salaam-Tanzania hours after meeting with the Tanzania Editors Forum (TEF) to probe on the state of freedom of expression in Tanzania and disappearance of MCL journalist, Azory Gwanda.56 Responding to these allegations, the immigration authorities mentioned that the two journalists had been detained because they violated their visit purpose.57 The journalists were eventually released following calls for their release from local and international observers, including civil society and the CPJ.58

Working environment forcing journalists into self-censorship and sometimes kill stories

Existence and application of restrictive laws and harassment of journalists and media outlets, including through threats from unknown people, have created a difficult working environment for journalists, forcing them into self-censorship in the course of doing their job. In some cases, since freedom of expressing opinions has declined, people tend to refuse to comment on stories or deny that they commented, forcing journalists to kill stories. According to a study on citizens’ views on politics, demonstration and participation in Tanzania, conducted by Twaweza in 2018, majority of citizens (62%) feel that freedom of the media to criticize or report government mistakes has diminished.59

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58 Ibid; Gadiosa Lamtey “Tanzania’s Immigration Authorities Speak out on ‘Arrested’ CPJ Journalists” the Citizen Newspaper, 8th November 2018 at https://allafrica.com/stories/201811080159.html
Media freedom on the decline – stakeholders

During the commemoration of the World Press Freedom Day in May 2018, several stakeholders raised their concerns over declining media freedom in Tanzania. These included officials from the Tanzania Chapter of the Media Institution of Southern Africa (MISA-TAN), Union of Tanzania Press Club (UTPC), Media Council of Tanzania (MCT) and the Tanzania Editors’ Forum (TEF), citing disappearance and harassment of journalists and arbitrary restrictions on media freedom as contributing factors.\(^{60}\) They noted that Azory Gwanda, a journalist from the Mwananchi Communications Limited who went missing in November 2017, is still missing and it is not known where he could be and whether he is still alive. They added that media houses and journalists are operating under fear of sanctions, including heavy fines, and undue harassment from authorities and recently enacted laws and regulations on freedom of expression. They also expressed concerns with the newly-enacted Online Content Regulations, calling for the regulations to be reviewed to conform to the Constitution and international standards of freedom of expression.\(^{61}\)

In January 2018, five media outlets were fined by the Tanzania Communications Regulatory Authority (TCRA) for airing content by LHRC about by-elections in 43 wards that was deemed ‘offensive and unethical.” The media outlets are Star TV, Azam Two, East Africa TV, Channel 10 and ITV.

Concerned with decline in media freedom and situation of other human rights in Tanzania, in May 2018, a total of 65 rights groups from across Africa and a few outside Africa wrote to President Hon. John Pombe Magufuli to seek his intervention.\(^{62}\) Among the recommendations made to the Government of Tanzania were to amend all restrictive provisions contained in freedom of expression laws such as the Cybercrimes Act, the Electronic and Postal Communications (Online Content) Regulations and

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\(^{60}\) See Mussa Juma “Uhuru wa habari, kujieleza vyazorota nchini – wadau” Mwananchi Newspaper, 4\(^{th}\) May 2018.

\(^{61}\) Ibid.

the Media Services Act, to be replaced with progressive provisions that guarantee freedom of expression and media in line with international human rights standards.\footnote{63}{Ibid.}

**Tanzania further drops in the World Press Freedom Index 2018**

Reporters Without Borders (RSF) is an international NGO that promotes and defends the freedom to be informed and to inform others throughout the world. It’s 2018 World Press Freedom Index shows decline in press freedom in various parts of the world, including Tanzania. According to the report, Tanzania has further dropped in the index by 10 places, from 83\textsuperscript{rd} in 2017 to 93\textsuperscript{rd} in 2018, having dropped by 12 places in 2017.

Harassment of journalists and enactment of laws and regulations which do not conform to international standards of freedom of expression have contributed to this decline.

**Mawio Newspaper ban illegal – East African Court of Justice**

In June 2018, the East African Court of Justice ruled that Tanzania must annul the publication ban placed on a local weekly newspaper, Mawio, two years ago. The newspaper was banned in August 2016, by the former Minister responsible for media, Hon. Nape Nnauye, under the Newspapers Act of 1976, which has now been replaced by the Media Services Act of 2016. The Court stated that the Tanzanian Government failed to show sufficient justifiable grounds for the ban, and that the action of the Minister was unlawful and thus amounted to violation of the right of freedom of expression as per Article 18(1) of the Constitution of Tanzania; Article 19(3) of the International Covenant on
Civil Political Rights; and Article 27(2) of the African Charter on Human and Peoples’ Rights.  

2.2.2. Freedom of Opinion
Freedom of opinion, especially on social media, has been severely restricted by the Online Content Regulations, adding to Cybercrimes Act and Media Services Act. In LHRC’s view, the current legal environment does not promote the right to hold opinions without interference. This freedom is one of the key participation rights, which enables members of the public to contribute to political, economic and social development. It is also essential for realization of the right to take part in governance in the fight against corruption – in summary, holding the Government and other bodies and officials to account.

Employers restricting freedom of expression of employees
In 2018, LHRC received several complaints of employees in different sectors, both public and private, not being free to express their opinions deemed ‘unconventional’ by their employers, including what they post on their social media accounts that ‘might reflect badly’ on company, institution or organization. In its 2017 Human Rights and Business report, LHRC highlighted denial of right to freedom of association and collective bargaining by employers, which denies employees a platform to exercise their freedom of expression. Outside the arena of human rights and business, the restrictions are more imposed on political views. Twaweza’s study on citizens’ views on politics, demonstration and participation in Tanzania of 2018, shows that 54% of citizens also feel they personally have less freedom to voice their own political views.

Cyber-crime: Maxence Melo and Micke William cleared by Kisutu Resident Magistrate Court
In 2018, the Kisutu Resident Magistrate Court acquitted the founder of Jamii Forums, Mexence Melo and shareholder, Micke William of charges

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under the Cyber Crimes Act of 2015. The two were charged with obstruction of police investigation contrary to Section 22(2) of the Cyber Crimes Act in December 2016.

2.2.3. **Access to Information**

Restrictions of media freedom and freedom of speech or opinion have automatically affected the right to information, which is a component of freedom of expression. Sanctions imposed in laws and regulations such as Cybercrimes Act, Media Services Act and newly-enacted Online Content Regulations have created fear among media and people performing journalistic functions from freely expressing themselves and sharing information. Limited access to information is detrimental to personal and state development and may deny citizens and the state an opportunity to make informed decisions. A study conducted by Twaweza\(^66\) in 2016 indicated that 80% of respondents believed giving citizens more access to information would help to reduce corruption.\(^67\)

Arbitrary restrictions on freedom of expression imposed by laws and regulations mentioned above are contrary to international standards on such freedom as contained in international and regional instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Declaration of Principles on Freedom of Expression in Africa and African Declaration on Internet Rights and Freedoms.

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\(^{66}\) An organization that works on enabling children to learn, citizens to exercise agency and governments to be more open and responsive in Tanzania, Kenya and Uganda.

Concerns over curtailment of Freedom of Expression following amendments of the Statistics Act 2015

Amendments to the Statistics Act 2015 in the Written Laws (Miscellaneous Amendments) (No.3) Act of 2018, have raised concerns over impact of the amendments on enjoyment of freedom of expression in Tanzania. These concerns were expressed by research, human rights and media stakeholders, including REPOA, Twaweza and LHRC, following passing of the law in September 2018. The international community has also expressed concerns with some of the provisions in the Act. In October 2018, the World Bank issued a statement “regarding recent developments related to Tanzania’s 2015 Statistics Act,” expressing concern about the developments, “which are out of line with international standards such as the UN Fundamental Principles of Official Statistics and the African Charter on Statistics.” The World Bank warned that “the amendments, if implemented, could have serious impacts on the generation and use of official and non-official statistics, which are a vital foundation for the country’s development.”

Major concerns regarding the amendments include prohibiting dissemination of statistics that are considered to invalidate, distort or discredit official statistics by the National Bureau of Statistics (NBS), and publishing statistics

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70 Ibid.
without the approval of the bureau. This means it is illegal to question or fact-check official statistics, which may serve to discourage independent statistics; and the bureau holds sole power to decide which statistical information can be published.

2.3. Rights to Equality before the Law and Effective Remedy

Rights to equality before the law and effective remedy are guaranteed and protected under various regional, continental and international human rights instruments. These include the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples’ Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR). According to the Constitution of Tanzania, ‘all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.’ The right to effective remedy is provided for where other rights of an individual have been violated. Rights derived from these two rights include right to access to justice, right to legal representation, right to presumption of innocence and right to fair trial. The situation of these three rights in Tanzania in 2018 is discussed below.

In 2018, these rights were boosted through action by government and non-government actors to improve access to justice and effective remedy. However, realization of these rights continues to be hampered by several challenges, including: corruption in the justice system, violation of rights of accused persons, shortage of resources within the judiciary, and high costs of effective legal representation.

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72 Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.


74 Article 2(3) (a) of ICCPR.

75 See Article 14(3) (b) of the Constitution of Tanzania 1977; Article 7(1)(c) of ACHPR; and Article 14(3)(d) of ICCPR.

76 Article 13(6) of the Constitution of the United Republic of Tanzania of 1977; Article 7 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.
2.3.1. **Access to Justice**

Access to justice means access to **formal** or **informal** institutions that are tasked with delivery of justice such as courts and tribunals. This access enables people whose rights are violated or jeopardized to seek remedy from these institutions, where their grievances can be heard and determined. Access to justice is a key component of rule of law and the international community has recognized “**the right to equal access to justice for all**” and committed itself to “**taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid**.”

### Conditions for Access to Justice

- Availability of independent and impartial courts and tribunals
- Good laws
- Courts/tribunals to be accessible and have sufficient resources to administer justice
- Availability of qualified lawyers for legal representation
- Fair trial and timely justice

#### Action to improve access to justice

In 2018, LHRC observed and documented some notable improvements in access to justice. These include: improved coordination of legal aid following enactment of the Legal Aid Act in 2017 and positive action taken by the Judiciary to modernize the justice sector and increase access to justice.

### Construction and renovation of court buildings

According to the Chief Justice, construction of several court buildings completed in 2018, including Resident Magistrate Court in Pwani Region; District Courts of Kibaha, Bagamoyo, Mkuranga, Ilala and Kigamboni Districts; and Kawe Primary Court. During the financial year 2017/2018,

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78 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at
the Judiciary managed to complete construction of 12 court buildings, including Resident Magistrates’ Courts in Manyara Region; District Court and Primary Courts of Iguguno (Singida), Wasso (Loliondo), Old Korogwe and Magoma (Korogwe), Karatu, Robanda (Serengeti), Itinje (Meatu) and Totoe (Songwe). The Judiciary also renovated its buildings of High Court in Mbeya, Commercial Division of High Court in Mwanza and residence of Principal Judge of Dodoma. Construction of 16 District Courts were also reported to have commenced during the financial year 2017/2018, as well as construction of Resident Magistrates’ Court buildings in Geita, Njombe, Simiyu, Katavi and Lindi Regions. District Court buildings were under construction in Geita, Njombe, Bariadi, Lindi, Mpanda, Rungwe, Ruangwa, Chato, Bukombe, Bunda, Kasulu, Sikonge, Kilwa Masoko, Kondoa, Longido and Kilindi.

**Employing technology to increase access to justice**

With the support of the World Bank, the Judiciary of Tanzania has been implementing the Citizen-Centric Judicial Modernization and Justice Service Delivery Project, which seeks to transform and modernize justice delivery in Tanzania. This project, launched in 2016, is in line with the Judiciary’s five-year strategic plan, which includes using ICTs to improve access to justice in Tanzania. This is a positive step as digitalization of judicial services will help in fast-tracking judicial proceedings.

The Judiciary is also introducing a computerized filing system (e-filing system) to boost court performance and fast-track judicial proceedings and improve court efficiency and effectiveness; and making efforts to combat judicial corruption in collaboration with Tanzania’s anti-corruption body, PCCB. In order to regain public trust, the Judiciary has also introduced a campaign to re-introduce itself to the citizens.

**Efforts by the Judiciary and Government to address the problem of shortage of personnel**

By December 2018, the Judiciary had acquired 420 judicial servants and secure permit to employ 168 new servants for the new courts that are being constructed in different parts of Tanzania. In 2018, Hon. President John P. Magufuli appointed 2 Justices of Court of Appeal, Principal Judge and 12 Judges of the High Court.

**Efforts to reduce backlog of cases**

In 2018, the Judiciary continued to implement its policy of concluding cases within 6 months since they are instituted in an effort to address the problem of backlog of cases. According to the Chief Justice, 71% of all cases registered in 2018 were instituted at Primary Courts; and only 16 out of 15,675 cases that could not be concluded were more than 6 months old. At District Court and Resident Magistrate levels, a total of 51,161 cases were registered in 2018, whereby 47,089 were concluded and 28,912 were not concluded. Out of the cases which were not concluded, only 837 were more than one year-old. According to the Chief Justice, the number of cases in the case backlog category declined from 999 in 2016 to 729 in 2018.

At High Court level, however, out of a total of 37,471 cases available (18,284 registered, 19,187 from 2017), only 17,046 were concluded by the end of the year, while 20,425 continued into 2019. Each Judge is required to entertain 220 cases per year.

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80 Ibid.


82 Ibid.

83 Ibid.
The predicament of preliminary objections and amendment of the Appellate Jurisdiction Act

One of the factors that have been threatening access to justice in Tanzania for a long time now is constant preliminary objections due to procedural irregularities. This loophole has been used to frustrate and delay justice in civil and criminal proceedings. However, in 2018, a legal development in the form of amendment of the Appellate Jurisdiction Act sought to address the problem of striking out cases because of procedural irregularities. The amendments add a provision called “overriding objective of Act,” which is to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by the Appellate Jurisdiction Act. In exercising their powers or interpreting provisions of the this law, courts of law are required to seek to give effect to the overriding objective; and hand all matters presented before them with a view of attaining a just determination of proceedings; efficient use of the available judicial and administrative resources, including the use of suitable technology; and timely disposal of the proceedings in the Court at a cost affordable by the respective parties. Duty to uphold the overriding objective extends to parties to proceedings and advocates.

The amendments focus on attainment of substantive justice in line with Article 107A (2) (e) of the Constitution of Tanzania, which requires courts to take into account wider interests of substantive justice before striking out a matter on ground of procedural irregularity. This is because “so many appeals, revisions, reviews and other applications have been struck out on grounds of procedural irregularity in the past, making the jurisprudence of the Court of Appeal overly reliant on procedural technicalities instead of substantive justice expected by the Constitution.”

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84 See THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.3) ACT, 2018 (PART II: AMENDMENT OF THE APPELLATE JURISDICTION ACT(CAP. 141)).
85 Section 3A (1) of the Appellate Jurisdiction Act, CAP 141, as amended in 2018.
86 Ibid, Section 3A (2).
87 Ibid, Section 3B (1).
88 Ibid, Section 3B (2).
89 Objects and purpose of the amendement in the amendements Bill.
Introduction of the Legal Aid Regulations
In 2017, the Parliament enacted the Legal Aid Act, which sought to improve access to justice for the financially-challenge groups and recognizes paralegals scattered in different parts of Tanzania. To further improve access to justice and operationalize this law, the Legal Aid Regulations were adopted in 2018.\(^{90}\) The Regulations provide for administration and coordination of legal aid providers; registration of legal aid providers and paralegals; legal aid to indigent persons and persons in lawful custody; record management of legal aid provision; monitoring and evaluation of legal aid providers; management of appeals and other complaints; and some miscellaneous provisions, including on legal aid providers’ forum and continuous legal education.

Introduction of mobile courts
In 2018, the Judiciary revealed its plan to introduce and pilot mobile courts, in order to take justice delivery closer to the people.\(^{91}\) Pilot study areas were identified in Dar es Salaam and Mwanza Regions. The mobile courts will mainly entertain smaller claims and family-related issues at primary court level.\(^{92}\)

Challenges hindering effective access to justice
However, despite some notable improvements, access to justice continues to be faced with a number of challenges. These include limited access to legal aid, corruption within the justice system, inaccessibility of police stations and courts, high costs of effective legal representation, low awareness of relevant laws and procedures amongst community members, uneven distribution of lawyers and advocates and prolonged detention of accused persons.

\(^{90}\) See Legal Aid Regulations (G.N No. 44 Contd).THE LEGAL AID ACT, 2017REGULATIONS(Made under section 48)THE LEGAL AID REGULATIONS, 2018.


\(^{92}\) Ibid.
**Limited access to legal aid**

Legal aid is essential for members of the public who cannot afford an effective legal representation. Legal aid in Tanzania is provided by different government and non-government actors, including the national human rights institution – CHRAGG, civil society, paralegal centres and Tanganyika Law Society (TLS). NGOs providing legal aid include: Legal and Human Rights Centre (LHRC); the Tanzania Network of Legal Aid Providers (TANLAP); Women’s Legal Aid Centre (WLAC); Women in Law and Development in Africa (WiLDAF); and Tanzania Women Lawyers Association (TAWLA). Despite efforts by these organizations and those by paralegal centres in different parts of Tanzania Mainland, access to legal aid is still a challenge for majority of Tanzanians – especially those residing in rural areas. One of the reasons for this is the organizations and paralegal centres being concentrated in urban and/or semi-urban areas, as well as having limited resources to enable them reach remote areas.

**Shortage of judicial staff**

According to the Chief Justice of Tanzania, Prof. Ibrahim Hamis, in order for the Judiciary to operate effectively, there is a need of a total of 24,643. However, there are only 6,096 judicial servants, which means there is shortage of 18,556 servants. He mentioned that shortage of servants is caused by several factors, including death, retirement and certificates. 248 left judicial service because of death and retirement between January and December 2018, while 194 left because of fake or forged certificates.

**Inaccessibility of police stations and courts**

In some areas of Tanzania Mainland, especially rural areas, police service is not in close proximity. This makes it difficult for aggrieved persons in such areas to report crimes and begin a journey to justice. A 2015 study on effect of police integrity, government performance in fighting crime, and public trust in the police in Tanzania.

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94 Ibid.

95 Ibid.
accessibility of police stations on reporting crime in Tanzania, which was conducted by *Afrobarometer*, shows that people are more likely to report crime when police services are within easy reach.\(^{96}\)

Regarding courts, it is LHRC’s view that people are more likely to access justice and continue to pursue it where the courts are in close proximity. Tanzania is faced with acute shortage of courts, especially primary courts, whereby recent statistics indicate shortage of 67\% .\(^{97}\)

**Prolonged detention of accused persons**

One of the challenges that accused persons face in Tanzania is prolonged and arbitrary detention at police posts or stations. According to the Criminal Procedure Act, Chapter 20 of Laws of Tanzania, a person under police custody should be brought before the court within 24 hours, as a matter of general principle.\(^{98}\) However, in practice this right of an accused person is not respected, as it is now a common practice for arrested persons to be held beyond 24 hours without being brought before a court of law. This is contrary to principles of access to justice, as everyone has a right to be tried without undue delays, as guaranteed under the International Covenant on Civil and Political Rights (ICCPR).\(^{99}\) A good example is the case of Abdul Nondo, a student at University of Dar es Salaam, who was held for 2 days without being brought before the court. This case is discussed in detail under the right to liberty and personal security (sub-chapter 2.4).

**Corruption within the justice system**

Corruption is a big challenge to independence and impartiality of courts and tribunals. A study by the Prevention and Combating of Corruption Bureau (PCCB) in 2015 revealed that widespread corruption exists within all levels of the judicial system, especially in lower courts (resident magistrate,


\(^{98}\) See Section 32 of Criminal Procedure Act, CAP 20, R.E 2002.

\(^{99}\) Article 14(3) of ICCPR.
district and primary courts). Judicial officers, including court clerks and magistrates, are known to solicit bribes to help ‘fast-track’ cases or slow down trial proceedings. Court assessors were also mentioned to be among corrupt individuals within the justice system. The PCCB report also mentioned poor working environment as a factor contributing to prevalence of corruption in lower courts, especially primary courts. Judiciary is still perceived to be among public institutions tainted with corruption. According to a 2017 corruption study by REPOA and AfroBarometer, majority of citizens (36%) perceive police as most corrupt, followed by magistrates and judges (21%). Because of perceived corruption within the justice system, some people decide ‘not to waste time’ pursuing justice.

In 2018, the Judiciary continued preparing an anti-corruption plan in line with the National Anti-Corruption Strategy and Action Plan Phase III. Eight (8) magistrates were implicated and accused of corruption in 2018.

Shortage of and uneven distribution of lawyers and advocates
As of December 2018, Tanzania Mainland had over 8000 advocates. Based on the current population of over 50 million, there is one advocate for every 6,250 people in Tanzania Mainland. This number is still not enough to cater for the needs of many people in Tanzania Mainland.

Apart from having shortage of lawyers and advocates, there is also a problem of uneven distribution of these legal professionals. Most of the

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101 Ibid.
104 Ibid.
105 Based on the number of advocates in 2017 and reported lawyers admitted to the Bar in 2018.
lawyers and advocates are concentrated in urban or semi-urban areas or townships. Ironically, majority of Tanzanians, over 60%, reside in rural areas, but they get a smaller share of lawyers, including advocates.

**Low awareness of relevant laws and procedures**

Low awareness of relevant laws and procedures is a key factor in people not being able to access justice in Tanzania. Low awareness is particularly higher in rural areas, where majority of the people are even intimidated by formal justice systems/mechanisms. Though its legal aid programme in Kinondoni-Dar es Salaam, Sakina in Arusha and mobile legal aid, LHRC has realized that many people who seek legal aid are not aware of relevant laws and legal procedures, something which contributes to their delays in accessing justice; sometimes even finding their claims barred by the law of limitation. Ignorance of the law and court procedure also leaves people seeking justice vulnerable to corruption, with corrupt officials taking advantage to solicit bribes.

**Interference with the independence of the Judiciary**

In 2018, the issue of political interference with judicial independence also came to the spotlight. Among those implicated in this sort of interference are regional and district commissioners. In January 2018, the Chief Justice, Prof. Ibrahim Juma, warned politicians and government officials against interfering with the work of the Judiciary and ignoring court orders and rulings. A good example is disobedience of a court order (injunction) is two houses reportedly demolished despite specific order from the court against such action.

**Unethical lawyers affecting access to justice**

Some lawyers are unethical and take advantage of their clients, who usually possess no or little legal knowledge. In 2018, legal aid providers, including LHRC and the Tanzania Women Lawyers Association (TAWLA) provided legal aid to a number of clients who had been taken advantage of by their lawyers, destroying their cases in the process. Unscrupulous lawyers give

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107 Ibid.
other lawyers a bad name, and among other things, charge their clients unusually high costs in contravention of the Advocates Remuneration Order. Most cases of complaints against advocates before the Ethics Committee of the Tanganyika Law Society (TLS) are of lawyers who take advantage of clients.

**Language problem for lawyers and magistrates**

English language has been identified as a problem by most lawyers and magistrates, which has shown during court proceedings and in several judgements seen or obtained by LHRC and other stakeholders. This issue may lead to delays in dispensation of justice and unnecessary objections and grounds of appeal. For instance, in Mbeya, a judge read a judgement by a magistrate of a District Court and could not understand it, hence ordering the case to be struck out. In December 2018, the Chief Justice, Prof. Ibrahim Juma remarked during advocate swearing-in ceremony, that most advocates struggle with the English language in the course of performing their duties, something which affects citizens’ access to justice.  

**Available Judges burdened by shortage of judges**

By December 2018, there were 66 Judges. Each of the judges had an average of 568 cases, which is too much and more than double the standard of 220 cases per year.

**Inadequate allowance for assessors in Primary Courts**

The amount of allowance granted to assessors in Primary Courts every time the matter is concluded by the court is Tshs. 5000. This amount is too little considering the role and importance of assessors in determination of

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cases at Primary Court level, as well as the amount of time they stick around until a case is concluded. According to the Chief Justice, Prof. Ibrahim Juma, sometimes the Judiciary fails to pay the assessors due to budgetary constraints; and in the financial year 2017/18 the Judiciary owed a total of Tshs. 115 million in assessor allowance.\footnote{See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20JAJI%20M KUU%20SIKU%20SHERIA%20TRH%20FEBRUARI%202019.pdf, accessed 28th February 2019.}

### 2.3.2. Right to Presumption of Innocence and Legal Representation

Presumption of innocence is a key principle in criminal justice. The right to be presumed innocent until proven guilty is an established principle under domestic, regional and international law. According to the Constitution of Tanzania, “no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.”\footnote{Article 13(6) (b) of the Constitution of the United Republic of Tanzania, 1977.} This right is also guaranteed under the ICCPR and UDHR.\footnote{Article 14(2) of ICCPR; Article 11 of UDHR.}

Right to legal representation is clearly stipulated under Article 13 of the Constitution of the United Republic of Tanzania 1977, which is key for ensuring administration and access to justice. This means the right of an accused person to a lawyer, who will help to defend them in the court of law. In criminal justice, Tanzania is required under domestic, regional and international law to ensure an attorney is appointed for the defendant where the defendant cannot afford one. Article 14(3) of ICCPR – which Tanzania has ratified – clearly stipulates this obligation on the part of States.

A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*
In 2018, LHRC was able to document several incidents of violations of the right to presumption of innocence and right to legal representation. One such case is that of Abdul Nondo, a university student who was reportedly abducted and later accused by the police of faking his own abduction. Statements issued by police and government authorities concluded that Mr. Nondo was guilty of faking his own abduction, which is contrary to the principle of presumption of innocence.

Nevertheless, the right to legal representation continues to be hampered by shortage of lawyers and advocates in within rural-based communities and high costs of legal representation.

**Threatening lawyers seeking to represent their clients**

There has been a tendency of threatening lawyers who seek to represent their clients, particularly in criminal cases. This affects right to legal representation and freedom of lawyers to provide legal services and their right to work. Right to legal representation is a fundamental right protected under the Constitution of the United Republic of Tanzania of 1977 as well as various regional and international human rights treaties that Tanzania is bound to, most notably the International Covenant on Civil and Political Rights (ICCPR). This right is at the heart of justice, and is very important in realizing the right to equality before the law.

**Prolonged detention of accused persons and criminal suspects languishing in jail as remandees**

Many people languish in jail and remand because ‘investigations are still underway.’ State attorneys and the Director of Public Prosecutions (DPP), contribute to this problem. This contravenes the right to liberty and personal security, presumption of innocence until proven guilty by court of law and the right to effective remedy. According to the former President of the Tanganyika Law Society (TLS), Adv. Fatma Karume, by December 2018, there were 1,723 males in Segerea Prison, out of whom only 158 had been convicted and found guilty by courts of law; while a whopping 1,565 were remandees.112 She added that there were a total of 313 females in the

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112 See Speech by the President of Tanganyika Law Society (Swahili), Adv. Fatma Karume, delivered in Dar es Salaam on 6th February 2019.
prison, out of whom only 66 had been convicted and found guilty by courts of law.

2.3.3. Rights to Fair Trial and Effective Remedy
Rights to fair trial and effective remedy are also known as rights to due process. Right to fair trial includes the right to legal representation, right to be heard, right to be presumed innocent until proven guilty and right to be tried without undue delay by an independent, impartial and competent tribunal. Right to effective remedy is closely associated to the right to fair trial; and is also protected under the Constitution of Tanzania and international human rights instruments, including ICCPR.

In 2018, rights to fair trial and effective remedy continued to be hampered by limited access to courts and delays in dispensation of justice. Recent estimates show that more than 20 million Tanzanians have no access to the High Court. According to the World Bank, delays and prolonged or unnecessary procedures cost Tanzania an estimated US$464 million a year.

Corruption also continues to play a part in hindering full realization of the rights to fair trial and effective remedy, known to be more prevalent in lower courts, which are more accessible to majority of Tanzanians.

2.4. Right to Liberty and Personal Security
Right to liberty and personal security is an essential human right, guaranteed under regional and international human rights instruments, including UDHR and ICCPR. It is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977. This right includes freedom

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113 See Article 14 of ICCPR; Article 13 of Tanzania Constitution; & Article 7 of ACHPR.
115 Article 2(3)(b) of ICCPR.
116 A statement by former Chief Justice, Hon. Mohamed Othman Chande
118 Article 3 of UDHR; Article 9(1) of ICCPR.
119 See Articles 15 & 16 of the Constitution of Tanzania 1977; Article 6 of ACHPR.
from arbitrary arrest and detention, right to personal security and right to bail. When a person is arrested they are denied their liberty; and according to the Criminal Procedure Act, when this happens they are supposed to be brought before a court of law within 24 hours\(^{120}\) and are entitled to bail,\(^ {121}\) unless the offence for which they have been arrested is not bailable. The right to personal security creates an obligation on the Government of Tanzania to ensure that reasonable and appropriate measures are taken to protect detained and non-detained persons.

In 2018, the right to liberty and personal security was mainly affected by arbitrary arrests, including orders of arbitrary arrest and detention by regional and district commissioners; controversial/suspicious killings; and abductions.

### 2.4.1. Freedom from Arbitrary Arrest and Detention

Deprivation of liberty is only justified if it is \textbf{in accordance with the law} (principle of legality) and \textbf{not arbitrary}. If a person is arrested or detained on grounds which are not clearly stated in domestic law, the principle of legality is violated. Arbitrary arrest/detention does not only mean that against the law, but also not appropriate, unjust and done in disregard of due process of law. Arrest and detention of a person must \textbf{not only be lawful, but also reasonable and necessary} under the circumstances, for instance to prevent flight, interference with evidence or recurrence of crime. Accused person must not be discriminated against, must be allowed to communicate with family, and presumed innocent until proven guilty in court.\(^ {122}\) Moreover, when an accused person under police custody is not produced before a court of law within 24 hours after arrest,\(^ {123}\) it amounts to arbitrary detention.

The Criminal Procedure Act requires police officers or other people carrying out an arrest to use a reasonable force during arrest (no more

\(^{120}\) Section 32(1) of the Criminal Procedure Act, CAP 20 R.E 2002.

\(^{121}\) Ibid, section 48.

\(^{122}\) See ICCPR and BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT, adopted by the UN General Assembly in resolution 43/173 on 9 December 1988 at New York.

\(^{123}\) Ibid.
than is necessary to prevent escape). A person being arrested should not be subjected to more force than is necessary to make the arrest.

**Arbitrary arrests and detention of journalists and civilians**

Arbitrary arrest of a journalist in Dar es Salaam: In August 2018, a video of police officers beating a journalist from Wapo Radio, Silas Mbise, at the National Stadium in Dar es Salaam circulated in the social media. He was allegedly beaten because of trying to enter into a press conference following a football match involving Dar es Salaam-based Simba Sports Club. The incident was widely condemned by media and human rights stakeholders.

Arbitrary arrest and detention of Abdul Nondo: 24-year old Abdul Nondo, a student at the University of Dar es Salaam, was reported missing by his fellow students on the night of 6th March 2018. On 8th March 2018, police in Iringa Region announced that the student had been found and was in police custody pending police investigation to determine whether he had really been kidnapped or not; and if not he would be treated like any other criminal. He was then reportedly transferred to Dar es Salaam where he continued to be held by police without being charged. Statements by the police and public leaders hinted at the student faking his own abduction and appeared to presume he committed the crime. LHRC’s assessment of the matter revealed that whether he was abducted or faked his own abduction, the student had a right to be presumed innocent until proven guilty by a court of law in line Article 13(6) (b) of the Constitution of Tanzania and holding him without charging him for more than 2 days amounted to arbitrary arrest and detention, thus in violation of his right to liberty.

**Multiple complaints about police fabrication of cases against innocent civilians**

In 2018, concerns over police fabrication of cases against innocent civilians were raised in different parts of Tanzania Mainland. In August 2018, while in

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124 Section 12 of the Criminal Procedure Act, CAP 20.
125 Ibid, Section 21.
126 “Polisi washutumiwa kila kona kipigo mwanahabari” Nipashe Newspaper, 11th August 2018.
127 “THRDC walaani polisi kupiga, kutesa waandishi wa habari” Nipashe Newspaper, 13th August 2018.
Bunda District, the Minister of Home Affairs, Hon. Kangi Lugola, stated that he would deal with corrupt police officers who fabricate cases against innocent motorcycle drivers, popularly known as bodaboda drivers. In the same month, Hon. Minister also warned traffic police officers who fabricate cases/charges against motor vehicle drivers, providing an example of a traffic police officer in Vinguguti area in Dar es Salaam, who fined one driver for ‘putting boxes on passenger seats.’ During his visit at the police college in Kurasini-Dar es Salaam, again in August 2018, the Minister of Home Affairs further warned police officers against fabricating cases against civilians, including those relating to loitering and terrorism. He mentioned that among the top complaints of fabrication of cases levelled against police officers are those on loitering and terrorism charges. He also made similar comments during a parliamentary session in September 2018.

In October 2018, the Prevention and Combating of Corruption Bureau (PCCB) called for the Police Force to put a stop to harassment, arbitrary arrests and beatings of citizens by some of the police officers, instead promoting closer ties between the force and community members. This was raised by the PCCB Head of Community Education from the Kinondoni regional officer, Elly Makala, during a community sensitization session in Mbezi-Dar es Salaam.

Again, in October 2018, while opening a leadership training at the police academy in Moshi (CCP), Commissioner of Police Mussa Ali Mussa urged police officers to refrain from engaging in corrupt behavior and fabricating cases against innocent civilians. He noted that some police officers have a tendency of fabricating cases and delaying investigations to create

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129 “Lugola awageukia trafiki waonevu” Nipashe Newspaper, 9th August 2018.

130 “Lugola azidi kuwabana polisi” Nipashe Newspaper, 23rd August 2018; “Polisi watakiwa kuachana na kazi za ‘dili’” HABARILEO Newspaper, 22nd August 2018.

131 Ibid.


133 “TAKUKURU yakemea uonevu Jeshi la Polisi” Majira Newspaper, 2nd October 2018.

134 “Polisi waonywa kubambikia wananchi kesi” Mtanzania Newspaper, 2nd October 2018.
opportunities for solicitation of bribe; and this constitutes majority of complaints against police officers.

In December 2018, residents of Salawe Ward in Shinyanga District reportedly complained to their District Commissioner, Hon. Jasinta Mboneko, about police officers in the ward who fabricate cases against them, including murder cases/charges, something which has made most of them to live in fear.135

Orders of arbitrary arrest and detention by RCs and DCs

In recent years, orders of arrest and detention of people for up to 48 hours by regional commissioners (RCs) and district commissioners (DCs) have been a common occurrence in Tanzania Mainland. This has prompted several national leaders, including the Minister of State in the President's Office, Regional Administration and Local Government, Hon. Selemani Said Jafo (MP). In August 2018, the minister warned against the habit of some DCs of ordering arbitrary arrests and detention of government officials and public servants.136 In the same month, the deputy minister, Dr. Zainabu Chaulla, made similar remarks while opening a training workshop for district commissioners and district executive directors in Dodoma.137 In Simiyu Region, the Regional Commissioner, Hon. Anthony Mtaka, warned district commissioners in the region against ordering arbitrary arrest and detention of public servants.”138

In 2018, LHRC was able to document several reported incidents of arbitrary arrests and detention ordered by RCs and DCs. These include incidents in Nkasi District-Rukwa Region and Babati District-Manyara Region. In Nkasi District, it was reported that the Nkasi RC, Hon. Said Mtanda, ordered arrest and 12-hour detention of 3 public servants for delaying at an important function in Myula Ward.139 In Babati District, it was reported that the Manyara RC, Hon. Alexander Mnyeti, had ordered arrest

135 “Askari polisi watuhumiwa” Mwananchi Newspaper, 30th December 2018.
136 “Baada ya ma-DC Jafo awageukia ma-DED” Mwananchi Newspaper, 16th August 2018.
137 “Ma-DC waonywa utupaji watendaji ndani saa 48” HABARILEO Newspaper, 9th October 2018.
139 “DC awasweka ndani watendaji kwa kuchelewa ‘songambele’” HABARILEO Newspaper, 20th October 2018.
and 48-hour detention of four workers of a company called Barton and their lawyer, Menrad De Souza, for allegedly spreading false claims of being detained on social media (posting seditious content).\textsuperscript{140}

\textbf{2.4.2. Right to Personal Security}

In 2018, LHRC recorded at least four reported incidents of violations of the right to personal security.

\textit{Killing of a land rights activist, Godfrey Luena}

On 23\textsuperscript{rd} February 2018, the public was shocked by the tragic death of human rights defender, Mr. Godfrey Luena, who also worked with LHRC in the past as a human rights monitor. The human and land rights defender, who was also Councillor of Nemawala Ward, was brutally killed by unknown assailants outside his house. The tragic death of Godfrey Luena sent shockwaves throughout the nation and was met with strong condemnation.

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{godfrey_luena.jpg}
\caption{The late Godfrey Luena, who was brutally killed with machete by unknown assailants outside his home in Ifakara-Morogoro Region}
\end{figure}

\textsuperscript{140} “Mnyeti alivyowaweka ndani wakili, wateja wake” Mwananchi Newspaper, 1\textsuperscript{st} August 2018; Joseph Lyimo “Mnyeti orders arrest of five for sharing seditious content on social media” The Citizen Newspaper, 31\textsuperscript{st} July 2018, at https://www.thecitizen.co.tz/News/Mnyeti-orders-arrest-of-five-for-sharing-seditious-content/1840340-4690746-370kky/index.html, accessed 20\textsuperscript{th} December 2018.
LHRC and other human rights stakeholders are very concerned with these trends of killings, which threaten peace and personal security.

**Attack and killing of an opposition party official in Dar es Salaam**
In February 2018, a secretary of CHADEMA political party was reported kidnapped and killed by unknown assailants in Dar es Salaam. The late Daniel John, disappeared on 12th February 2018, his body discovered along the Indian Ocean.

**Abduction of business mogul, Mohammed Dewji**
In October 2018, a Tanzanian business mogul, Mohammed Dewji, was abducted in Dar es Salaam, outside Colleseum Hotel in Oysterbay area-Dar es Salaam by unknown assailants.\(^1\) The incident raised security concerns both nationally and internationally, with calls for his safe return spreading fast in the social media.\(^2\) The businessman was found safe, ten days after his abduction.

**Abduction of a university student**
As discussed above, in March 2018, it was reported that a student at University of Dar es Salaam, Abdul Nondo, was reportedly abducted by unknown people in Dar es Salaam, although police later claimed that the student might have abducted himself and sent him to court. However, in May 2018 the High Court in Iringa released the student after the Prosecution failed to prove charges against him, including of publishing and disseminating false information about his abduction on social media and lying to a police that he had been kidnapped.\(^3\)

**Abductions and Killings of bobaboda drivers**
In recent years, killings of motorcycle drivers (popularly known as *bobaboda* drivers) by unknown assailants, who pretend to be passengers, have been an issue of concern in Tanzania Mainland. In 2018, several such incidents were

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\(^2\) Ibid.

reported in different parts of the country. For instance, in May 2018, the Regional Commissioner of Kagera expressed concern over incidents of killings of the bodaboda drivers in the region, following brutal killings of three in the month. In the same month, more than 100 bobaboda drivers in Masasi-Mtwara Region, took to the streets to protest against abductions and killings of three fellow drivers in the district within two weeks. In September 2018, it was reported that police in Pwani Region apprehended two people suspected of abducting and killing a bobaboda driver in Kibindu area in Bagamoyo District, before leaving with his motorcycle.

In the same month, the District Commissioner of Pangani in Tanga ordered investigation into the abduction and killing of a bodaboda driver, Mohamed

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Ally, of 22nd September 2018. Babaj drivers have also been known to face this predicament of abductions and killings in recent years.

**Ben Saanane, Azory Gwanda and Tundu Lissu: What happened to them?**

Ben Saanane, who was head of research department of an opposition party (CHADEMA) disappeared in November 2016, while Azory Gwanda – a journalist with Mwanananchi Newspaper, disappeared in November 2017. In September 2017, Tundu Lissu (MP), who was opposition chief whip in Parliament, was shot multiple times outside his residence in Dodoma. These incidents are among several, which have shocked the nation and threatened right to liberty and personal security in recent years. However, the question as to what happened to them remains unanswered.

### 2.4.3. **Right to Bail**

As indicated above, the right to bail is guaranteed under the Constitution of Tanzania 1977 and stipulated in the Criminal Procedures Act, CAP 20. Bail can be granted by police following an arrest, or by a court of law. But in practice, there have been multiple reported complaints about denial of police bail, especially during weekends. Some police officers have also been accused of extorting money from individuals under police custody or their relatives as a condition for release on bail. Because of this situation, in 2018 the Minister of Home Affairs issued a warning to police officers and ordered that bail should be granted by police even during weekends.

### 2.5. **Freedom from Torture and Inhuman or Degrading Treatment**

Freedom from torture is a basic human right protected under the regional and international human rights treaties. The Constitution of the United Republic of Tanzania also prohibits torture, providing that to ensure equality before the law, among the principles that must be taken into account, is to ensure that no person is subjected to torture or inhuman or

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148 Article 5 of ACHPR and Article 7 of ICCPR.
degrading punishment or treatment.\textsuperscript{149} The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture for the purposes of the convention as any act inflicting severe pain to obtain information, confession or to intimidate or punish by a public official or any person in official capacity.\textsuperscript{150} However, it also provides for a wider application. According to the the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, "Any unnecessary, excessive or otherwise arbitrary use of force by law enforcement officials is incompatible with the absolute prohibition of cruel, inhuman or degrading treatment."\textsuperscript{151} He notes that the act of a law enforcement official intentionally and purposefully inflicts pain or suffering on an individual who is powerless and unable to escape or resist arrest is unlawful and amounts to torture.\textsuperscript{152}

\textit{Torture of a journalist at the National Stadium in Dar es Salaam}

In August 2018, a video of police officers beating a journalist from Wapo Radio at the National Stadium in Dar es Salaam circulated in the social media. He was allegedly beaten because of trying to enter into a press conference following a football match involving Dar es Salaam-based Simba Sports Club.

\textit{Torture of a local businessman in Bunju area – Dar es Salaam}

In August 2018, a video showing a peoples’ militia officer severely beating a local businessman in Bunju area - Dar es Salaam for not paying a cleanliness fine circulated in the social media. The police force later released a press statement stating that the perpetrator had been arrested and would be brought to justice.

\textsuperscript{149} Article 13(6) (e) of Constitution of Tanzania 1977.
\textsuperscript{150} Article 1 of CAT.
\textsuperscript{152} Ibid.
Beating of a journalist in Tarime District – Mara Region

In August 2018, it was reported that a journalist with Tanzania Daima Newspaper, Sitta Tuma, was brutally beaten and harassed by police officers in the course of performing his duties in Tarime District, Mara Region. According to the Tanzania Editors Forum (TEF), which issued a statement to condemn the beating, the officers continued beating the journalist even after he had introduced himself.


154 Ibid.
Torture of children by parents, teachers and guardians

Chapter Seven of this report, under sub-chapter 7.2 below, discusses issues of violence against children, which include acts of torture. LHRC has found that these acts are usually perpetrated by parents or guardians of the children, usually in the form of excessive punishment. Some of these acts have even resulted into death, as was the case of a pupil in Kagera Region, who was severely beaten by his teacher to death and an incident in Morogoro Region, where a child has severely beaten by her teachers such that she had to be admitted to a hospital. All these incidents are covered in greater detail under sub-Chapter 7.2 below.

Conclusions and Recommendations

1. Conclusions

<table>
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<th>Right to Life</th>
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| Right to life continues to face major threats in the form of mob violence, judicial killings, witchcraft-related killings, death penalty and road accidents. Incidents of mob violence have slightly increased compared to the first six months of 2017. Witchcraft-related killings also appear to have decreased, based on reported incidents, as have road accidents. However, these rights issues still pose a significant threat to right to life and numbers are still high. For the case of death penalty, LHRC documented fewer incidents of death sentences compared to the year 2017. More efforts are thus needed to safeguard right to life against these common threats.

While the Online Content Regulations contain some important provisions and set minimum standard requirements with regards to the protection of children online, fighting hate speech and extremism online, and promoting user responsibility and digital security practices, they also contain provisions that do not meet international standards on freedom of expression and therefore serve to mainly arbitrarily restrict rather than promote freedom of expression which is essential in a democratic society. Amendments to the Statistics Act 2015, also poses a threat to freedom of
expression, especially for investigative journalists, CSOs and independent research institutions. Harassment of and threats to journalists was also a key issue affecting freedom of expression in 2018, which has contributed to Tanzania further dropping in the 2018 World Press Freedom Index.

Realization of the right to equality before the law continues to be boosted by government, judiciary and CSO action, especially through improving access to justice through provision of legal aid and construction of new courts. However, full realization of this right continues to be hindered by limited access to legal aid; inaccessibility of police stations and courts; prolonged detention of accused persons; corruption within the justice system; uneven distribution of lawyers and advocates; and low awareness of relevant laws and procedures. Violation of the right to presumption of innocence was also a key issue affecting the right to equality before the law in 2018.

LHRC welcomes the order issued by the Minister of Home Affairs, Hon. Kangi Lugola, regarding granting of police bail even during weekends. This will help to correct the practice of not allowing bail during weekends and consequently help to safeguard right to liberty. Apart from denial of police bail, right to liberty was mainly threatened by arbitrary arrests and detention of journalists and civilians; and arbitrary arrests and detentions ordered by regional and district commissioners.

LHRC commends the Minister of State in the President’s Office, Regional Administration and Local Government, Hon. Selemani Said Jafo (MP), for speaking against misuse of arrest and detention powers by regional and district commissioners and calling upon them to refrain from such behaviour. On the other hand, the right to personal security in 2018 was jeopardized by killings and abductions, including killing of Godfrey Luena, a land rights activist, outside his home in Ifakara-Morogoro.

Incidents of torture recorded by LHRC in 2018 include torture of a journalist and a local businessman in Dar es Salaam; beating of a journalist in Tarime-Mara; and torture of
Inhuman or Degrading Treatment of children by their parents and guardians in different parts of the country.

Failure to ratify the anti-torture convention so far presents a challenge in the fight against torture in Tanzania.

2. Recommendations

State actors

⇒ Ministry of Home Affairs and the Police to ensure the police force responds timely to prevent mob violence and take action against mob-kilings, ensuring the perpetrators are brought to justice.

⇒ Given President Magufuli’s stance on death penalty execution, which is further proof of Tanzania’s state of moratorium, the Government should move to declare the state of moratorium. The Law Reform Commission and the Parliamentary Committee on Constitutional and Legal Affairs should push for legal reforms to outlaw death penalty.

⇒ The Ministry of Home Affairs should ensure police officers implicated in extrajudicial killings are held accountable and brought to justice. Police officers and other law enforcement agents should also be properly trained and instructed to refrain from using excessive or unnecessary force in dealing with suspected criminals and other civilians. Use of force, especially firearms, should be a last resort in case of imminent threat to life and serious injury.

⇒ Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.

⇒ The Judiciary and the Prevention and Combating of Corruption Bureau (PCCB) to closely work together to address corruption within the justice system in order to restore public faith in the system and reduce incidents of mob violence. Addressing judicial corruption will also contribute to safeguarding access to justice.
⇒ The Government and the Police Force to refrain from arbitrarily interfering with freedom of expression, including press freedom; freedom of assembly; and freedom of association.
⇒ The Government, through Ministry of Constitutional and Legal Affairs, should move table amendments of laws that impose arbitrary restrictions on participation rights, especially freedoms of expression, association and assembly. These laws include Media Services Act, Cyber Crimes Act and Statistics Act.
⇒ The Ministry of Information, Culture, Arts and Sports should review the Online Content Regulations remove or amend provisions that do not conform to international standards of freedom of expression.
⇒ Regional and District authorities should refrain from misusing their powers of arrest and detention under the Regional Administration Act.
⇒ The Police Force should refrain from conducting arbitrary arrests and arbitrarily detain suspected criminals instead of sending them court within a specified period of time (usually 24 hours) as required by the law, in order to the right to liberty. Police officers implicated in this behaviour should be held accountable.
⇒ The Police Force should ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.
⇒ The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in order to safeguard freedom from torture.
⇒ The Police Force and courts of law to grant bail for all bailable offences and to do so timely.
⇒ There is need to have in place an independent police oversight body to investigate police misconduct and ensure police officers who do not abide by the law are held accountable.

Non-state actors
⇒ CSOs to intensify effort to raise public awareness on legal procedures and human rights, as well as encouraging community members to obey the law and respect human rights of others in
order to preserve right to life. In case of mob violence, for example, members of the public should be made aware of offences which are bailable.

⇒ CSOs and FBOs to use their platforms to speak against and raise awareness about mob violence, death penalty, witchcraft-related killings, attacks of PWAs and road accidents as well as their overall impact on human rights.

⇒ CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals in order to enhance with knowledge and understanding of human rights as a way of safeguarding right to equality before the law and ensuring access to justice.

⇒ CSOs, in collaboration with CRAGG, to conduct research to determine extent of torture in Tanzania and ways of addressing this problem. Evidence collected could help to advocate for ratification of the United Convention against Torture.

**Members of the public**

⇒ To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system where they are not happy with the outcome of a case.

⇒ Religious leaders and traditional leaders to use their platforms to speak against violations of civil rights, especially right to life, freedom of expression and freedom from torture, as a way of promoting these rights.
Chapter 3: Political Rights

Introduction
Political rights are human rights that enhance direct participation of individuals in the political life, without discrimination or repression. Right to vote and to be voted for, the right to participate in democratic processes, freedom of association, freedom of assembly and the right to demand accountability from the State are key components of political rights. Civil societies and trade unions play a big role in enhancing political rights, especially through freedom of assembly and freedom of association.

Political rights are generally protected under the International Covenant on Civil and Political Rights of 1966. Domestically, political rights are constitutionally guaranteed under the Constitution of the United Republic of Tanzania of 1977. This Chapter examines the situation of freedom of assembly, freedom of association and right to take part in governance in the year 2018 as key political rights in Tanzania.

The International Covenant on Civil and Political Rights (ICCPR) of 1966 protects the political rights, as do regional human rights treaties that Tanzania is party to such as the African Charter on Human and Peoples’ Rights (ACHPR) of 1981 and the African Charter on the Rights and Welfare of the Children (ACRWC) of 1990. These rights were also incorporated in the Constitution of the United Republic of Tanzania, 1977 as part of the bill of rights. The chapter discusses the situation of the political rights in Tanzania for the year 2018, focussing on freedom of assembly, freedom of association and right to take part in governance.

3.1. Freedom of Assembly
States are obligated to respect and refrain from interfering with freedom of assembly under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) and African

Every person has a freedom, to freely and peaceably assemble freedom of associate and cooperate with other persons, and for that purpose, express views association publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests

Article 20(1)
Charter on Human and Peoples’ Rights (ACHPR). In 1984, the Government incorporated the bill rights, including freedom of assembly, into the Constitution of United of Tanzania of 1977.

The only restrictions on freedom of assembly allowed are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others, according to ICCPR. Restrictions must be necessary to achieve the desired purpose and must be proportionate to the need on which the limitation is based.

**Continued limitation of political assemblies**

According to the Guidelines on Freedom of Association and Assembly in Africa, published by the African Commission on Human and Peoples’ Rights in 2017, organization of and participation in assemblies is a right and not a privilege, hence does not require authorization of the State. States are required to offer the necessary measures to protect public safety and other rights if only the prior notification is put in place on the happening of the event. The Guidelines also prohibit blanket bans and require simple and flexible notification procedures.

Freedom of assembly, particularly political assemblies, continued to face limitations in 2018, characterized by bans on political assemblies outside a politician’s constituency. There were also complaints of discriminatory practices relating to freedom of assembly from political opposition camps, with notifications for assembly usually denied in the name of protecting peace and security. Arbitrary restrictions on freedom of assembly contributed to reduced civic space in Tanzania Mainland in 2018. In this year, law enforcement officials were also criticized for their tendency of using excessive force to deal with demonstrations, which lead death of a

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155 Article 20(1) of UDHR; Article 22 of ICCPR; and Article 11 of ACHPR.
156 See Article 22(2) of ICCPR; see also Article 11 of ACHPR.
158 Ibid.
159 Ibid.
university student, Akwelina Akwilini, during an opposition protest in Dar es Salaam in February 2018.

In 2018, political rallies resulted in arrest of many opposition members were arrested. This includes arrests of CHADEMA members of parliament,¹⁶⁰ who were accused of “inciting hatred and rebellion” during a public speech in which they uttered that the incumbent President would not last long.¹⁶¹ In late April 2018, citizens were threatened to be “beaten like stray dogs” and made to suffer if they participated in demonstrations called for 26th April 2018, which was the union day. Such threats have contributed to fear to participate in demonstrations among members of the public. A study on citizens’ views on participation and demonstrations, conducted by Twaweza in 2018 shows that 2 out of 3 citizens are unlikely to participate in any public demonstration.¹⁶² The study also shows that 5 out of 10 citizens agree with ban on political rallies, while 4 out of 10 disagree.¹⁶³

### Key Provisions within the Guidelines on Freedom of Association and Assembly in Africa

**What constitutes peaceful assembly?**

The right to freedom of assembly extends to peaceful assembly. An assembly should be deemed peaceful if its organizers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful. a. ‘Peaceful’ shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties. b. Isolated acts of violence do not render an assembly as a whole non-peaceful.

**Notification of assembly**

Participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens. a. A notification regime requires that the presumption is always in favor of holding assemblies, and that assemblies not be automatically penalized,

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¹⁶⁰ Freeman Mbowe, Vincent Mashinji, John Mnyika, Peter Msigwa, Esther Matiko, Salum Mwalimu, and Halima Mdee


¹⁶³ Ibid.
through dispersal or sanction, due to failure to notify, subject to the provisions further detailed below. b. Lack of notification shall not be understood to make an assembly illegal.

Notification procedures shall be nonburdensome.
a. A notification regime shall not stipulate that notifications be required too far in advance; rather, any notice period shall be as short as possible. Notification may be sought far enough in advance for an exchange of views as to any possible conditions, and for the relevant authorities to prepare
b. Lack of notification shall not be understood to make an assembly illegal.
c. Procedures shall be flexible in instances of late notification or submission of incomplete information, with a view to facilitating the conduct of assemblies.

A failure to respond by the authorities shall be taken as acknowledgement that the assembly may go ahead along the lines proposed.

No notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. Spontaneous assemblies include assemblies that occur as immediate reactions to events, and planned assemblies that necessarily occur within a tighter deadline than that required relative to notification.

A single authority shall be designated as the entity responsible for receiving notifications.54 The designated authority shall be impartial. Upon receipt of notifications, the authority in question shall be responsible for communicating with other concerning agencies.

The operations of the authority in question should be subject to oversight and monitoring by an independent authority with a rights-advancement mandate, such as an ombudsman or a national human rights institution.

Freedom of expression through assembly
States shall fully respect in law and practice the right to freedom of expression through assembly.56 States shall not discriminate among assemblies based on the expression involved.

Speech addressing matters of public concern, public interest or political or policy affairs, including criticism of the state or state officials, including as exercised in the context of an assembly, is given maximum protection under the right to freedom of expression

Blanket Bans
The blanket application of restrictions, including the banning of assemblies at certain times of day or in particular locations, shall be permitted only as a measure
of last resort, where the ban in question complies with the principle of proportionality.63 The holding of assemblies in public areas in the proximity of residential areas, as well as the holding of nighttime assemblies, shall be handled on a case-by-case basis, rather than prohibited as such.

**Proportionality**

Any limitations imposed shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law. The law shall not allow assemblies to be limited based on overly broad or vague grounds.

**Citizens’ views on participation and demonstrations**

A study on citizens’ views on participation and demonstrations, conducted by Twaweza in 2018 shows that 2 out of 3 citizens are unlikely to participate in any public demonstration.164 The study also shows that 5 out of 10 citizens agree with ban on political rallies, while 4 out of 10 disagree.165

3.2. **Freedom of Association**

Freedom of Association ensures one the right to form and participate in association, either formally or informally. It covers any form of organized groups and professional organizations like political parties, trade unions, public associations and non-governmental organisations. It involves an ability to seek and receive resources for organization, peacefully promotion and respect of human rights.166 This right is guaranteed under the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples Rights (ACHPR), and the African Charter on Democracy, Elections and Governance, among other human rights instruments.167 In Africa, States have an obligation to have in place national


165 Ibid.


167 Article 22(1) of ICCPR; Article 10(1) of ACHPR; Articles 12(3), 27(2); and 28 of the African Charter on Democracy, Elections and Governance, 2007
legislation on freedom of association that facilitates and encourages establishment of associations and promotes their abilities to pursue their objectives. Members have a choice of joining and leaving associations.\textsuperscript{168} Like for the right to freedom of assembly, restrictions applicable for the right of freedom of association are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals, or protection of rights and freedoms of others.\textsuperscript{169} Together with freedom of expression and freedom of assembly, freedom of association is key for realization of the right to participate in governance (participation rights).

In 2018, freedom of association was threatened by violations of freedom of assembly. This is because the two rights are closely related, which is why they are both provided for under Article 20(1) of the Constitution of the United Republic of Tanzania of 1977. Arbitrary limitation of political rallies is a serious threat to the existence of political parties, as it hinders effective growth. Opposition members and leaders also complained of unfair treatment while in the conduct of political affairs in the forms of harassments, denial or delays in granting bail and prison sentences.

**Unfair treatment of opposition political leaders, including harassments and bail delays**

Opposition political parties, especially CHADEMA, complained of constant arrests and harassments by law enforcement officers while in the course of conducting political activities in the year 2018. This includes arrest of its top leadership in connection with the protests of February 2018, that lead to the death of a university student, as discussed above. They faced 13 counts, including staging an unlawful demonstration in Dar es Salaam in the run-up to the February 16, 2018 parliamentary by-election in Kinondoni Constituency. They also raised concern over prison sentences for even minor offences and denial or delays in granting bail for bailable offences. Jail sentences were issued for Mr. Joseph Mbilinyi (MP) and Mr. Emmanuel


\textsuperscript{169} Article 22(2) of ICCPR.
Masonga in February 2018, for delivering “a hate speech” against the President.

**Political Parties Bill: A serious threat to freedom of association for political parties**

In November 2018, the Political Parties Bill was tabled before the National Assembly of Tanzania. The controversial bill introduced several new provisions which significantly threaten freedom of association for political parties in Tanzania. The bill generally contravenes the Constitution of the United Republic of Tanzania of 1977, which guarantees freedom of association; and also threatens multiparty democracy. CSOs, opposition political parties and other stakeholders strongly voiced their concerns with the Bill, but it was nevertheless passed by the Parliament. Key problematic provisions of contained in the Bill are briefly discussed below:

**Criminalization of legitimate political activities**

The Bill proposed unnecessary criminalization of political activities – which are the cornerstone of freedom of association of political parties. It imposes jail terms for contravention of the prohibition, focusing on punitive rather than administrative measures. For instance, it prohibited for a political party from functioning as a pressure or activist groups, a measure that serves to cripple the functioning of political parties by rendering them inactive, thus contravening the Constitution of the Tanzania and contrary to regional and international standards on freedom of association under human rights and democracy instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Guidelines on Freedom of Association and

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171 Including LHRC, Twaweza, Tanzania Network of Legal Aid Providers (TANLAP), Tanzania Human Rights Defenders (THRD) and Tanganyika Law Society (TLS).

172 The parties include Chadema, ACT-Wazalendo, CUF, UPDP, DP, CCK, Chaumma, ADC and NCCR-Mageuzi.


174 Pressure or activist group is defined as ‘a group of people that influences public opinion or government action in the interest of a particular cause.’
Assembly in Africa. In LHRC’s opinion, putting pressure on the Government to take a certain action is a key function of a political party and health for democracy and development.

Vague provisions, susceptible to multiple interpretations and abuse

Some of the provisions, including definitions, are vague and susceptible to multiple interpretations and leave loopholes for abuse. They are also likely to create fear in the course of realization of freedom of association by party members. For instance, terms such as “ethics: and “peace and tranquility” are not clearly defined and thus leave room for wide interpretation.

Severe penalties and disregard of the principles of natural justice

Severe penalties are provided for in case of non-compliance with the provisions, including jail terms and fines. Some of the criminal sanctions, which are imposed on both individuals and parties, could be addressed administratively or at least be preceded by a warning or lesser sanction. For instance, a person who contravenes the requirement of conducting civic education or training to a political party and without approval of the Registrar is liable to a fine of not less than one million shillings but not exceeding five million shillings or to imprisonment for a term of not less than six months but not exceeding twelve months or to both. If it is an institution then it will be liable to a fine of not less than five million shillings but not exceeding thirty million shillings. If a political party, a leader or a member of a political party fails to provide any information demanded by the Registrar, they are liable to a fine of not less than one million shillings but not exceeding ten million shillings (political party) and a fine of not less than one million shillings but not exceeding three million shillings or to imprisonment for a term of not less than six months but exceeding twelve months or to both (an individual). Additionally, the Registrar may also suspend or deregister such political party.

Immediate suspension or deregistration without taking other administrative measures or imposing lesser sanctions is contrary to the spirit of promoting multiparty democracy and contravenes the principles of natural justice. One of the key principles of natural justice is the right to be heard and defend
oneself, which in this case is not afforded. In this case, the Registrar is also assuming the roles of both the accuser and judge.

**Sweeping discretionary powers of the Registrar of Political Parties**
The Bill granted the Registrar excessive powers, including policing and regulating of internal affairs of political parties. For instance, he is given powers to suspend any member of a political party from conducting political activities in case there’s contravention of any provision of this law; and may demand any information from a political party, a leader or a member. Another good example of sweeping discretionary powers of the Registrar is in relation to provision of civic education and training to political parties, which cannot be done without his/her approval. Moreover, the Registrar was granted powers to suspend or deregister political parties for contravention of provisions of the Bill. These sweeping powers granted to the Registrar pose a big threat to freedom of association for political parties and hinders full realization and enjoyment of this right for both parties and individuals/members.

**Low public awareness of smaller political parties**
A survey on citizens’ views on politics in Tanzania, conducted by Twaweza in 2018, shows that almost citizens are aware of three major political parties in Tanzania, namely CCM (100%), Chadema (97%) and CUF (83%). However, awareness of other significant parties is much lower, whereby among other parties NCCR Mageuzi (54%) is the most well-known, followed by TLP (41%) and ACT Wazalendo (32%). The blanket ban on political rallies will further hamper growth of these political parties, hence denying them their right to freedom of association.

**The Non-Governmental Organizations (Amendments) Regulations, 2018 and its impact on CSOs**
In October 2018, the Ministry of Health, Community Development, Gender, Elderly and Children introduced the the Non-Governmental

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176 Ibid.
Organizations (Amendments) Regulations, 2018, complementing the Non-Governmental Organizations Regulations, 2004). The regulations provide for some positive provisions, seeking to ensure financial transparency and accountability of NGOs operating in Tanzania, as well as combating corruption and money laundering.\(^{177}\) However, LHRC’s assessment of the regulations shows that the reporting requirements under the Regulations are burdensome and the Regulations generally raise the question of practicability and leave loopholes for misuse of power by government actors, which might lead to harassment and arbitrary interference with the freedom of association of NGOs.\(^{178}\) Under the Regulations, among other things, NGOs obtaining funds exceeding Tshs. 20,000,000 (twenty million) are required to: publish bi-annually fund reports together with its expenditure in a media that can be easily accessed by targeted beneficiaries; submit to the treasury and Registrar of NGOs contracts entered with the person who grant the said fund; and declare to the Registrar of NGOs any other resource received in cash or kind before its expenditure.\(^{179}\) The Regulations also talk about and prohibit contracts which undermine sovereignty of the state and rights of the people,\(^{180}\) but do not explain what this means.

### 3.3. Right to Take Part in Governance

Right to take part in governance is also known as right to take part in public affairs or right to participate in the government.\(^{181}\) It includes the right for citizens to vote and be voted for public office and the right to participate in political life.

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\(^{177}\) See Regulations 12, 14 and 15 of the Non-Governmental Organizations (Amendments) Regulations, 2018.

\(^{178}\) For further analysis, see LHRC’s analysis at [www.humanrights.or.tz](http://www.humanrights.or.tz).

\(^{179}\) Regulation 13 of the Non-Governmental Organizations (Amendments) Regulations, 2018.

\(^{180}\) Ibid, Regulation 15 (1) (b).

\(^{181}\) Is guaranteed under various regional and international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disability (CRPD).
Everyone, either directly or through a chosen representative, has a right and opportunity to take part in the public affairs of the state.\textsuperscript{182} Public participation enhances promotion of democracy and the rule of law. Individuals have to be allowed to draw attention in case there is any aspect of work that may likely to impede realization and promotion of human rights in the country.\textsuperscript{183} Restrictions should not be imposed when a citizen is about to participate fully in the process leading to the matters affecting his wellbeing or that of the nation.\textsuperscript{184}

In practice, citizen participation in governance in Tanzania is limited by factors such as: low levels of financial and administrative discretion by local government authorities (LGAs); unavailability of more realistic participatory planning strategy and feedback mechanisms; and limited access to information, capacity of citizens or civil society organizations to carry out public expenditure tracking and budget analysis on a timely and regular manner.\textsuperscript{185}

This sub-chapter looks at the situation of right to vote and be voted for as well as right to participate in political life as key components of right to take part in governance in Tanzania Mainland in 2018.

### 3.3.1. Right to Vote and be Voted for

In 2018, some of the citizens of Tanzania exercised their right to vote and be voted for during the by-elections held in different parts of Tanzania Mainland. However, realisation of this right largely not peaceful as the violence erupted at some of the areas that held the by-elections, leading to injuries to both voters and some of the candidates. For instance, in Kaloleni-Arusha, one of the contestants from the opposition party,

\textsuperscript{182} Article 25 (a) of the International Covenant on Civil and Political Rights, 1966; Article 21(1) of the Constitution of Tanzania

\textsuperscript{183} Article 8 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly resolution 53/144 of 9 December 1998.

\textsuperscript{184} Article 21 (2) of the Constitution of the United Republic of Tanzania, 1977

CHADEMA, Mr. Boniface Kimaro, was attacked by unknown assailants.186 Such incidents of violence hinder people from freely coming out and voting, which in turn restricts their participation in governance. As the general elections of 2020 loom, such incidence of violence may discourage or prompt neutral Tanzanians and some members of political parties to decide not to vote and stay indoors.

Tensions between the ruling party, CCM, and opposition parties is an issue of key concern in Tanzania Mainland, as addressed in Chapter 10 of this report; and is, in LHRC’s opinion, a key source of violence between members of these opposing parties. Deliberate measures to address this problem of political intolerance should be taken ahead of the upcoming elections in 2019 and 2020.

In another by-election held in Kinondoni Constituency in Dar es Salaam in February 2018, violence erupted at polling stations, as the opposition cried foul and bemoaned unfair treatment by the National Electoral Commission (NEC). Opposition parties, led by CHADEMA, claimed delays/denial of

permits for their polling agents in Kinondoni-Dar es Salaam and Sihale-Kilimanjaro, an action that prompted them to protest in Dar es Salaam.

LHRC’s assessment of the by-election in 2018 concluded that they were marred with acts of violence, tension and complaints of foul play, which means NEC has a lot of work to do to ensure the upcoming elections are peaceful and democratic; and address perceived bias against it. LHRC condemns all acts of violence that occurred during the by-elections of 2018 and calls upon the authorities to address the irregularities and ensure future elections are free, fair and peaceful.

3.3.2. Right to Participate in Political Life

Right to participate in political life is key for advancement of human rights and promotion of democracy in Tanzania. This right enables citizens to take part in matters pertaining to the governance of the country and participate fully in the process leading to the decision on matters affecting them, their well-being or their nation, as provided for under the Constitution of the United Republic of Tanzania of 1977.\(^{187}\) It also helps to open up debate and discussion about development and promote rule of law. This is a right of all people and can be enjoyed directly or indirectly through members of parliament (MPs). By nature, human rights are interrelated and interdependent; and as such, there are human rights which are crucial for realization of the right to participate in political life, also known as participation rights. These rights include freedom of expression, right to education, freedom of assembly and freedom of association. International human rights standards require that participation in political life and public affairs be equal (discrimination-free). Marginalized groups such as women, PWDs and indigenous peoples are usually not able to fully participate in political life in equal basis.

In 2018, the situation of the right to participate in governance slightly worsened compared to the year 2017. This was mainly due to:

\(^{187}\) See Article 21 of the Constitution of Tanzania of 1977.
**Arbitrary restrictions on freedoms of expression, assembly and association**

As discussed above, freedoms of expression, assembly and association faced severe restrictions or threats in 2018. These participation rights are key for realisation of the right to participate in political life, hence their restrictions directly affected this fundamental right. Proposed amendments of the Political Parties Act further jeopardized realisation of this right in 2018 and in the future. The proposed amendments make it difficult for leaders and members of political parties to freely enjoy their right to participate in political life, owing to several restrictions, interferences and criminal sanctions proposed. 188

**Removal and suspension of Members of Parliament for certain periods of time**

The Standing orders of the National assembly empowers speaker of the assembly to reprimand and punish any MP in case there is contravention of the rules and regulations governing the parliamentary sessions. The speaker may ban/prohibit MPs from attending not more than five parliamentary sessions. 189

In 2018, several Members of Parliament (MPs) were kicked out of parliamentary sessions for different periods of time as disciplinary measures, with punishment for some taking longer than others. These MPs include:

- Hon. Hamidu Bobali, MP of Mchinga Constituency (CUF), who was ordered out by the Speaker during a parliamentary session on 28 June 2018; 190
- Hon. Peter Msigwa, MP of Iringa Urban Constituency, was suspended by the Deputy Speaker, Hon. Dr. Tulia Ackson, during the 13th Parliamentary session;
- Hon. Susan Kiwanga, MP of Mlimba Constituency, who suspended by the Speaker during the 13th Parliamentary session for misconduct; and191

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188 The Bill has been signed into law in early 2019.
189 Order 72 of the Parliamentary Standing Order of 2016.
- Hon. Ester Bulaya, MP of Bunda Constituency, was suspended by the Deputy Speaker, Hon. Dr. Tulia Ackson, during the session of 9th May 2018. \(^{192}\)

LHRC understands that the Parliament has its own rules and regulations (standing orders), which are used to justify different forms of punishment for members of parliament who contravene them. However, there is need to balance between the need to punish the MP and the right of citizens to participate in governance through MPs. In this case, the principle of proportionality should be considered for the sake of wider public interest. On the other hand, LHRC urges MPs from all political parties to conduct themselves properly while in Parliament, in line with the Standing Orders, in order to reduce the risk of suspension, so as to protect the right of the citizens to participate in governance through representation by MPs. MPs are also encouraged to actively participate in parliamentary sessions and in order to effectively perform their job of holding the government accountable.

*Majority of citizens do not feel that they are adequately represented by their Members of Parliament and councillors*

A 2018 Twaweza study on citizens’ views on politics in Tanzania shows that majority of Tanzanians are not confident in their representation by their Members of Parliament (MPs). \(^{193}\) According to study findings, fewer than half of all citizens approve of the performance of their MP (44%) and councillor (45%) since coming to office. \(^{194}\)

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\(^{194}\) Ibid.
**Arbitrary restrictions on participation rights contributing to shrinking civic space for civil society**

Restrictions on freedoms of expression, association and assembly also continued to affect the work of civil society organisations (CSOs) and individual members and activists in Tanzania Mainland, as independent advocates and watchdogs. For instance, the adoption of amendments to the Statistics Act of 2015, pose a significant threat to the research function of CSOs. Online Content Regulations, discussed in detail in Chapter Two of this report, introduced in 2018, also affect the work of CSOs in terms of sharing information and using online platforms to advocate for change.

**Conclusion and Recommendations**

1. **Conclusions**

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<th>Conclusion</th>
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<tr>
<td>Freedom of Assembly</td>
<td>Freedom of assembly continued to be affected by a blanket ban on political rallies in 2018. Opposition political parties also complained of discriminatory practices relating to political assembly; and arbitrary arrests and detention. These practices contravene the Guidelines of Freedom of Association and Assembly in Africa and severely curtailed freedom of assembly in Tanzania Mainland. Restrictions imposed on freedom of assembly are neither stipulated in the Constitution of the United Republic of Tanzania of 1977 nor the Political Parties Act of 1992, thus arbitrary.</td>
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<tr>
<td>Freedom of association</td>
<td>Arbitary restrictions on freedom of assembly significantly contributed to violations of freedom of association, since the two rights are closely interrelated. Opposition political parties complained about unfair treatment while in the conduct of political affairs. However, the biggest threat to freedom of association, particularly for political parties, was introduction of the bill to amend the Political Parties Act of 1992. Analysis of the bill by various non-state actors revealed that the bill contained provisions which: criminalize legitimate political activities; are vague, susceptible to multiple interpretations and abuse; providing for severe penalties;</td>
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</table>
Right to take part in governance includes right to vote and be voted for and right to participate in political life. In 2018, these rights were marred by violence which erupted during by-elections in several parts of Tanzania Mainland. In 2018, the situation of the right to participate in governance slightly worsened compared to the year 2017. This was mainly due to arbitrary restrictions on freedoms of expression, assembly and association. Right to take part in governance is key for realization of the right to development and ensure government accountability. Tanzania is also yet to ratify the African Charter on Democracy on Good Governance of 2007, which is key for realization of the right to take part in governance.

2. Recommendations

State actors

⇒ Government and police authorities to refrain from arbitrarily interfering with freedoms of assembly and association;
⇒ The Police Force to objectively apply the Police Force and Auxiliary Services Act in relation to freedom of assembly in line with the Guidelines on Freedom of Association and Assembly in Africa and international human rights standards;
⇒ The Government should sign and ratify the African Charter on Democracy on Good Governance of 2007 in order to strengthen participation in democratic practices;
⇒ The Officer of the Registrar of Political Parties should move to make amends to the proposed amendments to the Political Parties Act 1992, by addressing problematic provisions identified by stakeholders and considering the recommendations given;
⇒ The National Electoral Commission (NEC) should move to address perceptions of bias in order to promote full realization of the right
to take part in governance, particularly right to vote and be voted for;

⇒ The Government and police should allow CSOs and political parties to operate freely in their work as watchdogs by guaranteeing their rights to freedoms of assembly and association;

⇒ As Tanzania heads to the 2019 and 2020 elections, the National Electoral Commission (NEC), Commission for Human Rights and Good Governance (CHRAGG) and CSOs should work together to provide civic and voter education in order to prepare Tanzanians to effectively participate in the elections as part of realizing their right to take part in governance;

⇒ The Ministry of Health, Community Development, Gender, Elderly and Children should hold consultative sessions with NGOs to review and amend the Non-Governmental Organizations (Amendments) Regulations, 2018 to ensure they do not arbitrarily interfere with the realization of freedom of association of NGOs.

Non-state actors

⇒ CSOs and political parties should exercise their freedoms of association and assembly;

⇒ CSOs should provide raise public awareness on freedom of assembly, freedom of association and right to take part in governance and collaborate with the Government, including its institutions such as the Police Force and the Commission for Human Rights and Good Governance, in promoting and protecting these fundamental human rights;

Members of the public

⇒ Members of the public are encouraged to effectively and fully realize their right to take part in governance;

⇒ Members of the public are also encouraged to report violations of their political rights to the Commission for Human Rights and Good Governance, which is the national human rights institution mandated with protection and promotion of human rights;
Chapter 4: Economic Rights

Introduction
International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, ratified by Tanzania in 1976, guarantees economic rights. States have a duty to ensure progressive realization of these rights. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals. Economic rights, such as right to work and right to own property are also enshrined in the Constitution of the United Republic of Tanzania.197

Like social rights, economic rights are rights which are essential for a person to meet their basic needs, enabling them to lead or live a life with dignity. They are also enshrined in a several other human rights instruments, including the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples’ Rights (ACHPR) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) and the Convention on the Rights of Persons with Disabilities (CRPD). This chapter provides some highlights on the situation of the economic rights, particularly right to own property and right to work, in Tanzania Mainland for the year 2018.

4.1. Right to Own Property
Right to property is recognized under various regional and international human rights instruments, including ICCPR, ACHPR, UDHR, CEDAW and the Declaration on the Elimination of Discrimination against Women.198 This right is also guaranteed under the Constitution of Tanzania of 1977.199 The right to own property empowers the owner of the property with exclusivity of rights to choose the use of a resource, to the services of a

195 Article 2(1) of ICESCR.
196 Ibid, Article 2(3).
198 Article 26 of ICCPR; Articles 13 & 14 of ACHPR; Article 17 of UDHR; Articles 15 & 16 of CEDAW; and Article 6 of the Declaration on the Elimination of Discrimination against Women.
199 See Article 24(1) of Tanzania Constitution (Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law).
resource, and rights to exchange the resource at mutually agreeable
terms. It is somewhat complex human rights, subjected to more
qualifications and limitations than any other human right and having features
of both civil and socio-economic nature. It is an essential right and has
implications for other human rights, including right to work, right to
education and right to adequate housing. Interference with or deprivation of
the right to own property is only allowed where it is lawful, done for the
public interest, proportional and accompanied by fair and adequate
compensation.

In 2018, realization of the right to own property was slightly improved,
through several government actions. These include: intensified effort to
resolve land disputes and launch of the Land Management Programme;
effort to enhance security of tenure; and employing a more hands-on
approach to addressing land issues by the Ministry of Lands, Housing and
Human Settlements Development under Hon. William Lukuvi.

**Intensified effort to resolve land disputes and launch of the Land
Management Programme**

Land conflicts and disputes have been a key issue affecting realization of the
right to own property (land) for many years in Tanzania Mainland. Common
conflicts/disputes are usually between villagers and investors, farmers and
pastoralists and boundary disputes – including between villagers and wildlife
authorities. In 2018, efforts to address these disputes were intensified by
the Ministry of Lands, Housing and Human Settlements Development under
Hon. William Lukuvi (MP). In August 2018, the Minister launched land
management programme, implemented jointly by the Tanzania National
Parks (TANAPA) and National Land Use Planning Commission (NLUPC),
seeking to resolve land conflicts in regions with wildlife protected areas,

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200 Alexandro P: Public property and Property Rights available at
http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/pdf/4th_%20Symposium/
PAPERS_PPS/LAW_CITIZENSHIP/ALEXANDROPOULOU.pdf, accessed on 6th March 2019

201 Magdalena Sep.Iveda et al (2004), Universal and Regional Human Rights Protection:
Cases and Commentaries (University for Peace, Costa Rica), p. 373.

202 Article 24(2) of the Constitution of Tanzania of 1977; see also Article 14 of ACHPR.
namely Manyara, Dodoma, Mara, Arusha and Simiyu. He noted that land use planning was key in ending land/border disputes between villagers and wildlife authorities.

In Ujiji-Kigoma, the authorities have been doing well to have in place and implement good land management system, which helps to ensure realization of the right to own and use property.

**Effort to enhance security of tenure**

In 2018, the ministry responsible for lands also worked to enhance security of tenure, including by ensuring increased pace of provision of title deeds and providing public education about land ownership and laws, since it was revealed that there were gaps in knowledge amongst a large section of the society, especially in rural areas. This has contributed to some of the citizens occupying land which is not registered, hence without formal ownership documents – leaving them susceptible to eviction without compensation. Ensuring citizens have formal ownership documents will reduce incidence of land conflicts/disputes and enhance security of tenure. It will also enhance access to credit for villagers and other people in order to effectively invest in their agricultural and other activities. Land Tenure Support Project (LTSP), which kicked off in 2016 in Ulanga, Malinyi and Kilombero Districts, was said to contribute to strengthening security of tenure in Morogoro Region.

**Ministry of Land, Housing and Human Settlements Development employing a more hands-on approach to addressing land issues**

In 2018, the ministry responsible for lands was observed to employ a more hands-on approach in addressing land issues, including land-related conflicts. This was a key step in ensuring progressive realisation of right to own land. In Morogoro, one of the regions were land-related conflicts are prevalent, Land Tenure Support Project (LTSP), which kicked off in 2016 in Ulanga, Malinyi and Kilombero Districts, was said to contribute to significant decline

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204 Ibid.
in land disputes in the region. Morogoro Regional Administrative Secretary (RAS) Clifford Tandale made a request to the ministry responsible for lands to extend the programme to Mvomero, Morogoro Rural and Kilosa districts where land disputes were still tense in 2018. It was reported that the project had enabled survey of 127 villages and issuance of title deeds. Land survey sought to help citizens access title deeds and proper management of their land. Addressing the issue of unsurveyed land was key to strengthening security of tenure and consequently reduce land-related disputes in the region.

At different times of the year, the Minister also made time to attend to citizens who visited his office to hear about their land-related problems and devise ways of addressing them. He also made several visits in regions such as Morogoro and Manyara to address land issues.

Land-related conflicts still an issue of great concern
Despite efforts to address land issues in 2018, land-related conflicts still persist in different parts of Tanzania Mainland, especially between farmers and pastoralists. Reading the budget speech of his ministry for the financial year 2018/2019, the former Minister of Home Affairs, Hon. Mwigulu Lameck Nchemba (MP), mentioned that between July 2017 and March 2018, a total of 86 land-related conflicts between farmers and pastoralists were recorded in Tanzania Mainland, resulting into deaths of 44 people (34 male and 10 female) and causing injuries to 75 people (71 male and 4 female).

He added that a total of 129 people were arrested in connection with the violence and killings. It was reported in 2018 that in areas such as Mvomero, Morogoro Rural and Kilosa Districts in Morogoro Region, land disputes were still tense.

206 The project is briefly discussed below.
Discriminatory laws and GBV limiting women’s access, control and ownership of land

In 2018, LHRC observed that in the 10 regions it visited economic violence was the major form of violence against women for the year 2018. This was especially the case in rural areas, where women are the main producers of food. In regions such as Mbeya, Iringa and Kilimanjaro, it was revealed that men in rural areas tend to use women to engage in agricultural production but take full control during harvest period and abandon their spouses to seek and cohabit with other, usually younger, women. This form of economic violence significantly reduces chances of personal development for women, which in turn affects their ability to access, acquire and use land. In some cases, women tend to victimized by their husbands when they access credit without their consent, leading to loss of property through confiscation. Other forms of violence, including physical, psychological and sexual violence also hinder effective realisation of women’s right to acquire, use and dispose of land.

Limited access to land also affects women in terms of accessing financial services, as land is usually the main form of security that is accepted. Women, especially in rural areas, are usually less involved or not involved at all in decision making on land issues.

In pastoral societies such as Sukuma and Maasai, women generally face discrimination in accessing and owning land. Their situation is exacerbated by existence of discriminatory laws relating to inheritance, especially customary laws. Women in some communities, especially where practices such as bride price are common, are treated as objects or property themselves, hence no need to own property such as land. In such communities, women continued to have access only through their spouses/husbands in 2018.

Affordability of land

Land prices, especially in urban and semi-urban areas are generally high, hence not affordable for majority of Tanzanians. A good example is Dodoma, where many people have not been able to afford planned land, having easier access to unplanned land – which is cheaper. This calls for
availability of affordable land plots, so as to enhance the right to own property. Easier access to planned land could also help to reduce land-related disputes/conflicts. Access to land for investment should not be promoted at the expense of lack of land for common citizens. There is need for the Government to balance between the need for more investment and need for its citizens to have adequate access to land. Citizens should also have easier access to title deeds in order to enhance security of tenure.

**Corruption and land grabbing in the land sector still issues of great concern**

Corruption is still a major problem in different sectors in Tanzania, including in the land sector. This has resulted into violations of citizens’ land-related rights. A 2015 study by the Prevention and Combating of Corruption Bureau (PCCB) the land sector as one of the high risk and high impact sectors for corruption. For instance, in 2018 Acacia Mining Company’s North Mara Gold Mine was implicated in a grand corruption scandal, whereby some of its officials and government officials were accused to giving and receiving bribes to help the mine expand and deny rights of villagers, including compensation rights.

Land grabbing also continued to be a key issue in 2018. This is particularly a threat for villagers who need land for farming and indigenous people. According to the 2018 report by the International Work Group for Indigenous Affairs (IGWIA), land grabbing is one of the biggest threats against indigenous peoples, including in Tanzania. In September 2018, during his visit in Bunda-Mara Region, Hon. President John P. Magufuli issued a warning against investors who grab land of citizens, instead of following relevant procedures for land acquisition for investment. This followed complaints by Bunda residents about an investor who took their land without compensating him.

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211 Ikunda Erick “JPM awacharukia matajiri wapora ardhi” HABARILEO Newspaper, 6 September 2018.

212 Ibid.
4.1. Right to Work

Right to work is provided for under the various international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and The African Charter on Human and Peoples’ Rights (ACHPR).\(^\text{213}\) It gives an individual an opportunity to gain a living by work they freely choose or accept.\(^\text{214}\) An emphasis is made for governments to set up social, civil, political and economic mechanisms to enable full and progressive realization of the right to work.\(^\text{215}\) Right to work includes right to gain living by work and right to just and favourable working conditions.

The Intentional Labour Organization (ILO) emphasises on the commitment of member states to adhere to and respect four categories of rights in enhancing realization of the right to work, which are: freedom of association and recognition of the right to the collective bargaining, elimination of all forms of discrimination in employment, elimination of child labour and elimination of forced and compulsory labour.\(^\text{216}\)

This chapter highlights the situation on right to work in Tanzania Mainland in the year 2018.\(^\text{217}\)

4.1.1. Right to Gain Living by Work

*Unemployment continues to be a key challenge affecting the right to gain living by work*

Estimations and projections of the status of employment in Tanzania show that very few people are employed in Tanzania Mainland and even fewer will be in the employment sector by 2020.\(^\text{218}\) Majority of the people are currently self-employed.

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\(^\text{213}\) Article 15 of ACHPR.
\(^\text{214}\) Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, 1966
\(^\text{215}\) Ibid 6(2)
\(^\text{217}\) Ibid.
\(^\text{218}\) See Danish Trade Union Council for International Development Cooperation, *Tanzania and Zanzibar Labour Market Profile 2018*, at
Factors contributing to unemployment, particularly among youth, include lack of employability skills among university graduates and youth not being prepared for self-employment. Most youth face the challenge of lacking the necessary skills to secure employment or self-employ.

Majority of the people are employed in the agricultural sector. According to the World Bank, employment in agriculture in Tanzania stands at 66.71% as of 2017. However, this sector continues to be faced with several challenges, including budgetary deficits and non-use of modern farming equipment and technology, including during harvest – which has contributed to loss of crops during harvest. Most farmers have poor access to improved seeds and fertilisers and limited access to financial institutions. They also lack storage facilities, which means they have to sell their produce at the earliest (at harvest), usually at a low price – hence hindering their full

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Figure 5: Estimations and projections of status of employment in Tanzania, 2000-2020

Source: ILO, Key Indicators of the Labour Market (KILM)


realization of the right to gain living by work. Moreover, in 2018, access to markets that pay for agricultural produce fairly continued to be a challenge for most farmers – the problem being compounded by existence of too many middlemen, who exploit farmers. Unreliable rainfall is also not helping their situation as does underinvestment in irrigation. According to the budget speech of the Ministry of Water and Irrigation for the financial year 2018/2019, Tshs. 20,103,412,150 million had been allocated for the National Irrigation Commission (NIC) for development expenditure for the financial year 2017/2018, but by March 2018, the NIC had only received Tshs. 2,468,524,645, equaling to 12.13%.\(^\text{222}\) The speech also indicates that while there are 29.4 million hectares suitable for irrigation farming in Tanzania, only 475,052 hectares, equal to 47.44% of target and 1.6% of the land, were irrigated.\(^\text{223}\) Dissatisfied with disbursement of funds for development projects in the agriculture sector, in 2018, CSOs\(^\text{224}\) urged the Government to put more funding into the sector in order stimulate economic growth and eradicate poverty.\(^\text{225}\)

For women working in the informal, their right to gain living by work is hindered by economic violence – which as discussed in Chapter Seven of this report, was a key issue affecting women’s rights in 2018. In this chapter, it is also highlighted that sexual violence threatened women’s rights in 2018, including at workplaces, which is a threat to their right to gain living by work. In December 2018, women’s rights activists met in Dar es Salaam to discuss marginalisation of and discrimination against women in the country’s labour market.\(^\text{226}\) It was revealed that women’s labour needs to be respected, valued and recognized in the national economy in order to ensure equal division of labour and benefits accruing from it.\(^\text{227}\) During the


\(^{223}\) Ibid.

\(^{224}\) Including Action Aid, Ansaf, Forum CC, Oxfam, Policy Forum and Tanzania Gender Networking Programme (TGNP).


\(^{227}\) Ibid.
In 2018, realization of this right continued to be an even bigger challenge for persons with disabilities (PWDs), who as discussed in Chapter Seven of this report, continued to face discrimination when accessing employment, despite the law offering them protection.

**Introduction and suspension of new pension pay formula**

In 2018, the Social Security Regulatory Authority (SSRA) introduced a new pension pay formula, which brought a public outcry from different parts of the country. The new formula provided for a pension pay of 25% in lump sum and the remaining 75% to be paid on a monthly basis in a period of 12 years. Different stakeholders, including trade unions, criticized and protested against the new formula as a threat workers’ right to social security, made in disregard of their views. In December 2018, President John Magufuli ordered revert to old pension formula during the transition

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228 Ibid.
229 Ibid.
230 Ibid.
232 Ibid.
PAYE and loan board payments: a challenge for workers in public and private sectors

In 2018, workers in both public and private sectors continued to lament the burden of Pay as You Earn (PAYE) tax and loan board payments. PAYE constitutes 30% of monthly pay, while loan board in now 15% of monthly pay, rising from 8% since January 2017. Recently, the Controller and Auditor General (CAG) has indicated that some of the workers receive less than one third of their salary due to 15% deduction of educational loan. According to the 2016/2017 CAG report on local government authorities, a total of 4,830 employees in 58 local government authorities (LGAs) were noted to receive less than one third of their basic salaries, which is contrary to the Specified Officers (Debt Recovery) Act No.7 of 1970 as emphasized in circular with Ref. No.CE.26/46/01/1/66 of 28th November 2012. The CAG noted that excessive deductions significantly increased during the financial year 2016/2017 due application of the new rate of 15% to employees who are beneficiaries of Higher Education Students' Loans Board (HESLB), instead of 8% used to be charged previously. The CAG warned that these excessive deductions may adversely affect employees' performance and their well-being and leave them vulnerable to fraudulent practices and misappropriation of public funds or abuse of office, which will affect service delivery. He also recommended that “in future that any amendments to the law by the Government should apply prospectively in order to avert negative impact to parties that had already contracted using the Act before its amendments.”

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236 Ibid.
237 Ibid.
2017/2018 showed that basic salaries of 6,800 employees in 53 LGAs were subjected to deductions exceeding two thirds of their salaries.\footnote{238}{See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at \url{http://www.nao.go.tz/?wpfb_dl=291}, accessed 10\textsuperscript{th} April 2019.}

Other monthly deductions include health insurance, trade unions and social security, which total to up almost 50% of monthly pay – which means 50% is what most workers take back home, if they do not have bank or other loans.

**Unpaid staff claims, inadequate staff appraisal and delays in promotion**

In 2018, realization of the right to gain living by work was partly hindered by unpaid staff claims, inadequate staff appraisal and delays in promotion. According to the audit report on local government authorities by the Controller and Auditor General (CAG) for the financial year 2017/2018, outstanding staff claims and salary arrears in 22 LGAs amounted to Tshs. 11,141,505,574.\footnote{239}{See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at \url{http://www.nao.go.tz/?wpfb_dl=291}, accessed 10\textsuperscript{th} April 2019.} These claims, including salaries, leave, acting allowances and subsistence, remained outstanding for more than 12 months without being paid.\footnote{240}{Ibid.} It was noted, and LHRC concurs, that these outstanding claims demoralize employees in delivery of effective and efficient services to the community.\footnote{241}{Ibid.}

The CAG report on LGAs has also highlighted absence of or inadequate staff appraisal, which affects delivery of service. The report revealed that performance appraisal for 661 staff out of 874 staff sampled in 27 LGAs, equivalent to 76%, was not performed or inadequately carried out, contrary to the Public Service Regulations, 2003 and the Public Service Standing Orders, 2009 and Circular No.2 of 2004.\footnote{242}{Ibid.} Absence of or inadequate staff appraisal also affects he right to work in terms of need for training and suitability for promotion.

\footnote{238}{See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at \url{http://www.nao.go.tz/?wpfb_dl=291}, accessed 10\textsuperscript{th} April 2019.}
\footnote{239}{See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at \url{http://www.nao.go.tz/?wpfb_dl=291}, accessed 10\textsuperscript{th} April 2019.}
\footnote{240}{Ibid.}
\footnote{241}{Ibid.}
\footnote{242}{Ibid.}
Furthermore, the CAG report shows that for the financial year 2017/18, there were delays in approving promotions and salary increments to 10,899 officers in 17 audited LGAs. Lists for approval were submitted to the President Office Public Service Management (PO PSM) for approval, but delayed despite the employees in question having the required qualifications. The delays were partly attributed to certificate verification exercise which commenced in 2016, and affect working morale and job satisfaction, which could lead to poor delivery of services to community members.

**Payment of salaries or deductions to non-existing staff**
The CAG report on local government authorities (LGAs) for the financial year 2017/2018 also reveals that despite Government effort to halt payment of salaries to ghost workers, the problem still exists in some LGAs. In 17 LGAs that were audited, a total of Tshs. 207,375,726 was paid to non-existing staff, out of which Tshs. 128,319,822 was paid as salaries; Tshs. 53,946,549 was paid as deductions; and Tshs. 25,109,355 was a double payment of salaries in one LGA.

**Shortage of staff at LGAs**
CAG audit reports on local government authorities (LGAs) for the financial years 2016/2017 and 2017/2018 reveal inadequate number of staff in LGAs. The 2016/2017 report revealed shortage of 155,013 staff (32%) in 166 selected LGAs, while the 2017/2018 report indicates shortage of 149,943 staff (33%) in 158 LGAs. Shortage was also observed in health and education departments, whereby there was shortage of 37,544 staff (47%) in the health sector (hospitals, health centres and dispensaries) in 155 LGAs; shortage of 58,057 staff (29%) in primary education in 146 LGAs; and shortage of 21,257 staff (24%) in secondary education in 146 LGAs. The shortage is partly attributed the government exercise of removal of

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245 Ibid.
workers without genuine certificates, which did not go hand in hand with their timely replacement.\textsuperscript{246}

Shortage of workers has created a burden for existing employees, who are forced to do more than they are required in order to meet performance expectations. The CAG warns that this negatively affects efficiency and effectiveness of service delivery and could result into mental and physical health problems and lower morale and job satisfaction. The most affected sectors are health, agriculture and education.

\textit{Violations of right to work for domestic workers}

A 2016 report by the International Labour Organization (ILO) on the situational analysis of domestic workers in Tanzania revealed that a number of work-related rights of domestic workers are abused in Tanzania.\textsuperscript{247} These rights include: right to employment contract; right to fair remuneration; right to normal working hours; right to overtime pay; right to favourable working conditions; and right to leave. The situational analysis revealed that 80% of domestic workers did not have employment contracts, while the average pay among domestic workers employed by diplomats ranged from TZS100,000 to 250,000 and for live-in domestic workers as low as TZS 25,000 and as high as TZS 100,000.

<table>
<thead>
<tr>
<th>Table 6: minimum wage rates for domestic and hospitality services</th>
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<tr>
<td><strong>Sector</strong></td>
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<td></td>
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<td>Domestic and Hospitality Services</td>
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\textsuperscript{246} Ibid.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Area</th>
<th>Minimum Wage Rates (Tshs.)</th>
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<tr>
<td></td>
<td>Per Hour</td>
<td>Per Day</td>
</tr>
<tr>
<td>Domestic workers employed by entitled officers</td>
<td>666.70</td>
<td>5000.40</td>
</tr>
<tr>
<td>Domestic workers, other than those employed by diplomats</td>
<td>410.30</td>
<td>3077.15</td>
</tr>
<tr>
<td>Other domestic workers not specified in (a), (b) and (c) above</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Potential and tourist hotels</td>
<td>1282.15</td>
<td>9616.10</td>
</tr>
<tr>
<td>Medium hotels</td>
<td>769.30</td>
<td>5769.85</td>
</tr>
<tr>
<td>Restaurants, guest house and bars</td>
<td>666.70</td>
<td>5000.40</td>
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In terms of working hours, while the normal working hours are 9 hours a day, the situational analysis revealed that 70 percent of domestic workers were said to work between 14 and 16 hours, while 20 percent worked between 10 and 14 hours; and without overtime pay. Majority of domestic workers were also said not to be guaranteed rest during compulsory holidays or paid when they work during these days. Moreover, 70 percent of domestic workers indicated that they were never given annual leave; and maternity leave is rarely granted and if granted it is at the

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footnote 248: Ibid.
discretion of the employer, while it is actually a legal requirement. In practice female live-in domestic workers voluntarily ask to leave their jobs or are asked by employers, when they get pregnant. The report further shows that most employers do not consider their households to be legitimate work places and do not value domestic work, hence mistreating domestic workers. Furthermore, Tanzania has not registered any collective bargaining agreement for any domestic worker; and most domestic workers do not have information on the existence dispute resolution mechanisms and trade unions.

Domestic workers, especially female workers, also face acts of violence, including physical and sexual violence – including rape, from their employers. However, most of these acts go unreported. Further research is needed to determine whether the overall situation of the right to work for domestic workers in Tanzania has improved.

**Inadequate compensation in case of injury while at work**

According to the Committee on Economic, Social and Cultural Rights, States parties should ensure that workers suffering from an accident or disease, and where relevant, their dependents, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, as well as access to rehabilitation services. Compensation requirement is provided for under various international instruments on right to work, including ILO Workmen’s Compensation (Accidents) Convention, 1925 (No. 17), which has been ratified by Tanzania, and Tanzania’s Workers’ Compensation Act. This Act provides for the right to compensation for occupational injury (resulting in disablement or

According to ILO, 78% of female domestic workers are aged between 15 and 24 years, while 52% of their male counterparts fall in this age category in Tanzania Mainland.

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249 Committee on Economic, Social and Cultural Rights, General Comment No. 23 of 2016
250 Article 1 of the Convention states that “Each Member of the International Labour Organisation which ratifies this Convention undertakes to ensure that workmen who suffer personal injury due to an industrial accident, or their dependants, shall be compensated on terms at least equal to those provided by this Convention.”
251 CAP 263, R.E. 2015.
death)\textsuperscript{252} and right to compensation for occupational diseases.\textsuperscript{253} It also establishes the Workers Compensation Fund\textsuperscript{254} and creates an obligation for an employer to contribute to it.

However, in practice, little or no compensation for workers in case of workplace injury is usually granted, as revealed in LHRC’s Human Rights and Business Report of 2017 on situation of workers in private companies.\textsuperscript{255} Amount of compensation granted is usually not proportional to injury suffered.

\textbf{4.1.2. Right to Just and Favourable Working Conditions}

Under ICESCR, States are required to ensure just and favourable conditions of work, including: fair wages and equal remuneration for work of equal value without and not discriminatory, especially to women; remuneration that will provide a decent living for an individual and their families; safe and healthy working conditions; equal opportunity for promotion; and enjoyment of holidays.\textsuperscript{256} Tanzania has put in place a number of labour laws and regulations, which require just and favourable working conditions.

\textbf{Factors affecting realization of the right to favourable working conditions}

Despite existence of mechanisms to ensure enjoyment of the right to work, including labour laws and regulations, the right to favourable working conditions continues to be affected by several factors, some of which were highlighted in LHRC’s Human Rights and Business Report 2017.\textsuperscript{257} These include: inadequate wages, restrictions on freedom of association and collective bargaining, poor working conditions and low awareness about labour laws, rights and duties.

\textbf{Poor remuneration/Inadequate wages}

The issue of inadequate wages was identified as a key issue affecting right to work in Tanzania Mainland in LHRC’s Human Rights and Business Report

\textsuperscript{252} Section 19(1) of the Workers’ Compensation Act.

\textsuperscript{253} Ibid, Section 22(1).

\textsuperscript{254} Ibid, Section 5(1).

\textsuperscript{255} See LHRC (2018), Human and Rights and Business Report 2017 at www.humanrights.or.tz

\textsuperscript{256} Article 7 of ICESCR.

\textsuperscript{257} See LHR (2018), Human Rights and Business Report 2017 at www.humanrights.or.tz
Complaints about inadequate wages were leveled by workers of private companies/industries in all regions surveyed by LHRC, especially Mbeya, Morogoro and Tanga. This challenge continued to be an issue in 2018, as employers in the private sector continued to take advantage of demand for employment to offer minimum wages and exploit workers. LHRC also found that the Wage Order in use is that of 2013, while review is required every three years.

One of unjust conditions in the labour sector is unavailability of satisfactory wages to workers of the private sectors. Most of the private sector employees are unable to enjoy the fruits of their labour as they get paid wages that are inadequate to satisfy the basic needs.

**Restrictions on freedom of association and collective bargaining**

Restrictions on freedom of association and collective bargaining significantly affected full realisation of the right to favourable working conditions. Most workers, especially in the private sector, are discouraged to join trade unions and those who are actively engaged face threats from employers. Trade unions have also been questioned by workers and largely branded ineffective in protecting them and their rights, including right to favourable working conditions. According to the Danish Trade Union Council for International Development Cooperation, systemic violations of trade union rights exists in Tanzania, meaning that “government and/or companies are engaged in serious efforts to crush the collective voice of workers.”

**Poor working environment**

LHRC’s Human Rights and Business Report 2017 indicated some improvements in working environment in the private sector companies. However, the overall situation of working environment continued to be unsatisfactory in 2018, including in the education sector – where teachers, especially in rural areas, continued working in poor conditions.

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258 Ibid.
259 Ibid.
260 Ibid.
261 Ibid.
characterized by shortage of learning and teaching materials, burden of shortage of teachers, shortage of classrooms, shortage of teacher houses and delays in receiving their salary and other dues from the Government. In February 2018, the Government revealed that it would pay dues owed to 53,925 civil servants, including teachers, totaling Tshs. 43.39 billion, which is 34% of the initial claims made by the servants.\(^{263}\) 42.27% of the salary and other dues were of teachers. Some of the dues were said to go as far back as 2005.\(^{264}\)

**Low awareness about labour laws, rights and duties**

A 2017 study on human rights and business in Tanzania Mainland indicates that awareness of labour laws, rights and duties, especially among workers, is very low. Only 23% of workers at private companies that were engaged were found to be aware of relevant labour laws, rights and duties and clearly mention them. Through its Dar es Salaam and Arusha legal aid clinics, LHRC receives clients who complain about different issues, including labour-related issues. Through its engagement with clients, LHRC observed that awareness about labour laws, rights and duties continues to be low and a key issue affecting realization of the right to work, including right to favourable working conditions, in Tanzania Mainland.

**Sexual violence against women at workplaces**

In 2018, the issue of sexual violence against women at universities and workplaces re-emerged as an issue of great concern, as discussed in Chapter Seven of this report. This makes for uncomfortable working condition for women at workplaces, which includes being asked for a sex bribe to secure employment, promotion or work trips.

**Conclusion and Recommendations**

1. **Conclusions**

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\(^{263}\) Sanula Athanas “Maelfu watumishi kulipwa mabilion madeni mwezi huu” Nipashe Newspaper, 10 February 2018.

\(^{264}\) Ibid.
Despite continuing challenges related to realization of the right to own property, especially for women, the situation of this right slightly improved in 2018. This was attributed to action by the Ministry of Lands, Housing and Human Settlements Development to address land disputes; fast-tracking of acquisition of land titles; and enhancing security of tenure. However, land-related conflicts/disputes remained an issue of great concern in 2018, resulting into deaths and injuries and affecting crop production. These conflicts were reported to be tense in areas such as Mvomero, Morogoro Rural and Kilosa Districts in Morogoro Region, land disputes were still tense. Discriminatory laws and GBV continued to affect women’s access, control and ownership of land, especially rural areas.

The situation of the right to work remained the same in 2018, as it continued to be affected by challenges such as youth unemployment; unfavourable working conditions; inadequate wages; restrictions on freedom of association and collective; and low awareness about labour was, rights and duties. Lack of employability skills continued to be a key factor in youth unemployment. Teachers were among the group mostly affected by poor working environment, characterized by shortage of learning and teaching materials, burden of shortage of teachers, shortage of classrooms, shortage of teacher houses and delays in receiving their salary and other dues from the Government.

2. Recommendations

State actors

⇒ The Government, through the Ministry of Lands, Housing and Human Settlements Development, should continue applying a hands-on approach to resolving land-related conflicts and disputes and devise long-term solutions this problem, order to ensure realization of the right to own property. This includes strengthening the land-dispute settlement mechanisms, such as land tribunals. The Ministry should work with the Prevention and Combating of Corruption
Bureau (PCCB) to address corruption within these mechanisms and the land sector.

⇒ The Ministry of Lands, Housing and Human Settlements Development should also collaborate with the Law Reform Commission and other stakeholders to assess the impact of customary laws and practices that limit right to own property for women and devise a strategy to address this problem.

⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should ensure the Wage Order is regularly reviewed, in accordance with the law, to ensure realization of the right to work and promote adequate wages.

⇒ Since agriculture employs the majority of Tanzanians and rainfall has not been very reliable due to climate changes in recent years, the Government, through the Lands, Housing and Human Settlements Development and the Ministry of Water and Irrigation, should increase investment in irrigation in order to boost the right to work and economic boost.

⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should collaborate with the Ministry of Health, Community Development, Youth, Gender and Children to promote self-employment and entrepreneurship in order to address the problem of youth unemployment.

⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should strengthen mechanisms for protection of labour rights and enhance regular inspection of workplaces to ensure rights are respected, protected and promoted, including favourable working environment.

⇒ The Ministry of Education and Vocational Training should address challenges faced by teachers to ensure they work in good conditions.

⇒ The Ministry of Education and Vocational Training to work with the Ministry of Labour and Employment to address the problem of lack of employability skills among majority of university graduates.

⇒ Authorities which have been granted mandate to manage land should intervene at early stages of establishment of informal settlements and stop illegal construction of houses.
⇒ The Government, through the Ministry of Lands, Housing and Human Settlements Development, should ensure that people who possess title deeds to land are timely and adequately paid compensation when their land is acquired for other use, as directed by law.

⇒ The Urban Planning Department within the Government should ensure implementation of laws related to urban planning as well as land laws in order to prevent informal settlements in urban areas.

⇒ Land management programmes should be properly and cautiously implemented to guarantee long-term solutions.

⇒ Local Government Authorities (LGAs), President’s Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO PSM) in collaboration with Treasury to ensure that funds for settling staff claims are released without further delays to avoid accumulation of debts; and ensure no new staff debts are created without having funds.

⇒ As recommended by the CAG in his 2017/18 audit report on local government authorities (LGAs), management of the LGAs and the Government as a whole to ensure that there is sufficient budget allocation for staff appraisal activities and perform awareness program to LGAs’ staff on the importance of staff appraisal to the government employees.

⇒ Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President’s Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted soon after being promoted.

⇒ Government to implement CAG recommendation of management of LGAs to ensure that all the retired, absconded, transferred and dismissed employees are timely and effectively removed from payroll; and taking stringent measures should be taken to ensure total recovery of TZS 207,375,726 used to pay nonexistent employees.

⇒ Government to implement CAG recommendation of Local Government Authorities (LGAs), President’s Office - Regional Administration and Local Government (PO-RALG) and President
Office Public Service Management (PO-PSM) to perform staff requirement assessment in LGAs and come up with mechanisms that will ensure that qualified staffs are recruited to fill the existing positions, retention of well skilled and experienced employees and provision of special incentives for employees especially those in education and health sector who are working in remote LGAs.

Non-state actors

⇒ CSOs should work with relevant government ministries, such as the ministry responsible for women and ministry responsible for land, to promote and protect economic rights, including conducting awareness-raising sessions and campaigns.
⇒ CSOs should collaborate with the Prime Minister’s Office Labour, Employment, Youth and People with Disability to raise awareness about labour laws, rights and duties.
⇒ Investors, both foreign and local, should follow relevant procedures to acquire land in Tanzania, comply with laws and respect human rights of the people where they operate.

Members of the public

⇒ Members of the public are encouraged to seek knowledge and access information about their economic rights, including right to work and right to own property, including popular versions on laws relating to these rights prepared by government and no-government actors.
⇒ Members of the public are also encouraged to report violations of their economic rights to relevant authorities, including trade unions and the Commission on Human Rights and Good Governance.
Chapter 5: Social and Cultural Rights

Introduction
Social and economic rights enhance individual’s protection by the state, for the dignity, freedom and well-being of individuals. The State is duty bound to support provision of entitlements to the basic needs such as education, food, public health care, housing, and other social goods to the maximum of the available resources.\textsuperscript{265}

Right to education, right to health, right to social security, right to food, right to clean water and sanitation, and the right to adequate standard of living are commonly identified as the entitlements upon which states should accord their citizens with for the purpose of improving and maintaining their social lives. At international level, these social and cultural rights are guaranteed and protected under the Universal Declaration of Human Rights (UDHR)\textsuperscript{266} and the International Covenant on Economic, Social and Cultural Rights (ICESCR).\textsuperscript{267} At regional/continental level, they are provided for and protected under the African Charter on Human and Peoples’ Rights (ACHPR),\textsuperscript{268} Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol)\textsuperscript{269} and the African Charter on the Rights and Welfare of the Child (ACRWC).\textsuperscript{270} Tanzania is duty bound under the ICESCR, ACHPR, Maputo Protocol and ACRWC to progressively realize these rights for its citizens to the maximum of its available resources.

This chapter highlights the situation of the rights to education, health, water, adequate standard of living, and culture in Tanzania Mainland in 2018.

5.1. Right to Education
As stated above, States are duty bound under international human rights treaties to ensure progressive realization of social rights, including right to education. This right has to be implemented by member states without any

\textsuperscript{266} See Article 25 (1) of UDHR.
\textsuperscript{267} See Articles 6, 9, 11, 12(1) and 13(1) of ICESCR.
\textsuperscript{268} See for example Articles 15, 16(1) and 17(1) of ACHPR.
\textsuperscript{269} See for example Articles 12(1), 14 15 and 16 of Maputo Protocol.
\textsuperscript{270} Articles 11 and 14 of ACRWC.
discrimination as to race, colour, origin and sex, since it is one of the most basic human rights as guaranteed by the international covenants. This right is also guaranteed under the Constitution of the United Republic of Tanzania of 1977, which clearly stipulates that “the authority shall make appropriate provision for realizations of person’s right to self-education.”

Right to education is essential for effective realization of all other human rights.

The Government of Tanzania strives to enhance provision of free education from the primary level to the secondary level. As education is regarded as fundamental to any state’s development, more efforts should be made to improve education as one of the measures to fight extreme poverty that has permeated most sections of Tanzanian society.

In 2018, the Government continued to implement its fee-free education policy to increase access to basic education for children and progressively address some of the challenges affecting both access and quality of education.

5.1.1. Right to Access Education

Education is one of the most powerful tools that empowers an individual economically, politically and socially and has an ability to lift marginalized children and adults out of poverty. The Governments, including of Tanzania, are therefore required to ensure that proper mechanism for realization of right to education exists. They are required to enact rules and regulations that promote individual development through provision of education without any form of discrimination.

Girls continue to face limitations in accessing right to education in 2018

In the year 2017 the Government of Tanzania made it clear that the Magufuli administration would not allow a girl who has gotten pregnant to go back to school and enjoy government-sponsored education. This stance triggered a national and international debate, and the Government

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271 Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966
272 Article 11 of the Constitution of the United Republic of Tanzania, 1977
continued with its stance in 2018. LHRC concluded in its Tanzania Human Rights Report 2017 that denying a girl her right to education because of pregnancy is in violation of various international conventions that Tanzania has signed and ratified such as the International Covenant on Civil and Political Rights, UN Convention on the Rights of the Child, Convention on the Elimination of all Forms of Discrimination Against Women- CEDAW, African Charter on the Rights and Welfare of the Child and Maputo Protocol. These human rights instruments impose an obligation upon States to provide education to all children and people at large without discrimination of any kind.

However, in November 2018, there was a hope for pregnant girls to be allowed to go back to school when the World Bank indicated that allowing pregnant girls to continue with education was key to its 300-million-dollar education loan for Tanzania.274 It was reported that the Government of Tanzania, in collaboration with the World Bank, has redesigned the USD 300 million education project intended for the country so as to align with the girls’ right to education. The proposed agreement is that the ministry of education has to provide a pathway for girls who drop out of schools for any reason so that they can be brought back to the system.275

Fee-free education policy continues to ensure increased access to education

The introduction of a fee-free basic education has significantly reduced the problem of inaccessibility of education for poor families which were not able to enrol their children to schools.276 This is a positive step that Government continued to take in 2018 as part of its progressive realization of the right to education. Since the introduction of the policy the enrolment rates in Tanzania Mainland have significantly increased.

275 Ibid.
276 Circular No.5 of the Education and Training Policy, 2014
In LHRC’s view, increased access to education made possible by effective implementation of the policy will also help to curb the problem of child marriage. This is because girls who usually remain at home after completing their primary education for lack of fees for secondary education can now proceed with education, thus reduced chances of them being married off.

*Long distance to school and violence against children among challenges affecting access to education, especially in rural areas*

While fee-free education policy continued to boost access to education in 2018, LHRC observed that challenges such as long distances to school, caused by shortage of schools; and violence against children, continued to be a threat to right to access education in 2018. This was especially the case for rural areas.

**Long distance to school**

A school being located far from home is a big challenge for students and pupils in rural areas, something with poses a threat to their well-being and affects their concentration and performance in class. In some areas, students are forced to walk for long distances to reach their designated schools. For instance, in 2018 it was reported that in Mgome Village, which is located in Mpayu Ward in Muheza District-Tanga Region, students were forced to walk up to 22 Kilometres to get to a secondary school in nearby Lusanga Ward.\(^{277}\)

Long distance to school also puts girls at risk of gender-based violence, especially by motorcycle drivers (popularly known as *boda boda*), who tend to take advantage of girls in order to sexually exploit them.

**Overcrowding in hostels due to shortage of dormitories/hostels**

In 2018, overcrowding of dormitories/hostels was a big problem, putting too much pressure on limited school facilities and making an uncomfortable environment for studying. For instance, this problem was revealed in Tanganyika District in Katavi Region, where it was reported that Kabungu Secondary School was not easily accessible and did not have enough dormitories to accommodate its students, thus causing overcrowding in available ones. The head master of the school reportedly stated that the

\(^{277}\) Nipashe Newspaper, 11\(^{th}\) August 2018
school had a total of 627 students, whereby 128 of them stay at dormitories. The dormitory was also said to be in poor condition, characterized by shortage of beds and worn out mattresses. Shortage of dormitories also leaves girls vulnerable to violence, as some of them tend to be tricked into cohabiting with men in areas nearby schools.

![Picture 7: Worn out mattresses of a dormitory at Kabungu Secondary School in Tanganyika District – Katavi Region](image)

Violence against children, child marriage and child pregnancy: a threat to the right to education

As discussed in sub-chapter 7.2 of this report, sexual violence against children significantly increased in 2018. Common forms of sexual violence were rape and sodomy; and girls were targeted by men, especially bodaboda drivers (motorcycle drivers), on their way to and back from school. Bodaboda drivers were said to take advantage of girls, especially those who have to walk long distances to reach school, by offering them lifts and gifts. Various reports of sexual violence perpetrated by male teachers were also reported in 2018, including in Misungwi District in Mwanza Region. Other perpetrators of sexual violence against children in 2018 were close relatives and fathers of children, especially where a female child is only living with a father – having separated with or divorced her mother.

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Incidence of child-on-child sexual violence is also growing, as discussed in sub-chapter 7.2 of this report. The perpetrators are usually older children in primary and secondary schools, for example those in standard 6-7 and form 3-6 respectively, while the victims are usually those in standard 1-5 and form 1-2. This affects access to and compromises quality of education.

Child marriage and child pregnancy also threatened right to education in 2018. As discussed in sub-chapter 7.2 of this report, child marriage is still widespread in Tanzania Mainland and child pregnancy incidents significantly increased in 2018, forcing more than a 1500 girls from different parts of Tanzania Mainland to drop out of school. These problems were mostly reported in regions such as Ruvuma, Iringa, Shinyanga, Mwanza, Mbeya and Tabora.

In LHRC’s opinion, it is very important that the Government, in collaboration with other key stakeholders, addresses and prioritises the issue of violence against children, especially sexual violence, as a key measure to ensure effective realization of right to education for all children. The victims of such violence cannot be expected to easily and effectively access education and perform well, as they are already suffering mentally, physically and psychologically due to harm inflicted on them. They also need quality and child-friendly sexual violence services in order to help repair their state of mind and enable them to fully realize and enjoy their right to education.

5.1.2. Right to Quality Education

While the Government has intensified efforts to ensure progressive realisation of the right to access education through implementation of fee-free education policy in line with the International Covenant on Economic, Social and Cultural Rights (ICESCR), it has not put the same amount of effort to ensure quality of education. In 2018, LHRC observed the right to quality education continued to be affected by several challenges, such as allocation of insufficient budget; shortage of teachers and learning materials; shortage of toilets and classrooms; and corporal punishment. Each of these challenges is discussed below.
Insufficient budget for the education sector

Insufficient budget for the education sector has been an issue of concern in Tanzania for many years. The international standard for education sector budget allocation is 20% of the national budget. However, according to *Haki Elimu*, the budget for the financial year 2016/2017 constituted 16% of the national budget, while for the financial year 2017/2018 it was 15%. The budget for development expenditure has also not been sufficient, taking into account that funds are usually not disbursed in full. For the financial year 2017/2018, the education sector was allocated Tshs. 4.71 trillion, a decline of Tshs. 63.99 billion (1.3%) and fell short of the 20% of the national budget minimum mark under the Global Partnership for Education (GPE) target at 15%. Implementation of the fee-free education policy has also contributed to stretching the available resources further.

Shortage of teachers and learning materials, especially in rural areas

The fee-free education policy has accelerated enrolment of students in primary schools. Due to other mechanisms of promoting the right to education like punishing parents who deny enrolling their children to school, however the policy has not created a smooth environment for application of the policy. There has been a problem of lack of teachers in primary schools, especially in rural and remote areas before the establishment of the policy but the problem has increased and escalated more to the extent that the quality of education provided is compromised as insufficient number of teachers can influence provision of quality education in public schools.

It was reported that in Momba District - Songwe Region, the district is faced with acute shortage of teachers, with only 618 teachers out of 925 required available. At one school five teachers had to teach 430 pupils.

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279 A right to education organization based in Tanzania.
281 Ibid.
283 Mwananchi Newspaper, 20th November 2018
Shortage of dormitories, toilets/toilet holes and classrooms

Shortage of school facilities such as dormitories, classrooms, toilet holes and learning materials such as books is still an issue of great concern in most parts of rural Tanzania Mainland, despite government effort to address it. Shortage of toilet holes, classrooms and dormitories make for an uncomfortable learning environment for pupils and students, affecting the quality of education that they receive. The table below provides an overview of reported incidents of shortage of classrooms, toilets/toilet holes and dormitories reported from different parts of Tanzania Mainland and documented by LHRC in 2018.

Table 7: Reported incidents of shortage of classrooms and toilets/toilet holes in 2018

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muheza, Tanga: More than 150 pupils at Magoda Primary School were said to queue for a toilet at the school’s neighbour’s house after school toilets collapsed.</td>
<td>Nipashe Newspaper</td>
<td>11 Aug 2018</td>
</tr>
<tr>
<td>Mbeya: More than 1900 pupils at Iyela Primary School in Mbeya CC were reportedly accommodated in only 13 classrooms, leading to congestion. Required classrooms were reported to be 38.</td>
<td>Nipashe Newspaper</td>
<td>7 Aug 2018</td>
</tr>
<tr>
<td>Igunga, Tabora: More than 400 pupils at Milumbi Primary School were reportedly forced to relieve themselves in bushes due to lack of toilets, putting themselves in danger due to presence of snakes in the bushes.</td>
<td>Mwananchi Newspaper</td>
<td>9 Nov 2018</td>
</tr>
<tr>
<td>Chamwino, Dodoma: Pupils at Chinoje Primary School were reportedly forced to relieve themselves in bushes and hills due to lack of water at the school, while the toilet which was built requires a lot of water, according to the head teacher. Head teacher also mentioned that the school suffers from shortage of desks (80 available, 251 required).</td>
<td>Majira Newspaper</td>
<td>9 Oct 2018</td>
</tr>
<tr>
<td>Kalambo, Rukwa: About 965 pupils at Kalepula Primary School in Kalepula Village were said to</td>
<td>Mtanzania Newspaper</td>
<td>2 Oct 2018</td>
</tr>
</tbody>
</table>
relieve themselves in bushes due to lack of toilets at the school.

**Igunga, Tabora:** Igunga MP, Hon. Dr. Peter Kafumu, reportedly stated that pupils at 8 primary schools in his constituency were relieving themselves in bushes. The schools mentioned were Mwajilunga, Kidalu, Mhamammoja, Ganyawa, Hindishi, Maweni na Milumbi.

**Arumeru, Arusha:** A pupil at Selian Primary, Emmanuel Ephraim (7), reportedly escaped death after a toilet at the school collapsed while he was relieving himself. He was rescued by teachers and parents who were nearby.

**Muheza, Tanga:** Nine teachers at Magila Primary School were forced to turn a store into an office due to shortage of offices at the school. Chairperson of school committee also mentioned that the school is faced with shortage of toilet holes, with 400 pupils using only 4 toilet holes, 2 for boys and 2 for girls.

**Arusha:** Education officer in Arusha CC mentioned that 8,456 (82%) who passed standard seven exams would not make it to secondary education due to shortage of classrooms.

**Sengerema, Mwanza:** It was reported that Busisi Primary School is faced with the problem of congestion in classrooms due to shortage of classrooms, with 1,098 pupils accommodated in only 7 classrooms.

**Shinyanga:** It was reported that the region is faced with shortage of 461 classrooms for secondary level, causing 6,271 pupils from commencing secondary education in January 2019.

**Kahama, Shinyanga:** Kahama township was reportedly faced with a shortage of 1,407 classrooms, preventing majority of pupils who
passed standard seven exams from commencing secondary education.

**Tanzania Mainland:** It was reported that 133,000 pupils who had passed standard seven exams could not join secondary schools due to shortage of classrooms in different regions of Tanzania Mainland.

<table>
<thead>
<tr>
<th>Babati, Manyara: 230 pupils at Endagwe and Hoshani Primary Schools in Dur Ward found themselves without classrooms after the classrooms they were using were demolished due to their dilapidated condition, having been deemed dangerous to the pupils. It was reported that the classrooms were built in 1975.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mtanzania Newspaper</strong></td>
</tr>
<tr>
<td><strong>Nipashe Newspaper</strong></td>
</tr>
</tbody>
</table>

Source: LHRC Media Survey 2018

**Corporal and inhumane punishments at schools**

Corporal punishment is prevalent in primary schools, especially at public schools. Physical harm and psychological harm are among the results of corporal punishment imposed on students. Despite the fact that there is a law governing imposition of corporal punishment on pupils and students, which should not exceed 3 sticks, its applicability is contrary to what the rules are stating. Teachers, especially in primary schools, continued imposing such punishment in disregard of the law.

In August 2018, it was reported that a 13-year-old student at Kibeta Primary School in Bukoba Municipal, Kagera Region was severely beaten to death by his teacher, Mr. Respicius Mtazangira, upon being accused of stealing another teacher’s handbag. Despite losing consciousness in more than one occasion, the teacher continued to mercilessly beat the pupil with heavy sticks; and reportedly did not stop even after other pupils and teachers begged him to stop the beating, leading to the child’s death a couple of hours later.
It is LHRC’s view that corporal punishment constitutes a violation of children’s rights and needs to be abolished, given the trend of children being severely beaten and some of them even dying, like it was the case in Bukoba. Alternative forms of punishments are encouraged, as corporal
punishment causes physical harm and psychological torture; and as stated above, the regulations are often not regarded by teachers.

**Other factors**

Other factors that compromise the quality of education in the country include poor working conditions for teachers, characterized by unpaid overdue debts, delays in obtaining salaries and allowance, shortage of teacher houses and inadequate wages. In some areas, poor educational background of parents and parents generally not regarding education as important, limit access to quality education for their children. For instance, in December 2018, it was reported that Some of the children aged 8 to 10 years in the Meatu District-Simiyu Region, had been hired by livestock keepers to heard cows, hence missing school.\(^{284}\)

### Table 8: Other reported incidents relating to or affecting access and quality of education documented by LHRC in 2018

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bunda, Mara:</strong> Teachers union in the district bemoaned the various challenges teachers face, including not getting their emoluments on time.</td>
<td>Mtanzania Newspaper</td>
<td>15 Oct 2018</td>
</tr>
<tr>
<td><strong>Sumbawanga, Rukwa:</strong> Teachers reminded the government to pay their dues, including salary and leave dues, worth Tshs. 1.2 billion. Teachers' union branch in the district noted that teachers were working in difficult environment.</td>
<td>Mwananchi Newspaper</td>
<td>9 Oct 2018</td>
</tr>
<tr>
<td><strong>Dar es Salaam:</strong> The 2017/2018 Annual Education Sector Performance Report (AESPR) indicates a drop in numeracy levels among standard two pupils and slight increase in literacy levels.</td>
<td>Mwananchi Newspaper</td>
<td>3 Oct 2018</td>
</tr>
</tbody>
</table>

Source: LHRC Media Survey 2018

### 5.2. Right to Health

Right to health is a key for realization of other rights, including the fundamental right to life. This right means that hospitals, clinics, medicines and doctors’ services must be accessible, available, acceptable, and of good

\(^{284}\) See Mtanzania Newspaper, 6\(^{th}\) December 2018.
quality for everyone on an equitable basis, where and when needed. This right is guaranteed and protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises enjoyment of the highest attainable standard of physical and mental health.\textsuperscript{285} States parties to the ICESCR are required to take several steps towards full realization of right to health, including creating conditions which would assure to all medical service and attention in the event of sickness and prevention, treatment and control of epidemic, occupational and other diseases.\textsuperscript{286} States thus have a primary duty to ensure that necessary measures are taken to protect the health of their people and to ensure that they receive medical attention when they are sick.\textsuperscript{287} This right also guaranteed under regional treaties that Tanzania is bound to, such as the African Charter on Human and Peoples’ Rights (ACHRP), African Charter on the Rights and Welfare of the Child (ACRWC) and Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol).\textsuperscript{288}

In 2018, the Government took several measures to ensure progressive realisation of right to health in Tanzania Mainland. However, realisation of this right continued to be affected by challenges such as shortage of health facilities, shortage of healthcare workers, insufficient budget and shortage of beds, essential medicines and medical supplies. This sub-chapter covers the situation of right to access health services and right to quality health services as key components of the right to health.

5.2.1. Right to Access Health Services

In 2018, the Government, through the Ministry of Health, Community Development, Elderly, Gender and Children (MoHCDEC), took steps to progressively ensure realisation of the right to access health services. This includes: enabling about 208 health facilities to provide emergency surgery services – including Comprehensive Emergency Obstetric and New-born Care (CEmONC), which is an ongoing exercise; providing HIV-related services; supplying essential medicines and medical supplies; providing health

\textsuperscript{285} Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1977
\textsuperscript{286} See Article 12(2) of ICESCR.
\textsuperscript{287} Article 16(2) of the African Charter on Human and People’s rights, 1981.
\textsuperscript{288} See Article 16(1) of ACHPR; Article 14 of ACRWC; and Article 14 of Maputo Protocol.
education to members of the public, including through media outlets; strengthening specialised medical services, which has helped to reduce number of patients needed referral to hospitals outside Tanzania; securing permit to employ more than 3000 new healthcare workers of different cadres, including doctors, nurse and medical consultants; construction of 30 houses for healthcare workers in Kiteto, Simanjiro and Hanang Districts in Manyara Region through the Global Fund project; finalizing and submitting a universal health coverage plan to the Cabinet; and implementing the Direct Health Facility Financing (DHFF), instead of disbursing funds through district/municipal/city councils, as was the case before.  

In August 2018, Minister of State in President’s Office – Regional Administration and Local Government, Hon. Selemani Jafo, mentioned that the Government is set to construct 67 district hospitals across the country in the 2018/2019 fiscal year. It was also reported that in August 2018 that the President’s Office – Regional Administration and Local Government was planning to construct 289 new health centres by 2020. In August 2018, Deputy Minister of Health, Community Development, Gender, Elderly and Children, Hon. Dr. Faustine Ndugulile, mentioned that the Government was planning to introduce a new affordable health insurance scheme to expand social protection to more Tanzanians. In November 2018, it was reported that Tshs. 1.5 billion was allocated for construction of Bukoba District Hospital in Kagera Region. 

However, effective realisation of the right to access health services continued to be hindered by a number of factors, including shortage of health facilities, in 2018. These factors also affected the right to quality health services; and are highlighted in 5.2.2 below.

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290 Daily News Newspaper, 25th August 2018
291 Nipashe Newspaper, 25th August 2018
292 Nipashe Newspaper 21st August, 2018
293 Nipashe Newspaper, 2nd November 2018
Lack of coverage of health insurance for the majority
In Tanzania, only 30% of citizens are covered by health insurance, leaving the majority in great trouble when they fall sick – considering that the majority of Tanzanians are poor. In 2018, the Minister responsible for health, Hon. Ummy Mwalimu, mentioned that the Government was planning to expand health insurance coverage to 50% of Tanzanians by 2020.

5.2.2. Right to Quality Health Services
Health services should not only be accessible, but also of required quality. This is the requirement under the ICESCR, as well as other human rights instruments such as ACRWC and Maputo Protocol.

The government has insisted on provision of health services by making it accessible and equal to all. However, accessibility of health services should not compromise provision of quality health services. The services provided should be of sufficient quality and intend to attain the highest standard of physical and mental states as the law requires. However, Tanzania is yet to achieve the highest attainable standard of physical and mental health through provision of services which its quality is compromised, several challenges facing the health sector and compromise its quality include the following:

Government action to improve quality of health services
In 2018, the Government continued to implement various programmes under the ministry responsible for health, including the Road Map Strategic Plan to Improve Reproductive, Maternal, Newborn, Child and Adolescent Health in Tanzania: 2016–2020 (One Plan II), and took other steps highlighted in 5.2.1 above to ensure progressive realization of right to health.

295 Ibid.
296 Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966
**Challenges hindering effective realization of right to health in 2018**

In 2018, full realisation of right to health continued to be hindered by various factors, including insufficient budget for the health sector; delayed disbursement of funds or disbursement of half of the funds; shortage of health workforce; shortage of health facilities; and shortage of beds.

**Insufficient budget**

One of the major factors that have been affecting delivery of quality health services is insufficient budget, which usually falls short of the minimum 15% of the annual budget required under the Abuja Declaration on HIV/AIDS, Tuberculosis and other related Infectious Diseases of 2001. For instance, the budget of the health sector for the financial year 2017/2018 accounted for only 7% of the national budget.297 Budget for the financial year 2018/2019 decreased by 19.6%, compared to that of 2017/2018;298 and still below the 15% threshold under the Abuja Declaration. The budget is also still significantly dependent on foreign donations, which raises concern over sustainability of health sector projects and programmes.

**Delayed disbursement of funds or disbursement of only half of the funds**

Delayed disbursement of funds allocated for the health sector is also a key challenge affecting progressive effective realisation of right to health in Tanzania Mainland. For the financial year 2017/2018, the total of Tshs 1,077,701,892,000 for the health sector. However, by March 2018, the ministry responsible for health had only received 57% of these funds.299

**Shortage of health workforce**

In February 2018, Chairperson of the Parliamentary Committee on Administration and Local Government Affairs reportedly told the National Assembly, while presenting the committee’s report, that shortage of health workers in regional and referral hospitals stands at 54.4%, following the removal of 3,310 health workers during the workers’ verification exercise.

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298 Fredy Azzah “Bajeti ya Afya yafyekwa” Mtanzania Newspaper, 20th April 2018

He added that the ministry needs to employ 57,788 health practitioners to cover the gap.\textsuperscript{300} In 2018, it was also revealed that Tanzania is faced with shortage of eye surgeons, who are currently only 55.\textsuperscript{301} However, the Government announced in late 2018 that it would recruit 684 new healthcare workers.\textsuperscript{302}

**Shortage of health facilities**

Report by the Parliamentary Committee on Administration and Local Government Affairs indicated that as of February 2018, at least 64 municipalities lacked hospitals, forcing local residents to walk long distances to access medical services.\textsuperscript{303} The policy is for each ward village to have a dispensary, each ward to have a health centre and each district to have a district hospital. However, some areas in Tanzania Mainland continue to face acute shortage of health facilities. For instance, it was reported that the District Commissioner of Ukerewe-Mwanza, Hon. Colonel Magembe, bemoaned shortage of health facilities in the district, noting that while there are 76 villages and 25 wards in the district, there maternal and child mortality was reported to be an issue of concern in Msalala District Council, largely contributed by shortage of dispensaries and health centres at village and ward levels. This means women are forced to walk long distances to access health facility services.\textsuperscript{304} This is particularly a challenge for villages which are in the outskirts (remote). In Muheza, Tanga, it was reported that Mgome Village in Mpayu Ward does not have a dispensary.\textsuperscript{305} Through its human rights survey, LHRC also documented reports of shortages of health facilities in areas such as Singida District Council in Singida; Mpwapwa District Council in Dodoma and Malinyi District Council in Morogoro.

**Shortage of beds**

Shortage of beds was an issue that affected full realization of right to health in 2018, especially for women. In August 2018, it was reported in Kigoma that Maweni Referral Hospital was facing shortage of 92 hospital beds.

\textsuperscript{300} The Guardian Newspaper, 9\textsuperscript{th} February 2018
\textsuperscript{301} Mwananchi Newspaper 8th October, 2018
\textsuperscript{302} Habari Leo Newspaper, 7\textsuperscript{th} October 2018
\textsuperscript{303} The Guardian Newspaper, 9 February 2018
\textsuperscript{304} Nipashe Newspaper, 9 February 2018
\textsuperscript{305} Nipashe Newspaper, 11 August 2018.
Harassment and/or maltreatment of patients by health workers
In 2018, harassment and/or maltreatment of patients by healthcare workers was revealed as another issue affecting full realisation of right to health. Reading her ministry’s budget speech in 2018, the Minister responsible for health, Hon. Ummy Mwalimu, mentioned that some expectant mothers decided against delivering at health facilities due to harassment by nurses. She noted that while 98% of the women attended clinic, only 64% delivered at health facilities. In Nyamagana District – Mwanza, District Medical Officer, Dr. Philis Nyimbi, reportedly ordered suspension of two doctors and all nurses at Nyamagana District Hospital for negligence that contributed to a child mortality incident. He noted that there have been complaints levelled against some of the doctors and nurses at the hospital.

5.3. Right to Water
The UN Committee on Economic, Social and Cultural Rights defines the right to water as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses. It is also known as right to water and sanitation and is essential and indispensable in ensuring life with dignity. While not covered under the International Covenant on Economic, Social and Cultural Rights (ICESCR), this right is implied under the right to adequate standard of living – which is provided for in the ICESCR – and nevertheless covered under key human rights instruments such as the UN Convention on the Rights

306 Nipashe Newspaper, 3rd August 2018
307 Majira Newspaper, 13th November 2018
309 Article 1.1 of the General Comment No. 15. The right to water, UN Committee on Economic, Social and Cultural Rights, November 2002,
of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).\footnote{310} Moreover, in 2010 the UN General Assembly declared right to clean drinking water and sanitation a human right essential in full realization of other human rights, especially right to life. Domestically, the National Water Policy of 2002 and the Water Resources Management Act of 2009 recognize the right to clean and safe water.

This sub-chapter briefly highlights the situation of realisation of right to water in Tanzania Mainland in 2018, looking at both access and quality of water.

5.3.1. Right to Access Water

In 2018, the Government continued taking steps to ensure progressive realisation of right to water, as a key socio-economic right. In his ministry’s budget speech for the financial year 2018/2019, the Minister of Water and Irrigation, Hon. Eng. Isack Aloyce Kamwelwe (MP), mentioned that in the financial year 2017/2018, the Government continued implementing various water projects in Dar es Salaam, regional capitals, district capitals, townships, towns and villages.\footnote{311} He noted that access to water service at regional capitals stands at 78%, a decrease of 2% compared to 2016/2017. In district capitals, townships and areas where national projects are implemented, he noted that access to water is 60%, while access to water services in Dar es Salaam is 75%.

According to Water.org,\footnote{312} that only 50% of the Tanzania’s population have an access to improved sources of safe water and 34% have an access to safe sanitation.\footnote{313} Due to difficulties in accessing water, women and girls are more likely to suffer as they have to travel for long distances in search for water. This is not far from a 2016 survey by a 2016 survey conducted by

\footnote{310} Article 24(2) of CRC & Article 14(2) of CEDAW.
\footnote{312} A nonprofit developmental aid organization whose goal is to provide aid to regions of developing countries that do not have access to safe drinking water and sanitation.
\footnote{313} see Tanzania’s water and sanitation crisis available at https://water.org/our-impact/tanzania/ accessed on 18\textsuperscript{th} January 2019)
Twaweza\textsuperscript{314} which revealed that access to water in Tanzania, especially in rural areas, has remained largely stagnant over the past decade, with half the citizens (54\%), having access to improved water source (46\% in rural areas and 74\% in urban areas).\textsuperscript{315} In 2018, incidents of shortage of clean and safe water were reported in different parts of Tanzania Mainland, including Gairo-Morogoro, Namtumbo-Ruvuma, Bunda-Mara and Bahi-Dodoma. The table below provides a highlight of shortage of clean and safe water in these areas in 2018.

**Table 9: Reported incidents of lack of or limited access to clean and safe water in 2018**

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gairo, Morogoro:</strong></td>
<td>Majira Newspaper</td>
<td>2 Aug 2018</td>
</tr>
<tr>
<td>It was reported that in Kwipipa Village, women are greatly affected by lack of clean water due to non-completion of a water project that commenced in 2010. Women in the village are thus forced to spend a lot of time fetching water. Water vendors in the village tend to charge up to Tshs. 1500 per 5-litre gallon.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Namtumbo, Ruvuma:</strong></td>
<td>Majira Newspaper</td>
<td>21 Aug 2018</td>
</tr>
<tr>
<td>Namtumbo District Commissioner, Hon. Sophia Kizingo, bemoaned shortage of water in his district and called for authorities to take relevant action to ensure adequate availability of water.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Bunda, Mara:</strong></td>
<td>HABARILEO Newspaper</td>
<td>29 Oct 2018</td>
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<tr>
<td>It was reported that women in Kihumbu Village were forced to wake in the dead of the night to go and fetch water, walking long distances in the process. They usually take around 6 to 8 hours for them to come back with water, while their husbands become suspicious that they could be cheating on them.</td>
<td></td>
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<tr>
<td><strong>Bahi, Dodoma:</strong></td>
<td>LHRC Human Rights Monitoring Unit</td>
<td>20 Nov 2018</td>
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<tr>
<td>Residents of Bahi Makulu were reportedly faced with a challenge of shortage of water, especially during dry season, having to buy a 5-litre gallon of water for Tshs. 1000.</td>
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\textsuperscript{314} An NGO that works in Tanzania, Kenya and Uganda.

Limited access to water affects to the right to education, especially for girls

Shortage of water and limited access to water sources greatly affects women and girls as they are forced to walk long distances to fetch water. For girls, this also hampers their efforts to attend school regularly and timely. It also presents a problem for them during menstruation, especially where there is also shortage or no water at school. In July 2018, it was reported in Gairo-Morogoro, that shortage of water in the district affects girls in terms of their school attendance as they are forced to miss school for up to five days when they are period due to lack of water both at home.
and school, as well as lack of favourable environment for girls at school and shortage of pads. 316

Due to shortage of water, most children reportedly go to school dirty and teachers cannot punish them because they understand the water problem. A teacher noted that after they are supposed to get tap water every 2 days, in most cases water comes after up to 5 days.

5.3.2. Right to Quality Water
The right to quality water means the water available is safe and acceptable. According to the United Nations Department of Economic and Social Affairs (UNDESA), safe water means water that is free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person’s health. Acceptable water is water that is of an acceptable colour, odour and taste for each personal or domestic use, as well as culturally appropriate and sensitive to gender, lifecycle and privacy requirements317

In 2018, several factors continued to compromise right to quality water in Tanzania Mainland. These factors include: insufficient budget allocated for water sector; shortage of experts in water sector; inability of councils to effectively monitor water project funds to ensure value-for-money; failure to complete water projects on time; non-payment of water bills by government institutions; decline in water resources; little investment in water projects by private sector; damage to water infrastructure and destruction of water sources; water leakages; little investment in water projects by the private sector; and lack of sustainability of water projects

**Insufficient budget allocated for water sector**
Reading his ministry’s speech during the budget parliamentary session for the financial year 2018/2019, the former Minister of Water and Irrigation, Hon. Eng. Isack Aloyce Kamwelwe, mentioned underinvestment in the water sector due to insufficient budget as one of the challenges faced by the sector. He mentioned that for the financial year 2017/2018, budget

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316 Majira Newspaper, 2nd August 2018.
allocated for his ministry was Tshs. 648,064,207,757, but by March 2018, it only received 56% of funds allocated for development expenditure and 52.45% of funds allocated for recurrent expenditure. 318 He stated that Tshs. 643,710,160,202 had been allocated for development expenditure, but by March 2018, the ministry had received Tshs. 349,968,825,172 (56%). 319 This presents a challenge in ensuring progressive realisation of right to water and sanitation, which is essential for human life with dignity, and a key factor for realisation of the right to adequate standard of living.

**Shortage of experts in water sector**

In his budget speech for the financial year 2018/2019, the former minister responsible for water also mentioned shortage of experts in the water sector as a challenge. 320 This is contributed by factors such as death, retirement, resignation and dismissal for misconduct.

**Inability of councils to effectively monitor water project funds to ensure value-for-money**

In May 2018, an alarm over probable mismanagement and misuse of funds allocated for water projects was raised in the National Assembly. 321 This was said to be contributed by inability of district/city/municipal councils to effectively monitor water project funds in order to ensure value-for-money. 322

**Failure to complete water projects on time**

Contractors delaying completion of water projects has also been a challenge for the water sector, which also affects realisation of right to water and sanitation, especially in rural areas. In July 2018, the Government moved to blacklist four water project contractors for failure to complete

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319 Ibid.

320 Budget speech, ibid.


322 Ibid.
big water projects in time.\textsuperscript{323} The Minister of Water and Irrigation, Prof. Makame Mbarawa, indicated that delays in completion of the projects without valid reasons hinder effective implementation of the Second Water Sector Development Programme (WSDP II).\textsuperscript{324}

**Non-payment of water bills by government institutions**

Government institutions were implicated in non-payment of water bills in the budget speech of Ministry of Water and Irrigation for the financial year 2018/2019. These institutions were said to use the water service for long periods of time without paying the bills on time, hence massive debt accumulation – whereby by March 2018 the combined water debt for government institutions stood at Tshs. 39 billion.\textsuperscript{325} This was said to hinder water authorities from effectively implementing their activities and maintaining water infrastructure.\textsuperscript{326}

**Decline in water resources**

In his ministry’s budget speech for the financial year 2018/2019, the former Minister of Water and Irrigation, Hon. Eng. Isack Aloyce Kamwelwe, mentioned that water resources have declined.\textsuperscript{327} Reasons for this include climate change, destruction of water sources and misuse of water. This has negatively affected social and economic activities and contributed to disputes at areas around water sources.\textsuperscript{328}

**Little investment in water projects by private sector**

Despite an increase in demand for improved water and irrigation services, the contribution of the private sector to investments in providing water services is said to be not satisfactory. The Government has continued to take various measures to promote the participation of the private sector including the enactment of the National Public Private Partnership Policy of 2009 and the Public-Private Partnership Act of 2010, so as to encourage and promote investment.

\textsuperscript{323} See “Tanzania govt blacklists four water projects contractors” The Citizen Newspaper, at https://www.thecitizen.co.tz/News/Minister-says-no-more-contracts-for-four-firms/1840340-4672532-dw51z/index.html, accessed 20\textsuperscript{th} December 2018.
\textsuperscript{324} Ibid.
\textsuperscript{325} Budget speech for Ministry of Water and Irrigation (supra).
\textsuperscript{326} Ibid.
\textsuperscript{327} Ibid.
\textsuperscript{328} Ibid.
Damage to water infrastructure and destruction of water sources
Damage to water infrastructure is another challenge that affects effective delivery of water service. This happens in different parts of the country, both urban and rural; and includes removal of water equipment such as pipes for purposes of selling them. In August 2018, police in Mbeya Region conducted an operation to find and arrest villagers in Ilungu District who were implicated in damaging water infrastructure.

Water leakages and Loss
In the budget speech for the Ministry of Water and Irrigation for the financial year 2018/2019, the former minister also mentioned that water leakages are among key challenges facing the water sector. He stated that reasons for this include infrastructure being in dilapidated condition (characterized, among others, by weakened iron pipes), bypass and illegal water connection, vandalism of water equipment and tampering with water meters. He noted that by March 2018, water loss stood at 38% for Dar es Salaam Water and Sewerage Corporation (DAWASCO) and 33% for other water authorities in Tanzania Mainland. This is 18% and 13% of internationally accepted standard of water loss, which is 20%. In July 2018, it was revealed that the DAWASCO losses 1.7 million dollars (equally Tshs. 4.2 billion) to water leakages each month. It was also highlighted that due to poorly-conditioned water pipes, Dar es Salaam is losing 44% of water pumped daily. The Government seeks to reduce water leakages to 30% by 2020. In Dar es Salaam, areas notorious for water leakages include Ubungo, Kimara, Mbezi and Tabata.

329 See budget speech for the Ministry of Water and Irrigation (supra).
331 See budget speech for the Ministry of Water and Irrigation (supra).
333 Ibid.
334 Ibid.
Lack of sustainability of water projects

In the budget speech for the Ministry of Water and Irrigation for the financial year 2018/2019, the former minister mentioned that most water projects lack sustainability. This is due to lack of effective management of the projects and maintenance of water sources and equipment. Disputes and conflicts around areas with water sources also negatively affect sustainability of water projects.335

5.4. Right to Adequate Standard of Living

Everyone is entitled to an adequate standard of living.336 This includes availability of adequate food, clothing and housing, and to the continuous improvement of living conditions.337 States are duty bound under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to take appropriate steps to ensure citizen’s realization of the this fundamental human right.338 States have a duty to take appropriate steps to ensure realization of the right to adequate standard of living, including right to adequate food and right to shelter/housing. Apart from the duty stipulated in human rights conventions, these states, including Tanzania, have made commitments to realise this right under several international instruments, including the Declaration on the Right to Development339 and the Universal Declaration on the Eradication of Hunger and Malnutrition.340 This subchapter looks at the realization of the two rights derived from the right to adequate standard of living, namely right to adequate food and right to shelter/housing, in Tanzania in 2018.

335 See budget speech for the Ministry of Water and Irrigation (supra).
336 See Article 11(1) of ICESCR; Article 25(1) of UDHR.
337 Article 11 (1) of ICESCR.
338 Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966
339 Article 8.
340 Article 1.
5.4.1. Right to Food

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), the right to adequate food is indivisibly linked to the inherent dignity of an individual person and is indispensable in fulfilment of other human rights. State parties to ICESCR are duty bound to enhance and ensure access to food and that everyone in the community has ability to access food or means of its procurement physically and economically, at all times. They are required to take all the appropriate measures to improve methods of production, conservation and production of food, and if possible, reform the agrarian system for the purpose of achieving the most efficient development and utilization of natural resources.

In 2018, the Government continued to take various measures to ensure progressive realisation of the right to adequate food in Tanzania Mainland. This was done through implementation of various programmes and plans, including the Tanzania Development Vision 2025, which, among other things, seeks to ensure high quality livelihood through food self-sufficiency and food security.

The overall situation of right to adequate food was satisfactory for most areas, as food supply remained to be satisfactory in most parts of the country, following good harvests in the financial year 2017/18 crop-season and adequate food supply in the region. Stocks of food held by the National Food Reserve Agency (NFRA) amounted to 95,534 tonnes at the end of December 2018, higher than the amount recorded at the end of December 2017 (Table 10). During the quarter, the agency purchased 18,541.7 tonnes

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342 Article 11 (2) of the International Covenant on Economic Social and Cultural Rights, 1966
of maize and sold 1,232.4 tonnes to private traders and Disaster Relief Unit of the Prime Ministers’ Office.  

Table 10: National food stock held by the National Food Reserve Agency

| Table 10: National food stock held by the National Food Reserve Agency |
|---------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
|                           | 2013                        | 2014                        | 2015                        | 2016                        | 2017                        | 2018                        |
| January                   | 72,170.0                    | 235,309.0                   | 459,561.0                   | 125,668.0                   | 86,833.5                    | 91,947.0                    |
| February                  | 60,739.0                    | 228,014.0                   | 454,592.0                   | 88,414.0                    | 86,444.0                    | 91,312.7                    |
| March                     | 46,153.0                    | 214,157.0                   | 452,054.0                   | 88,727.0                    | 86,443.8                    | 83,650.3                    |
| April                     | 36,982.0                    | 195,246.0                   | 433,547.0                   | 64,825.0                    | 86,278.0                    | 73,467.7                    |
| May                       | 26,802.0                    | 195,956.0                   | 406,846.0                   | 63,341.0                    | 74,826.0                    | 68,893.4                    |
| June                      | 27,494.0                    | 189,494.0                   | 353,702.0                   | 61,837.5                    | 70,393.0                    | 63,843.9                    |
| July                      | 71,141.0                    | 182,200.0                   | 282,401.0                   | 49,632.0                    | 68,697.0                    | 62,288.0                    |
| August                    | 175,609.0                   | 196,854.0                   | 268,514.9                   | 59,832.0                    | 78,434.0                    | 62,317.3                    |
| September                 | 224,295.0                   | 299,624.0                   | 265,046.0                   | 86,545.0                    | 85,403.0                    | 78,224.0                    |
| October                   | 235,817.0                   | 426,999.0                   | 253,655.2                   | 90,905.0                    | 89,248.0                    | 87,435.0                    |
| November                  | 234,145.0                   | 460,295.0                   | 238,133.8                   | 90,900.0                    | 93,353.7                    | 92,402.0                    |
| December                  | 232,963.0                   | 466,583.0                   | 180,746.3                   | 89,691.8                    | 92,074.0                    | 95,534.1                    |

Source: BOT Quarter Economic Review, December 2018

However, challenges faced in the water sector highlighted in sub-chapter 5.3 above also affected realization of the right to food, since there is no food without water. Moreover, the methods of production widely employed, such as use of hand hoe, are still poor, resulting in less production of food. Access to nutritionally adequate food is also still a challenge for a large section of the society, especially in rural areas. This is more common among women and children, and tends to affect growth among children – including in regions such as Mbeya and Njombe, who are among the major producers of food in Tanzania.

5.4.2. Right to Shelter/Adequate Housing

The right to shelter and adequate housing does not only mean acquisition of a house. It requires men, women, youth and children to gain and sustain a

safe and secure home and community in which to live in peace and
dignity. Elements of this right include security of tenure, affordability, habitability, accessibility, location and cultural adequacy.

Security of tenure is key to protect against arbitrary eviction, especially for women in marriage and widows. Habitability means housing should be free from hazards; and it needs to be located at a place where basic social services can be easily accessed and free from pollution. This right is protected in major human rights instruments adopted by the United Nations, including ICESCR, UDHR, CEDAW, CERD and CRPD; and is closely connected to rights to health, water and sanitation.

In 2018, the situation of the right to adequate housing continued to be an issue of key concern for majority of Tanzanians, in both urban and rural settings. Limited realisation of the right to adequate shelter/housing in Tanzania is a result of poor or inadequate planning for housing development, which has resulting into poor housing. In areas such as Msimbazi Valley in Magomeni and Jangwani areas – Dar es Salaam, which have been designated areas prone to floods and unfit for human settlement, the people residing there continued to live in very poor and dangerous housing conditions, despite repeated calls from the Government to leave and relocate. Fortunately, unlike in 2017, there was no natural disaster to compound the housing problems in Tanzania Mainland in 2018.

Demolition of houses in Dar es Salaam, which was illegal for some houses, claimed more than 1000 houses in the city, and left a huge impact on the affected families – which continued to be felt in 2018. For those who suffered the fate of demolition of houses in Dar es Salaam in 2017, realization of the right to adequate housing remained a big challenge for them in 2018, with women and children suffering the most.

To ease the housing problem, especially in urban areas, the Government continued with various housing projects through the National Housing Corporation (NHC) in different parts of Tanzania Mainland, including in Dar es Salaam and Dodoma. The major challenge, however, is affordability of these houses for majority of Tanzanian, who remain swamped in poverty.

![A house submerged by floods, reportedly resulting to deaths of 9 people in Jangwani area – Dar es Salaam in 2018](image)

**Picture 11: A house submerged by floods, reportedly resulting to deaths of 9 people in Jangwani area – Dar es Salaam in 2018**

### 5.5. **Right to Culture**

Right to culture enables everyone to participate in cultural life and enjoy the benefits of culture. To achieve full realization of culture, state parties are required to ensure that necessary steps are taken so as to conserve, develop and assist diffusion of culture.\(^{346}\) This right can be enjoyed individually and in groups, then States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are obligated to take measures to facilitate enjoyment of this right. It is also provided for under other international human rights instruments such as Convention on the Elimination of Racial Discrimination (CERD), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons

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with Disabilities (CRPD). Culture is dynamic and includes language, religion, land, arts, literature, sports and education. Right to culture is enjoyed individually and as part of a group.

This sub-chapter highlights the situation of the right to culture in Tanzania Mainland in the year 2018.

5.2.1. Right to Participate in Cultural Life
Like economic and social rights, right to culture is realised progressively, depending on the state’s availability of resources. This right raises three State obligations, namely to respect, protect and fulfil; and may only be limited in accordance with the law and to the extent that it does not interfere with the rights of other people. States are required ensure this right is respected, protected and fulfilled, unless where cultural practices against the law and violate human rights.

With more than 120 tribes and people of different faiths and those with no faith, realisation of the right to culture is very important in Tanzania. In 2018, Tanzanians, including ethnic minorities, continued to generally freely participate in cultural life and enjoying cultural products and identity. A State, like Tanzania, that experiences multiculturalism should be able to employ mechanisms necessary for recognition, respect, acknowledgment, value, encouragement, empowerment and celebration of cultures so as to bring unity among them.

Promotion of the Swahili Language
Swahili Language is the most important cultural symbol of for Tanzanians. It is this language that managed to unify more than 120 local tribes and enabled them to communicate and understand each other as well as understand and share their cultural practices and experiences. It has enabled promotion of unity, peace and solidarity among the people; influenced interaction among citizens socially, economically and politically; and enhanced patriotism.

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347 Article 5(e) (vi) of CERD; Article 13(c) of CEDAW; Article 30 & 31 of CRC; and Article 30 of CRPD.
In 2018, the Government and Tanzanians continued to enjoy and promote the Swahili language, which continues to gain more recognition in Africa and outside Africa, as requests for Swahili Language teaching continued to increase in 2018. Countries such as Rwanda and South Africa are promoting learning and use of the language in the countries. In September 2018, it was reported that the Minister of Education in South Africa, Ms. Angie Motshekga, had declared that Swahili Language would be incorporate in public and private school curriculums by 2020. 349

Currently other African countries including Rwanda and the Republic of South Africa have recognized the language and several mechanisms are set to enhance and promote the Swahili language within the countries. A good example is the Republic of South Africa through the Minister of Education, Ms.Angie Motshekga, has declared the Swahili language to be part of the curriculum in public and private schools by 2020.

LHRC commends the Government in its promotion of Swahili Language, which has seen its demand increase over the last five years.

*Enjoyment of cultural life*

In 2018, the Government ensured realisation of the right to participate in cultural life. LHRC did not receive or document reports of any incidents of arbitrary interference with this right.

Conclusion and Recommendations

1. Conclusions

<table>
<thead>
<tr>
<th>Right</th>
<th>Conclusion</th>
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<tr>
<td>Right to Education</td>
<td>Fee-free education has significantly contributed to improving access to education in Tanzania Mainland, hence boosting progressive realization of the right to education. This continued to be the major highlight in the education sector in 2018. However, realization of quality education was hampered by challenges such as: long distance to school and violence against children among challenges, especially in rural areas; insufficient budget for the education sector; shortage of teachers and learning materials, especially in rural areas; shortage of dormitories, toilets/toilet holes an classrooms; and poor working conditions for teachers.</td>
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<tr>
<td>Right to Health</td>
<td>The Government took several actions to ensure progressive realisation of the right to health in 2018. These include: enabling about 208 health facilities to provide emergency surgery services; providing HIV-related services; supplying essential medicines and medical supplies; providing health education to members of the public, including through media outlets; strengthening specialised medical services; allowing employment of more than 3000 new healthcare workers of different cadres, including doctors, nurse and medical consultants; construction of 30 houses for healthcare workers in Kiteto, Simanjiro and Hanang Districts in Manyara Region through the Global Fund project; finalizing and submitting a universal health coverage plan to the Cabinet; and implementing the Direct Health Facility Financing (DHFF). However, several challenges continued to hinder effective realization of the right to health in 2018, including: insufficient budget; delayed disbursement of funds; shortage of health workforce; shortage of health facilities; shortage of beds; and harassment of patients by health workers.</td>
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Right to water is essential in realisation of all other human rights, including right to life and right to adequate standard of living. In 2018, the Government continued implementing various water projects to increase access to quality water to citizens in Tanzania Mainland. However, shortage of improved water continued to be a challenge in several parts of the country, particularly rural areas. Women and children are the major victims of shortage of water services, as they are usually forced to walk long distances to fetch water and attend school under unfavourable environment. Insufficient budget for the water sector; shortage of experts; failure to complete water projects on time; damage to water infrastructure; destruction of water sources; and water leakages, are some of the factors that limited realisation of the right to quality water in 2018.

Right to adequate standard of living includes availability of adequate food, clothing and housing, and to the continuous improvement of living conditions. In 2018, realisation of this right was affected by shortage or lack of access to clean and safe (quality) water; limited access to nutritionally adequate food, which affects growth among children; poor or inadequate housing plans; habitability of housing; and affordability of adequate housing.

Right to culture enables everyone to participate in cultural life and enjoy the benefits of culture. In 2018, this right continued to be the most enjoyed human right, with no reports of arbitrary interference with its realization.

### 2. Recommendations

**State actors**

⇒ The Government to ensure increased budget for the education sector, whose resources have been even more stretched following the introduction of fee-free education, in order to guarantee quality education.
The Government, through the Ministry of Education and Vocational Training, to address key challenges affecting the education sector, such as poor working environment for teachers and shortage of facilities and learning materials. The Ministry should strive to ensure teacher houses are built and teachers are fairly and timely remunerated.

The Government, through the Ministry of Constitution and Legal Affairs, should move to make corporate social responsibility (CSR) a legal requirement for all sectors, following the amendments to the Mining Act, which saw CSR mandatory for companies in the mining sector. The amendments made in the Mining Act make it mandatory for mining companies to develop CSR plans on an annual basis, containing priorities set out by local government authorities. LHRC strongly recommends such legal requirement to extend to companies to other sectors and priorities to include addressing challenges faced in the education sector.

Regarding pregnant girls, LHRC continues to urge the Government to reconsider its stance in order to protect right to education for girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions;

LHRC calls upon the Ministry of Education and Vocational Training to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.

In order to promote and ensure quality education, the Ministry of Education and Vocational Training should ensure school inspections are conducted regularly and meals are available at primary schools, particularly in rural areas.

The Government, through the Ministry of Health, Community Development, Elderly, Gender and Children (MoHCDEC) to increase budgetary allocation for the health sector. In order to improve the quality of health services the Government must strive to improve budget allocation for this key sector, to at least reach the minimum target of 15% as required under the Abuja Declaration.

The Government, through the Ministry of Health, Community Development, Elderly, Gender and Children (MoHCDEC) to
enhance efforts to address challenges faced in the health sector, including shortage of health facilities;

⇒ The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the sector of agriculture and increase investment in irrigation farming in order to boost food production and improve accessibility.

⇒ The Ministry of Lands, Housing and Human Settlements Development to ensure increased access to adequate but accordable housing in line with the Development Vision 2025 and the Sustainable Development Goals.

⇒ The Government, through the Ministry of Finance and Planning, to increase funding for the water projects, especially for rural areas, in a bid to improve accessibility and quality of water, which is essential to the Government’s industrialisation drive.

⇒ The Government, through the Ministry of Finance and Planning, should strive to increase budgetary allocation for the water sector in order to improve access to quality water.

⇒ The Government should ensure its institutions pay water bills on time in order to water authorities to effectively implement their activities and maintain water infrastructure.

⇒ The Ministry of Water and Irrigation, should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of money.

*Non-state actors*

⇒ The private sector should collaborate with the Government to invest in water projects in order to increase access to water services. This could also be done as part of corporate social responsibility.

⇒ The private sector and CSOs should support the Government to address key challenges in its health, education and water sector, such as shortage of health and educational facilities. This includes construction or maintenance of relevant buildings and infrastructure, such as toilets/toilet holes and classrooms.
⇒ CSOs, the media and other stakeholders should collaborate with the Government to promote and protect social and cultural rights, including through awareness-raising of the public.

⇒ CSOs should assist the Government in devising strategies on the best ways to address some key challenges in the education, health, water and housing sectors.

**Members of the public**

⇒ Members of the public have a duty to protect infrastructure and refrain from the habit of damaging them, especially water infrastructure. They also have a duty to report incidents of damage to the infrastructure.

⇒ Parents have a duty to fully support their children in order to ensure they fully realize their right to education.

⇒ Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.

⇒ Community members residing in housing areas which are not habitable, such as the Msimbazi Valley in Dar es Salaam, are encouraged to move to other areas as relocated by the Government in order to protect their rights to health, life and adequate standard of living.
Chapter 6: Collective Rights

Introduction
Collective rights are the rights that belong to the group of people as opposed to individual rights. An individual enjoys collective rights as part of a group. Collective rights include the right to self-determination, the right to clean and safe environment, the right to natural resources, the right to peace and the right to development. These rights are enshrined in various international human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR); the African Charter on Human and People’s Rights (ACHPR) and the United Nations Charter. In order for a right to be recognised as a collective right, the holder of the right should be collective, the exercise of the right pertains to a legally protected collective good, the interest of a right is of a collective nature.350

6.1. Right to Development
The United Nations (UN) has defined development as “...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”351

Rule of law, good governance, participation of people and respect for human rights are key for realization of the right to development. The Government has a duty to involve community members in creating development plans and policies, as well as ensuring fair distribution of the benefits. As indicated in the UN Declaration on the Right to Development, development is not just economic, but also social, cultural and political.352

352 Ibid.
Governments are also obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals ensure meaningful participation in development and fair distribution of benefits resulting from such development. The Declaration further provides for states’ duty to cooperate with each other in ensuring development and eliminating obstacles to development.

6.1.1. Political development
Political development stalled in the year 2018, owing to arbitrary restrictions of participation rights, affecting peoples’ participation in political development. As discussed in Chapters 2 and 3 of this report, participation rights such as freedom of expression, freedom of assembly and freedom of association were negatively affected by government action and enactment of laws and adoption of regulations which infringe on these fundamental rights. As a result, civic space continued to shrink in the 2018, hence inability of non-state actors to hold the state accountable as a way of contributing to political development. Deteriorating civic space is also poised to affect the Development Vision 2015, in terms of achieving good governance and rule of law.

Laws such as the Media Services Act, Cyber Crimes Act, amendments made in the Statistics Act and introduction of Online Content Regulations, contain key provisions which are not in line with international human rights standards and a threat to political development. Government action such as limiting freedoms of association and assembly also pose a great threat to political development, as do the proposed amendments to the Political Parties Act.

6.1.2. Social development
Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Tanzania’s Development Vision 2025 seeks to achieve high quality livelihood for Tanzanians; and the strategies for this include food self-

353 Article 2(3) of the UN Declaration on the Right to Development, A/RES/41/128 of 4th December 1986
354 Ibid Article 3(3)
sufficiency and security, universal primary education, access to quality primary health care, absence to abject poverty and universal access to safe water. Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living, which threatens the welfare and wellbeing of the people, especially in urban areas – where conditions in the streets become worse during rainy seasons, as their houses and streets become flooded.

Chapter Five of this report provides a discussion of the situation of social rights in Tanzania Mainland for the year 2018. The introduction of fee-free education policy by the government has definitely paid dividends as there has been increased enrolment in primary education and authorities in different parts of the country are making efforts to vigorously implement the policy. However, increased enrolment has created a challenge of shortage of classrooms to accommodate pupils who pass the national examinations and ready to join secondary education. As discussed in Chapter Five, this has been reported as a challenge in different parts of the country. Other education-related challenges include shortage of toilets/toilet holes, shortage of teachers and shortage of desks. Main challenges in realization of right to health in 2018 were shortage of budget, shortage of healthcare workers and shortage of health facilities, as reported in different part of the country. Lack of decent shelter is also a key challenge affected residents of rural areas in many parts of Tanzania.

**Taxation as a human rights issue and key for social development**

All States are responsible for mobilising the resources necessary to implement their international obligation to promote, protect, and fulfil human rights. The collection of taxes and allocation of resources is essential to the realization of the right to development and requires efficient and equitable State action.

**Office of the United Nations High Commissioner for Human Rights**

Revenue collection by the Government is key for the realization of social rights. The Government needs to enable it to provide basic social services such as food, water, clothing, shelter and healthcare for its people, especially the poorer section of the society. It is therefore necessary for businesses and individuals to pay their taxes in order to contribute to their
own well-being by enabling the Government to progressively realise social and economic rights, which in turns brings about social development. This is a duty for every Tanzanian and businesses operating in the country, because this is essential for social development.

Governments need taxes, as most sustainable source of revenue, to ensure progressive realization of social and economic rights.\textsuperscript{355} Taxation is thus strongly linked to human rights and plays a fundamental role in realisation of such rights,\textsuperscript{356} especially right to development and social and economic rights. Moreover, fiscal policies play a key role in mitigating inequalities. According to Office of the United Nations High Commissioner for Human Rights, progressive taxation plays an important redistributive role ensuring the equitable sharing of wealth.\textsuperscript{357} All these suggest a human rights-approach to taxation.

Human rights obligations related to taxation exist under various regional and international instruments, including under the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; the UN Declaration on the Right to Development; and the UN Guiding Principles on Extreme Poverty and Human Rights – which provides for an obligation for States to “...make certain that adequate resources are raised and used to ensure the realization of the human rights of persons living in poverty.”\textsuperscript{358}

For the year 2018, Tanzania continued to be faced with challenges in the mining sector, including tax avoidance, tax evasion and corruption in the mining sector. These practices deny the Government the funds it needs to provide social services. However, it is crucial for the Government to also


\textsuperscript{356} Ibid.


manage the funds properly and put them into intended use. People are more likely to freely pay their taxes if they see that they are properly managed and not misappropriated. The Government needs to focus on progressive tax system (direct taxes), which is more favourable to the poorer section of the society as they promote equality.

6.1.3. Cultural development
Right to culture is one of the few human rights which are fully and freely realized by most people in Tanzania, save for harmful cultural practices, such as FGM and child marriage. Swahili language continues to enjoy local and international recognition as one of the key languages in the world and more people are learning the language across the world. Swahili language continues to be promoted and accepted beyond Tanzania as the language of the East African community, which is a pride for all Tanzanians.

6.1.4. Economic development
Tanzania continues to enjoy economic growth, through implementation of its Development Vision 2025, seeking to achieve a strong and competitive economy. The goal is to achieve a semi-industrialized economy with a substantial industrial sector comparable to middle-income countries, a growth rate of 8% per annum or more and adequate level of physical infrastructure, among others. Through its industrialization drive, popularly known as “Tanzania ya Vivanda,” the fifth phase government, has taken several measures to push Tanzania ahead, including continued improvement of key infrastructure, such as roads, railway and flyovers. It has also made efforts to revive the industrial sector and boost revenue collection.

Efforts to boost economy have seen Tanzania maintaining a relatively high economic growth rate, which is close to the 8% set in the 2025 Development Vision. In 2018, the economic growth rate was estimated at 6.6%, slightly lower than 2017, which was 6.7%. However, the Minister of

Finance and Planning, Hon. Dr. Phillip Mpango, revealed that economic growth rate stood at 7% from January to June 2018.\textsuperscript{360}

Despite the growth experienced in terms of economy, the main challenge for Tanzania remains translating such growth into poverty reduction in order to boost human development. Majority of the people still live under or slightly above USD 1 per day. Lack of modernization of the agricultural sector is also a challenge for economic development in Tanzania, taking into account that more than 65% of Tanzanians are employed in this sector. The AU Maputo Declaration on Agriculture and Food Security of 2003 requires that at least 10% of total budget should be allocated for agriculture, but this has not been realised. In most cases, less the approved budgeted funds are also not timely disbursed, including in the agricultural sector. These issues have a great effect on economic development.

\textbf{Women’s participation in development process}

The Declaration on the Right to Development requires that women have an active role on the development process.\textsuperscript{361} It also calls for elimination of discrimination based on sex in enjoyment of all human rights and fundamental freedoms.\textsuperscript{362} Although significant progress has been made over the years to include women in the development process, they continue to face a number of challenges, including underrepresentation in positions of authority or decision-making. GBV also hinders majority of women, particularly in the informal sector, to effectively take part in the development process.

\textbf{6.1.5. Counterfeit products and consumer rights}

In 2018, human and consumer rights in Tanzania continued to be affected as counterfeit and substandard products continued to flood domestic


\textsuperscript{361} Article 8(1) of the Declaration on the Right to Development.

\textsuperscript{362} Ibid, Article 6(1).
These products usually originate from China, India, the United Arab Emirates (Dubai), Indonesia, Taiwan, Singapore, Pakistan, Hong Kong, South Korea, Bahrain, Malaysia, Burma and Thailand. Presence of these counterfeit and substandard products causes loss revenue due to tax evasion; loss of employment; ill-health; loss of consumer trust; loss of market share; and safety risks. They also threaten right to life, right to health, right to work and right to development. Counterfeit products contribute to tax revenue loss of about USD 4 million annually. In September 2018, the Tanzania Foods and Drugs Authority (TFDA), reported that it seized and destroyed Tshs. 32 million worth of counterfeit products in Tabora Region.

A 2017 report on state of counterfeit goods in Tanzania by the Confederation of Tanzania Industries (CTI) indicates that in East Africa, Tanzania and Kenya suffer the most due to their geographical location; and that counterfeiting is a big problem in Tanzania. The products originate from both within Tanzania and from imports; and the hotspots for such products are Dar es Salaam, Arusha, Mwanza and Mbeya. Most of these goods (80%) enter Tanzania through the Port of Dar es Salaam and to a lesser extent through Tanga and Mbeya, while entry via Zanzibar is also widespread.

The CTI report further indicates that majority of consumers purchase counterfeit goods because of ignorance and the products being cheap; and most of them do not report to relevant authority when they encountered fake products, while others do not know which authority is responsible for

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364 Ibid.
368 Ibid.
fighting such products. Companies operating in Tanzania have also complained that counterfeit products have led to loss of market share (10-30%) and a loss of annual turnover; and tarnished their brand, leading to loss of consumer trust. Moreover, the CTI study findings show that 80% of the people interviewed reported that the fake products negatively affected the health and safety of Tanzanians as consumers. The situation has also contributing to companies not being able to expand and create more employment.

Reasons for existence of counterfeits in domestic market include: inadequate budget allocated for relevant authorities; poor governance and corruption; and lack of effective enforcement of laws; lack of coordination; and inability to monitor some of the borders with neighboring countries, which are highly porous.\textsuperscript{369} Report by the Controller and Auditor General (CAG) on audit of public authorities and other bodies for the financial year 2016/2017 indicates that there were no officers from the Tanzania Bureau of Standards (TBS) at several entry points to ensure compliance of imported goods with set standards.\textsuperscript{370} The entry points are: Borega, Kogaja, Kilongwe and Gorogonja in Mara Region; Bukoba and Kemondo ports in Kagera region; Kisese, Kitobo and Chumvini in Kilimanjaro region and Kigombe, Kipumbwi, Mkwa – Jasini, Chongoleani, Sahare, Mwambani, Dumi and Mnyanjani in Tanga Region.\textsuperscript{371} The CAG remarked that absence of TBS officers at these entry points poses a risk of importation of substandard goods in Tanzania.\textsuperscript{372}

6.2. Right to Enjoy and Benefit from Natural Resources
The African Charter on Human and People’s Rights of 1981 provides that “all people shall freely dispose of their wealth and natural resources” and importantly that “this right shall be exercised in the exclusive interest of the people.”\textsuperscript{373} The right is also covered under the UN General Assembly
Resolution 1803 of 1962 which calls for “permanent sovereignty over natural resources.”

Domestically the Constitution of the United Republic of Tanzania provides for the right to natural resources under article 9. This article provides that “the use of natural resources places emphasis on the development of people and in particular is geared towards the eradication of poverty, ignorance and disease.” Nevertheless, this provision in unenforceable as it is not in the Bill of Rights within the Constitution.

Natural resources are important for generation of revenue and provide employment for many Tanzanians, for example in the tourism industry. The mining industry is another area where natural resources generate revenue and provide employment. Local and foreign investors have invested in the mining sector.

Duty bearers are required to ensure permanent sovereignty over the natural resources for the purpose of enhancing national development and wellbeing of the people, ensure respect of the rights and interests of the indigenous people, equitable sharing of transboundary natural resources and protection and conservation of the natural resources. Duty bearers are required to ensure permanent sovereignty over the natural resources for the purpose of enhancing national development and wellbeing of the people, ensure respect of the rights and interests of the indigenous people, equitable sharing of transboundary natural resources and protection and conservation of the natural resources. Under the Constitution of the United Republic of Tanzania, the State authority and agencies are required to direct policies and programmes in ensuring that the use of natural wealth places emphasis on the development of the people and geared towards eradication of poverty, ignorance and disease.

Key factors affecting realization of the right to enjoy and benefit from natural resources

In 2018, LHRC was able to identify a number of factors that affect realization of the right to enjoy and benefit from natural resources. These factors include corruption in the mining sector, land grabbing, tax evasion and lack of access to water resource.

Corruption in the mining sector

374 Christina, V. International Environmental Law: Sovereignty over Natural Resources and Prohibition of Transboundary Harm available at https://www.uio.no/studier/emner/jus/jus/JUS5520/h14/undervisningsmateriale/3.-sovereignty-over-natural-resources.pdf, accessed on 19th March 2018

375 Article 9(i) of the Constitution of the United Republic of Tanzania, 1977
Corruption hinders people who are evicted from their land to pave way for mining activities from being compensated or justly compensated. Village authorities have been known to be corrupt, doing their investors’ bidding for personal interest instead of looking out interest of the people they lead (reference is made to the 2018 North Mara Gold Mine corruption scandal in Mara Region). Recent PCCB report indicates corruption in the land sector to be an issue of great concern.

Land grabbing
Land grabbing by foreign investors has contributed to denying citizens their right to enjoy their resources, as their land is taken away without due process and they are either not compensated or timely and adequately compensated. Local leaders and village leaders are usually implicated in corrupt transactions with investors to make decisions in their favour.

Tax evasion
Regarding tax evasion, particularly in the mining sector, the Government gets to collect less revenue than anticipated. This translates into slow pace in the progressive realization of social and economic rights, such as right to water, right to education and right to health, which in turn affects human development as well as social and economic development. Therefore, tax evasion in the mining and other sectors poses a threat to realization of the right to benefit from natural resources for Tanzanians.

Lack of access to water resource
Lack of access to water resource also hinders most Tanzanians, especially in rural areas, from fully realizing their right to benefit from natural resources available in Tanzania. Water is key for human and economic activities, and is crucial in realization of the right to life and right to health.

Conclusion and Recommendations

1. Conclusion

<table>
<thead>
<tr>
<th>Right</th>
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<tbody>
<tr>
<td>Right to Development</td>
<td>Right to development includes political development, social development, and economic development. All of these development are crucial in realizing the right to development. For the year 2018, major</td>
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challenges were in political development and social
development.

There is no realization of the right to development without
taxes, as there is a strong link between taxation and human
rights, especially social and economic rights. The
Government needs taxes in order to progressively realise
social and economic rights; and human rights obligations
related to taxation exist under various regional and
international instruments, including the International
Covenant on Economic, Social and Cultural Rights (ICESCR)
of 1966.

For the year 2018, Tanzania continued to be faced with
challenges in the mining sector, including tax avoidance, tax
evasion and corruption in the mining sector. These practices
deny the Government the funds it needs to provide social
services. However, it is crucial for the Government to also
managed the funds properly and put them into intended use.
People are more likely to freely pay their taxes if they see
that they are properly managed.

The fact that most areas/villages around investment areas,
especially mining areas, such in Geita, living in poor
conditions and face challenges in attaining quality social
services such as water and education also points to failure
on the part of investors and the government to ensure they
benefit from their natural resources. Companies operating
in these areas have a corporate social responsibility (CSR),
which compels them to assist in provision of key social
services. However, this has not been done much, given the
persisting levels of poverty in villages and townships around
their operation areas and reports of challenges in education
and other social sectors, including shortage of classrooms,
toilets and desks.

Key factors corruption in the mining sector, land grabbing,
tax evasion and lack of access to water.
2. Recommendations

State actors

⇒ The Government should address corruption in the mining sector, which is threatening right to development and right to enjoy and benefit from natural resources.

⇒ The Ministry of Natural Resources should ensure effective implementation of natural resources laws.

⇒ The Government to ensure respect of human rights in the course of attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.

⇒ The Government to ensure effective implementation of corporate social responsibility (CSR) policy to ensure people in areas with heavy investment, such as mining areas, benefit from their natural resources through improved social services.

⇒ The Government to address tax evasion and avoidance in the mining sector and ensure companies which evade tax are held accountable;

⇒ The Government, through the Tanzania Bureau of Standards (TBS), Tanzania Foods and Drugs Authority (TFDA) and the Fair Competition Commission (FCC) should spearhead provision of consumer education, touching on difference between counterfeit and substandard products; effects of counterfeit products on consumers and Tanzania as a whole; and which government authority to approach in case of counterfeit or substandard product.\(^{376}\)

⇒ The Government should enhance resources, budget and capacity of the Fair Competition Commission (FCC) in order to increase its presence in the country and ensure staff are well remunerated; and

⇒ The Government should enhance TFDA resources, budget and capacity, interagency cooperation in order to address corruption.

Non-state actors

⇒ CSOs and the Commission for Human Rights and Good Governance (CHRAGG) to raise public awareness on right to development and right to benefit from natural resources.

\(^{376}\) As recommended by the Confederation of Tanzania Industries.
CSOs should identify gaps in realization of natural resources and engage and advise the government accordingly.

CSOs should collaborate with the government to ensure companies comply with their corporate social responsibilities. CSOs can also advocate for CSR to be mandatory for other companies, following amendments to the Mining Act of 2010, which have made CSR a legal requirement for companies in the mining sector.

**Members of the public**

- Community members are encouraged to preserve and protect natural resources, which is their constitutional duty.
- Community members are also encouraged to pay their taxes, since these are key in realization of social and economic rights.
Chapter 7: Rights of Vulnerable Groups

Introduction

Vulnerable groups are groups within the society which are more likely to be victims of violations of fundamental human rights than others. In Tanzania, vulnerable groups include women, children, persons with disabilities (PWDs), the elderly and persons living with HIV/AIDS. These groups require special protection as they are more likely to face more human rights violations than others. This special protection, which is guaranteed under laws and conventions that specifically provide for rights of these groups, seeks to ensure they enjoy and realize fundamental human rights equally with others. This chapter looks at the situation of the rights of the members of these groups in 2018.

7.1. Women’s Rights

As human beings, women enjoy human rights guaranteed and protected under key human rights conventions that form the international bill of rights, namely the Universal Declaration of Human Rights (UDHRC), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR). However, there are treaties that specifically provide for women’s rights, namely the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) of 1979 and Protocol Additional to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) of 2003. Another key convention that provides for rights of women is the SADC Protocol on Gender and Development of 2008.

The principle of non-discrimination takes the centre stage when discussing women’s rights; and domestically the Constitution of the United Republic of Tanzania of 1977 guarantees the right to equality before the law and prohibits any form of discrimination, including based on sex and gender.377 Under CEDAW, Maputo Protocol and SADC Protocol on Gender and Development, Tanzania is obligated to pursue all appropriate means to eliminate discrimination against women and promote and ensure gender equality. This sub-chapter looks at the situation of violence against women,

discrimination and gender inequality in Tanzania Mainland as key issues affecting women’s rights in 2018.

7.1.1. Violence against Women

Violence against women (VAW) refers to any act of violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women.\textsuperscript{378} It includes threats which such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Examples of VAW include: rape, sexual harassment at work, trafficking in women and girls, forced prostitution, trafficking in women, beatings, torture, sextortion, and harmful traditional practices such female genital mutilation (FGM). VAW is a form of discrimination and constitutes human rights violation,\textsuperscript{379} violating rights such as right to life; right to physical integrity; right to liberty and personal safety; right against torture or cruel, inhuman or degrading treatment or punishment; and right to health.\textsuperscript{380}

**Government efforts to address VAW**

In 2018, the Government continued to take several measures, in collaboration with non-government actors, to address the problem of violence against women (VAW), through implementation of the national Plan of Action to End Violence Against Women and Children 2017/18 – 2021/22. The Judiciary also worked to ensure perpetrators of VAW are brought to justice. However, the situation of women’s rights continued to be negatively affected by different forms of VAW, which are still prevalent in different parts of Tanzania Mainland.

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\textsuperscript{378} See the United Nations Declaration on the Elimination of Violence against Women of 1993.


Physical and psychological violence
In the year 2018, LHRC documented various incidents of VAW, particularly in the forms of physical violence, economic violence and sexual violence, including beatings, rape, desertion/neglect, exploitation of labour and marital sodomy. More incidents of physical violence were reported in the media compared to the year 2017, including a husband stabbing to death his wife - a lecturer at University of Dodoma; and a husband hitting his wife with hard object and killing her in Mkuranga-Pwani Region.

In 2018, LHRC conducted an assessment of VAW in 20 districts of 10 regions of Tanzania Mainland, namely: Ruvuma (Songea & Namtumbo), Mbeya (Mbeya CC & Kyela), Iringa (Iringa MC & Iringa DC), Dodoma (Dodoma CC & Kongwa), Singida (Singida MC & Manyoni), Tabora (Tabora MC & Nzega), Shinyanga (Shinyanga & Kahama), Mwanza (Mwanza CC & Misungwi), Arusha (Arusha CC & Arumeru) and Kilimanjaro (Moshi MC & Moshi DC).

Physical and psychological violence were mentioned to be prevalent in Iringa DC, Dodoma CC, Singida MC, Manyoni, Tabora MC, Nzega, Kahama, Misungwi, Moshi MC and Meru.381

In Iringa, it was revealed that physical abuse incidents increase during the ulanzi local liquor period, which lasts from January to April each year, with drunkenness amongst men fuelling physical abuse against women. In Tabora MC, it was stated that most reported cases of VAW are on physical violence, but victims and onlookers are either afraid of reporting or reluctant to do so. In some places, even local government leaders are reluctant to report such incidents or testify in court for fear of ‘disrespecting/going against’ their customs and traditions. Physical violence cases in the region include beatings and attacks motivated by jealousy, most of them reported to police gender desks.

Most women do not provide cooperation when it comes to cases of physical violence. They are afraid of ending their marriages because the Chagga customs and traditions prohibit them from reporting their husbands to the police. If they do so (report to police) their marriages come to an end.

SWO, Moshi DC

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381 LHRC Field Report, 2018.
Misungwi, physical/partner violence was said to be especially prevalent during harvest season.

Complaints of men abandoning their wives and children to either marry other women (usually younger than their wives) or start new life with them were said to be common in Iringa, Mbeya, Kilimanjaro, Singida, Arusha and Tabora Regions. The wives are usually left alone to raise and care for their children, leaving them psychologically affected and constantly seeking help or intervention from social welfare departments. In Singida MC, the social welfare department revealed that there is a problem of women being constantly married and divorced, leaving them in psychological trauma, especially when left with children. In Nzega, desertion of wives and children was said to be common, hence many child support cases at the social welfare department.

In Tabora and Kilimanjaro, customs and traditions were mentioned amongst factors contributing to physical VAW, as women are prohibited from revealing being beaten by their husbands. It was also revealed that most women in rural areas do not know where to report or seek assistance, while others have lost faith in the justice system, put off by perceived corruption within the system (especially police). In Moshi-Kilimanjaro, fear of breaking up marriage was cited as among reasons for women not reporting physical abuse.

**Sexual Violence**

Regarding sexual violence, police data indicate that 1,218 women reportedly raped from January to June 2018. Sexual violence was said to be among the major forms of VAW in half of the regions that were visited by LHRC, namely: Songea, Tabora, Mbeya, Singida and Kilimanjaro. In Songea, sexual VAW was said to be high, with at least 43 cases recorded by social welfare department in 2017/2018. Sexual violence is mainly perpetrated in the form of rape and sodomy, including in marriage settings. Marital rape and sodomy are discussed below.

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382 LHRC could not obtain the statistics for the rest of the year from the Police Force.
The TELEZA Phenomenon: A nightmare for women in Kigoma

Since 2016, there have been reports of a group of rapists in Kigoma popularly known as TELEZA, who break into houses and brutally and repeatedly rape women. A fact-finding mission conducted by LHRC and Twaweza, has revealed some frightening information on brutal raping of women by the group in region, as little has been done to help the poor women and make them feel safe. LHRC and Twaweza were able to document a series of incidents of rape and attempted rape of women in the region going as far back as 2017. These include: raping of a woman who had returned home at midnight from fetching water in 2017; raping of a 60-year-old woman (four times) in 2017, after being hit with a rod; raping of a 36-year-old woman (who was reportedly raped 6 times from 2017 to 2019), such that she decided to buy a weapon to protect herself; raping of an eight-month-pregnant woman in 2018; and raping of two older persons, one of them 70-years old.

Marital sodomy: Women forced by their spouses to engage in anal intercourse

One of the acts of sexual violence reportedly widely committed against women in 2018 was their spouses forcing them to engage in anal intercourse. In December 2018, it was revealed by the Tanzania Women Lawyers Association (TAWLA) that women being forced by their spouses to engage in anal intercourse, especially those who are married, is becoming a common occurrence in Tanga Region. LHRC’s interviews with social welfare officers (SWOs) and community development officers (CDOs) in

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384 “Walio kwenye ndoa walazimishwa mapenzi kinyume na maumbile” Mtanzania Newspaper, 4th December 2018.
10 regions of Tanzania Mainland in 2018 further reveals the magnitude of this problem.

Marital sodomy exists, but men tend to think that they have a right to do to a woman as they please.

SWO, MERU

Incidents of marital sodomy were mainly reported in Singida, Tabora, Iringa, Arusha and Kilimanjaro. In Singida MC, the social welfare department revealed that women tend to complain about marital sodomy but they are afraid of reporting when they talk to SWOs. Some of them do not know that sodomy is a crime and those who know do not report to authorities for fear of ‘family shame’ and husband retaliation.

There are cases of marital sodomy, but most women are afraid of coming out and reporting. The problem of marital sodomy appears to be growing.

SWO, MOSHI MC

Sodomy incidents are common amongst spouses, but most women are afraid of reporting them, believing that ‘a woman should not reveal family secrets.’

SWO, MOSHI DC

There is a man who started forcing his wife to engage in sodomy. He started to regularly sodomize her and later even started inserting a bottle in her. When she complained about this behavior, he threatened to leave her, but the wife decided to come and report the matter.

SWO, Iringa DC

Forced anal intercourse constitutes an act of sexual violence against a woman, violates her dignity, is a human rights violation and is a criminal

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offence under the Penal Code of Tanzania. LHRC condemns this action and calls upon all men who commit marital sodomy to stop this behavior, which also has health consequences for women.

**Sexual corruption: A challenge for women, including female students in higher learning institutions**

Sexual corruption was also identified as a major challenge for women in 2018, especially for young women seeking jobs. Reports of these women being asked to sleep with prospective bosses in order to secure employment continue to be widespread, with some agreeing in order to be employed or promoted and others are discouraged and give up on employment altogether.

A study involving female journalists and university students, conducted by *Internews* in 2018 revealed rampant discrimination, lack of opportunities and demands for transactional sex against women who aim for media careers. According to the study, female journalists are usually asked for sexual corruption when they seek employment or by their story sources; and face sexual exploitation at their workplaces, especially when they seek promotion. The study further reveals that male lecturers make sexual advances and sexually exploit female students, sometimes giving them failing grades when they refuse such advances.

In November 2018, a lecturer at the University of Dar es Salaam, Dr. Vincensia Shule, took to her Twitter account to expose sexual corruption at the university, shortly after the visit of the President of Tanzania, Hon. Joseph Pombe Magufuli. In her tweet she urged the President to intervene.

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386 Section 154 of Penal Code, CAP 16 (prohibits carnal knowledge of any person against order of nature).
387 An international non-profit organization, works to ensure access to trusted, quality information that empowers people to have a voice in their future and to live healthy, secure, and rewarding lives.
389 Ibid.
390 “TGNP yaibuka sakata la rushwa ya ngono” *Nipashe* Newspaper, 7<sup>th</sup> December 2018; Elias Msuya “Mhadhiri aliyedai rushwa ya ngono imekithiri UDSM apongezwa” *Mwananchi* Newspaper, 10<sup>th</sup> December 2018; Peter Mwai “Vicensia Shule: Mhadhiri aliyezua mjadala
on the matter, stating that sexual corruption at the university is rampant. The tweet stimulated public debate, particularly on social media; and human rights activists commended her for bravery in fighting against sexual violence, which is among key issues affecting women in Tanzania. The lecturer was later called before the ethics committee at the university to discuss and see how to address the matter.391

![Picture 13: Dr. Vincesia Shule’s tweet regarding sexual corruption at the University of Dar es Salaam](image)

**Table 11: Incidents of VAW recorded by LHRC, 2018**

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
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<tbody>
<tr>
<td><strong>Mwanza:</strong> A 27-year-old man, resident of Mwanza, was arrested by police for raping and killing 28 women in Mwanza Region.</td>
<td><em>Nipashe</em> Newspaper</td>
<td>25 Aug 2018</td>
</tr>
<tr>
<td><strong>Misungwi, Mwanza:</strong> A resident of Sangamwalugesha Village in Simiyu Region was sent to court, accused of raping a woman who is mentally-handicapped.</td>
<td><em>Mwananchi</em> Newspaper</td>
<td>4 Oct 2018</td>
</tr>
<tr>
<td><strong>Shinyanga:</strong> Police in Shinyanga arrested 30-year-old Fikiri Charles, resident of Mwadui-Kahama, who reportedly confessed to killing 6 women for payment of up to Tshs. 800,000/-, ‘a business’ he said he inherited from his father, connected to witchcraft beliefs.</td>
<td><em>Nipashe</em> Newspaper</td>
<td>13 Oct 2018</td>
</tr>
<tr>
<td><strong>Siha, Kilimanjaro:</strong> In October 2018, Siha</td>
<td><em>Nipashe</em></td>
<td>13 Oct 2018</td>
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</table>


| District Court sentenced 48-year-old Peter Kimathi to a total of 60 years in prison after finding him guilty of raping and sodomizing a 35-year-old woman in January 2018. | Newspaper |
| Arusha: A woman in Arusha testified before the Resident Magistrate Court about how her husband was beating her and inserting his hand in her private parts, causing her persistent pain. | Mtanzania Newspaper | 17 Oct 2018 |
| Tanga: Two women, aged 18 and 40, were raped and killed in Pangani District and Tanga District respectively. | Mwananchi Newspaper | 4 Dec 2018 |
| Butiama, Mara: A 24-year-old woman, resident of Nyaange Village, was attacked by her husband with a machete after going to a traditional dance ceremony without his permission. As a result, he cut her fingers as she held the machete to prevent an attack on her body. | Mwananchi Newspaper | 12 Dec 2018 |
| Morogoro: A 27-year-old woman, Zuhura Gabriel, was reportedly killed by her co-parent, known as Msambaa, because of jealousy. She was stabbed with a knife on different parts of her body. | HABARILEO Newspaper | 28 Dec 2018 |
| Bukoba, Kagera: A secondary school teacher, 36 years old, strangled his woman, 29 years old, because of jealousy; and then committed suicide. | Nipashe Newspaper | 19 Dec 2018 |
| Geita: 3 teachers at Kasamwa Secondary School were accused of beating a 19-year-old Form Five student until she lost consciousness for piercing her ears. | Nipashe Newspaper | 18 Dec 2018 |
| Nachingwea, Lindi: Dotusi Isaya, resident of Chanika-Dar es Salaam, reportedly attacked with a machete and killed his wife and two daughters (aged 3 and 5), following a marriage dispute. The man then committed suicide. Apparently he wanted to move with the children to Bukoba, but the wife refused. | Mwananchi Newspaper | 16 Sep 2018 |
| Bagamoyo, Pwani: A 38-year-old man, Mzee Kondo, was arrested by police for killing his 27-year-old wife in August 2018, following accusations that she was chatting with other men on the phone. | Nipashe Newspaper | 5 Sep 2018 |
| Ikungi, Singida: A man, Joseph Wilbrod, reportedly killed his wife, Editha Kanisi, by LHRC Human Rights | 20 Aug 2018 |
stabbing her after accusing her of being unfaithful in their marriage.

**Temekte, Dar es Salaam:** Police arrested a man, Frank Magulu (29), who was accused of killing his lover, Mariam Charles, because of jealousy.

**Monitoring Unit**

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<thead>
<tr>
<th>Monitoring Unit</th>
<th>Newspaper</th>
<th>Date</th>
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<tbody>
<tr>
<td>HABARILEO</td>
<td>Newspaper</td>
<td>9 Sep 2018</td>
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</tbody>
</table>

**Mpanda, Katavi:** Mpanda District Court sentenced Ramadhani Shaaban (24) to 30 years in prison after convicting him of raping a woman who is deaf and has a mental disability.

**Mtanzania Newspaper**

| Mtanzania Newspaper | 19 Sep 2018 |

**Tanga:** Petro Sabuni, resident of Pongwe, was arrested by police on accusation of killing wife and son using a knife in November 2018 for allegedly being told there is no food after he returned home. The son was stabbed when he intervened to protect the wife.

**Mtanzania Newspaper**

| Mtanzania Newspaper | 7 Nov 2018 |

**Shinyanga:** Police arrested a bodaboda driver, Shyrock Kimaro (48), for hitting his wife with a rock on the head and causing her death in November 2018.

**Mtanzania Newspaper**

| Mtanzania Newspaper | 7 Nov 2018 |

In August 2018, District Commissioner of Misungwi, Hon. Juma Sweda, indicate that incidents of raping, killing and removing body parts of women are among issues of key concern in his district. 392

In October 2018, the Inspector General of Police Simon Sirro, mentioned that cases related to jealousy between spouses are among the major challenges for the police force. 393 He stated that cases of women being killed by their spouses constitute the majority of cases at most police stations and posts.

*“If you want child support, come get it!”: The case of Moshi*

In Moshi, it was revealed that some men tend to use child support to take advantage of women they share a child or children with. Complaints of this kind were levelled against men at the social welfare department in Moshi MC.

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392 “Mauaji ya wanawake Misungwi yamuumiza DC” Mtanzania Newspaper, 9th August 2018.
393 “IGP Sirro: Mauaji ya wenza sasa tishio” HABARILEO Newspaper, 8th October 2018.
Sexual violence and killings of women in Monduli-Arusha

In August 2018, reports of fear in Monduli-Arusha due to increasing incidents of sexual violence and killings of women were reported. Eight women were reportedly killed in the district, while several others survived sexual violence. In the latest incidents, which occurred in July 2018, one woman was found killed and dumped in Mto wa Mbu area, after she was raped. Police in the area, however, dismissed claims that women are the only ones targeted, noting that the killings are random acts of crime.

Economic violence

In 2018, LHRC found economic VAW to be a major problem in six out of the ten regions it was able to visit. These are Mbeya, Iringa, Shinyanga, Singida, Ruvuma and Kilimanjaro. In Ruvuma, economic violence was said to be more prevalent in Namtumbo.

Generally, SWOs and CDOs engaged by LHRC in these regions state that while women are the main food producers in their communities, men tend to take control during harvest period and sell the crops and keep the money for their own use – usually seeking another wife or spending it with younger women. In Iringa, it was reported that men tend to marry many women in order to use them to grow and harvest crops as cheap labour, seeking to exploit their labour.

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395 Ibid.
396 Ibid.
Women are the main producers of rice, but when they harvest their men tend to take charge of crops. During harvest season men tend to turn on their wives, even kicking them out their homes.

*SWO-Kyela*

Dowry is used to justify VAW, as once a man pays the required dowry it is taken to signify that he can do whatever he wants with the woman. Also, there are many cases of economic violence during the harvest season, with men deserting their wives and marrying other women, especially young women.

*SWO, Kahama*

Economic violence is becoming prevalent. During harvest, the male spouse tends to take all the crops (to go and sell them) and seek or marry other women.

*SWO-Namtumbo*

**Table 12: Incidents of VAW documented by LHRC in 2018**

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dodoma:</strong> In May 2018, a university lecturer at the University of Dodoma was reportedly stabbed to death with a sharp object by her husband, John Mwaisango, a pastor. It was reported that the victim was stabbed multiple times.</td>
<td>LHRC Human Rights Monitoring Unit</td>
<td>2 Jun 2018</td>
</tr>
<tr>
<td><strong>Mkuranga, Pwani:</strong> In May 2018, a senior nurse at Mkuranga District Hospital in Pwani Region, Rosemary Magombora, was reportedly killed by her husband by hitting her with a hard object. It was reported that the husband was accusing his late wife of infecting him with HIV.</td>
<td>LHRC Human Rights Monitoring Unit</td>
<td>2 Jun 2018</td>
</tr>
<tr>
<td><strong>Meatu, Simiyu:</strong> A secondary school teacher in Meatu District, Richard Kihwili (29), was brought before a court of law, accused of raping a 19-year-old student.</td>
<td>Mтанзания Newspaper</td>
<td>6 Jun 2018</td>
</tr>
<tr>
<td><strong>Njombe:</strong> A 32-year-old man was arrested by police for burning his wife in her private parts. It was reported that the man attacked his wife after refusing to have sexual intercourse with him.</td>
<td>Mтанзания Newspaper</td>
<td>12 Mar 2018</td>
</tr>
<tr>
<td><strong>Kakonko, Kigoma:</strong> A woman in Itumbiko Village was reportedly killed by her husband with</td>
<td>Mтанзания Newspaper</td>
<td>23 Apr 2018</td>
</tr>
</tbody>
</table>
a bat for bearing him only female children.

Reasons for VAW: LHRC’s assessment

Based on its assessment of reported incidents of VAW and interviews with various key stakeholders, LHRC has identified various factors contributing to VAW. These factors include: witchcraft-beliefs, especially in the Lake Zone and Tabora; jealousy and revenge amongst spouses; harmful customs and traditions; dowry payment, especially in the Lake Zone; lack of economic empowerment for women, which forces them to tolerate VAW; low awareness about GBV and laws; drunkenness among men; and poor educational background among women and their spouses. Most women, especially in rural areas, do not report acts of violence perpetrated against them, including of partner violence, because of ‘shame.’

7.1.2. Gender Inequality and Discrimination

Gender equality refers to equal enjoyment of rights and access to opportunities and outcomes, including resources, by women, girls and boys. Rights to gender equality and non-discrimination are recognized under CEDAW, the Maputo Protocol and SADC Protocol on Gender and Development. One of the key principles of promoting gender equality is ensuring at least 50% of decision-making positions in the public and private sectors are held by women.

Goal 5 of the Sustainable Development Goals (SDGs) calls for achieving gender equality and empowering all women and girls. To achieve this goal, the Government of Tanzania needs to end all forms of discrimination against women and girls, eliminate all forms of violence against women and girls; ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life. To achieve gender equality and

397 Article 1(2) of the SADC Protocol on Gender and Development 2008.
398 Ibid, Article 12(1).
399 Goal 5.1 of the SDGs.
400 Goal 5.2 of the SDGs.
401 Goal 5.5 of the SDGs.
empower women and girls, the Government also needs to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.\footnote{402}

In 2018, the Government continued with efforts to promote and ensure gender equality and non-discrimination in Tanzania. Continued violence against women, including economic violence, presents a hurdle in achieving gender equality and combating discrimination against women. Representation of women in decision-making also continues to be a problem, especially in rural areas – where most customs and traditions still discriminate women in decision-making. According to the Association of Tanzania Workers (ATE), as of June 2017, only 35\% of women in Tanzania held senior leadership positions.\footnote{403}

\textit{Pulling the plug on family planning: a threat to women’s sexual and reproductive rights}

In September 2018, the President of Tanzania, Hon. John Pombe Magufuli, advised against family planning, noting that Tanzania does not need such planning and accused people who use contraceptives of being lazy and not wanting to bear responsibilities for their children, including feeding them.\footnote{404} He advised women during a rally in Meatu-Simiyu Region to stop using birth control, as stakeholders feared this would lead to change in policy – which was adopted in 1976.\footnote{405} On 19\textsuperscript{th} September 2018, the Ministry of Health, Community Development, Gender, Elderly and Children in Tanzania

\begin{verbatim}
\footnote{402} Goal 5.a of the SDGs.
\footnote{403} Rosemary Mirondo “Only 35pc of Tanzanian women hold senior leadership positions, says ATE” The Citizen Newspaper, 29 June 2017, at https://www.thecitizen.co.tz/News/Only-35pc-of-Tanzanian-women-hold/1840340-3992906-s2ib7s/index.html, accessed 20\textsuperscript{th} November 2018.
\footnote{405} Ibid.
\end{verbatim}
announced ban on airing of all family planning advertisements on radio and television pending further notice.  

7.2. Children’s Rights  
Children’s rights in Tanzania are protected at international, continental and domestic levels. They are guaranteed and protected under the UN Convention on the Rights of the Child (CRC) of 1989 and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, which require Tanzania to take all appropriate measures to protect children within its territory from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation; and to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.

This sub-chapter looks at the situation of harmful cultural practices, sexual violence and physical and psychological violence against children as key issues affecting children’s rights in 2018.

7.2.1. Violence against children  
Violence against children (VAC) is a key issue affecting human rights in Tanzania Mainland. For the year 2018, LHRC found children’s freedom from violence to be the most violated human right, mainly caused by growing incidence of VAC. Police data for the first six months of the year 2018, indicate increased magnitude of the problem, showing an increase of VAC incidents from 4,728 incidents by mid-2017 to 6,376 incidents by mid-2018, as shown in the figure below.

Information obtained by LHRC through media reports and interviews with different stakeholders in 20 districts of 10 regions of Tanzania Mainland also paint a picture of seriousness of the problem of VAC, especially sexual VAC. The regions and districts that were reached were: Ruvuma (Songea & Namtumbo), Mbeya (Mbeya CC & Kyela), Iringa (Iringa MC & Iringa DC), Dodoma (Dodoma CC & Kongwa), Singida (Singida MC & Manyoni), Tabora (Tabora MC & Nzega), Shinyanga (Shinyanga & Kahama), Mwanza (Mwanza CC & Misungwi), Arusha (Arusha CC & Arumeru) and Kilimanjaro (Moshi MC & Moshi DC).

Sexual violence was mentioned as the major VAC issue in all districts, followed by physical violence; and main acts of VAC were mentioned to be rape, beatings, sodomy/defilement and neglect/desertion.

There is one case of a woman who sells traditional liquor. When she comes back home, she usually comes back with a man, both drunk. They engage in sexual activity; and when they finish the man turns to her 13-year-old daughter (they sleep in the same room) and rapes her. Different men come by the house every now and then, sometimes during the day and rape the child. Fortunately, the child has been rescued by social welfare officers and was found to be HIV negative.

SWO, Singida MC

Figure 6: Reported incidents of VAC by mid-2017 and mid-2018

Source: Tanzania Police Force, 2017 & 2018
Various factors were mentioned as contributing to VAC in Tanzania Mainland. These include lack of proper care and parental guidance; lack of parenthood and child care knowledge amongst parents/guardians, leading to poor upbringing; household poverty, leaving children – especially girls – vulnerable to men who offer them money and food; witchcraft-beliefs; low awareness about child rights; family disintegration, whereby mother leaves father with children or father leaves and mother stays with children but children spend most of the time alone at home; drunkenness among men, and in some few cases women; tendency of parents preferring to settle VAC cases out of court ‘to conceal family shape.’ Other factors that were mentioned were: men abandoning their wives and children to marry other, usually younger, women; poor school environment and long distance to school, leaving children vulnerable, especially to bodaboda drivers; peer pressure, especially for the case of child-on-child sexual abuse; and parents/guardians not spending adequate time with their children.

In Namtumbo-Ruvuma, it was revealed that some parents tend to leave children by themselves for a long period of time, literally taking care of themselves. During the growing season, some parents even leave their homes and camp at the farms, leaving children to take care of themselves, thus putting them at increased risk of VAC. It was also revealed that men tend to marry more women (polygamy) every now and then, thus finding themselves incapable of adequately providing for all their wives and children, leaving children exposed to VAC. In Mbeya, drunkenness, witchcraft beliefs and parental separation (especially where a father remains with a female child), were said to be major factors contributing to VAC. In Manyoni, the social welfare department indicated that children are usually left home alone, leaving them at increased risk of violence from passers-by and neighbours – who are known to be among the main perpetrators of

Victims of violence against children are more likely to become either perpetrators or victims of violence when they become adults.
VAC. **In Moshi,** strong belief in customs and traditions was said to contribute to VAC, as parents seek to ‘resolve issues’ at family level. **In Tabora,** shortage of fit persons and families was identified as among the challenges facing prosecution of sexual VAC cases.

Lack/shortage of fit persons/families contributes to victims of sexual violence turning hostile witnesses in court, since they are usually threatened to tell the truth in court when they return back home, especially where the perpetrator is a close relative or family member.

**SWO, Tabora DC**

LHRC’s media survey revealed that sexual violence incidents dominated print media reports for the year 2018. As shown in the table below, 91% of reported VAC incidents were of sexual violence, while 9% were physical and psychological violence.

**7.2.2. Sexual Violence**

**Alarming rate of sexual violence against children**

Sexual violence against children, particularly in the forms of rape and sodomy, was a major human rights concern in 2018. In the first half of 2018 police data indicated that reported child rape had increased by 3 times compared to the first six months of 2017. Sodomy incidents have increased
from 12 in the first half of 2017 to 533 in the first half of 2018. Such incidents are also common in schools, including primary schools and boarding schools.

![Graph showing increase in incidents of child rape from mid-2017 to mid-2018](image)

**Figure 8: Incidents of child rape reported to the police by mid-2017 and mid-2018**

*Source: Tanzania Police Force, 2011 & 2018*

As indicated above, there were many media reports on VAC in the year 2018, more than 2017; and majority of reported incidents were of sexual violence, especially rape and sodomy. The table below provides some short narratives on reported incidents of sexual violence that were recorded by LHRC in 2018.

**Table 13: Incidents of sexual violence against children recorded by LHRC, January to December 2018**

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mtwara</strong>: A man reportedly attacked and killed a child after the child’s mother refused his sexual advances.</td>
<td>Nipashe Newspaper</td>
<td>8 Feb 2018</td>
</tr>
<tr>
<td><strong>Loliondo, Arusha</strong>: A secondary school teacher, Erick Kaliache, reportedly raped and impregnated his student March 2018.</td>
<td>HabariLeo Newspaper</td>
<td>12 Jul 2018</td>
</tr>
<tr>
<td><strong>Shiyanga</strong>: A father poisoned his 2-month-old baby born outside wedlock, allegedly to prevent his wife from finding out about the child.</td>
<td>Nipashe Newspaper</td>
<td>13 Apr 2018</td>
</tr>
<tr>
<td><strong>Nyegezi, Mwanza</strong>: Soli Mkanzabe (24) was</td>
<td>HabariLeo</td>
<td>28 Feb 2018</td>
</tr>
</tbody>
</table>
reportedly apprehended by police, accused of raping a 4-year-old girl.

**Maswa, Shinyanga:** Two people were taken to court in February 2018, accused of raping and impregnating students, including a Standard Three pupil.

**Ruangwa, Lindi:** A police officer (28) was reportedly arrested and suspended after being accused of raping a 14-year-old girl.

**Kinondoni, Dar es Salaam:** A resident of Makumbusho area, Said Mussa, was brought before Kinondoni District Court, accused of raping a 16-year-old girl.

**Iringa:** A resident of Mwangata area in Iringa (45) was arrested by police for using a 14-year-old girl for commercial sexual exploitation and beating her when she refused to engage in sexual intercourse with men.

**Kinondoni, Dar es Salaam:** Vitalis Joseph (24), a resident of Tegeta area was brought before Kinondoni District Court, accused of raping a 9-year-old girl, child of his former employer, where he was working as a garden attendant.

**Bukombe, Geita:** A resident of Segere Village, Rushanga Kusumo (37), was sentenced to life in prison for sodomizing a 6-year-old girl in April 2018.

**Ilala, Dar es Salaam:** A resident of Pugu Stesheni, Issa Athumani (47), was beaten by angry citizens for reportedly raping his own child.

**Kiteto, Manyara:** A teacher at Engusero Secondary School, Henry Michael (30), was brought before Kiteto Resident Magistrate Court, accused of raping a Form Two student aged 16 years.

**Hai, Kilimanjaro:** 19 secondary school students were reportedly raped in September 2018 during the Uhuru torch celebrations. They mentioned bodaboda drivers, bajaj drivers and CD vendors as major perpetrators.

**Serengeti, Mara:** A teacher at Nyibereka Primary School, Sokoine Francis (28), was brought before a court in Serengeti, accused of raping and impregnating a 15-year-old student in August 2018.
**Misungwi, Mwanza:** A head master in Misungwi was arrested by police after being accused of engaging in sexual relationship with students.

**Mpwapwa, Dodoma:** It was reported that in the first 9 months of 2018, a total of 54 incidents of child rape were reported to police gender desk, 24 of which resulted into child pregnancy.

**Moshi, Kilimanjaro:** 10 secondary school students in Moshi DC, 5 boys and 5 girls, were reportedly sodomized and raped respectively.

**Babati, Manyara:** Police in Manyara arrested Charles Merikiory (32), a primary school teacher, for sodomizing a Standard Five pupil in a dormitory at the school.

**Misungwi, Mwanza:** Resident Magistrate Court of Misungwi sentenced a primary school teacher, Telesphory Revocatus (32), to 30 years in prison for raping and impregnating a primary school pupil.

**Misungwi, Mwanza:** Charles Abel (24), resident of Usagara, was brought before Misungwi District Court, accused of raping and impregnating a 13-year-old pupil who is his cousin. He reportedly committed the offence in June 2018 at Usagara area.

**Misungwi, Mwanza:** Magige John (20), resident of Old Misungwi Village, was sentenced by court to 30 years in prison for raping and impregnating a Standard Six pupil.

**Chunya, Mbeya:** An 8-year-old girl was raped to death in Mbuguni area by a 25-year-old man. Witchcraft-belief was said to be the motivation behind the incident.

**Siha, Kilimanjaro:** Siha District Court sentenced a man, Abrahamu Kaaya (30), to 60 years in prison after convicting him of raping and impregnating a 15-year-old secondary school student.

**Misungwi, Mwanza:** Misungwi District Court sentenced 30-year-old Peter Fred to 30 years in prison, following conviction of impregnating a Standard Seven pupil.

**Misungwi, Mwanza:** Misungwi District Court sentenced 25-year-old Paul Masunga, resident of Mwemagembe Village, to 30 years in prison after he was convicted of raping and impregnating a 14-
<table>
<thead>
<tr>
<th>Location</th>
<th>Incident Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tabora MC, Tabora</td>
<td>Patrick Kabula (24), who was accused of raping a 5-year-old girl in February 2018, was sentenced to 30 years in prison.</td>
<td>Mtanzania Newspaper</td>
<td>6 Dec 2018</td>
</tr>
<tr>
<td>Kinondoni, Dar es Salaam</td>
<td>Mohammed Hasan (66), resident of Mburahati area, was brought before Kinondoni District Court, accused of raping a 3-year-old girl in October 2018.</td>
<td>Mtanzania Newspaper</td>
<td>6 Dec 2018</td>
</tr>
<tr>
<td>Siha, Kilimanjaro</td>
<td>Issa Ismail (20), was sentenced to life in prison after he was convicted of sodomizing an 8-year-old Standard Two pupil in October 2018.</td>
<td>Nipashe Newspaper</td>
<td>3 Dec 2018</td>
</tr>
<tr>
<td>Misungwi, Mwanza</td>
<td>Misungwi District Court sentenced a resident of Inonelwa Village, Nyanda Zephania (27), to 30 years in prison and payment of a fine of Tshs. 50,000 after he was convicted of trafficking, raping and impregnating a 16-year-old student.</td>
<td>Mwananchi Newspaper</td>
<td>10 Dec 2018</td>
</tr>
<tr>
<td>Siha, Kilimanjaro</td>
<td>A tourist escort, George Lesilwa, was sentenced to life in prison after he was convicted of sodomizing three children.</td>
<td>LHRC Human Rights Monitoring</td>
<td>12 Dec 2018</td>
</tr>
<tr>
<td>Mbeya</td>
<td>Mbeya Resident Magistrate Court sentenced a 67-year-old man, resident of Lyunga area, after convicting him of raping a 6-year-old girl in Mbalizi area in March 2018.</td>
<td>Majira Newspaper</td>
<td>21 Dec 2018</td>
</tr>
<tr>
<td>Chamwino, Dodoma</td>
<td>A 14-year-old pupil at a primary school in Wilunze Village was accused of sodomizing other pupils of Standard One and Standard Two.</td>
<td>HABARILEO Newspaper</td>
<td>24 Dec 2018</td>
</tr>
<tr>
<td>Korongwe, Tanga</td>
<td>Police opened investigations into 3 secondary school teachers accused of engaging in sexual relationships with students.</td>
<td>Nipashe Newspaper</td>
<td>12 Dec 2018</td>
</tr>
<tr>
<td>Kahama, Shinyanga</td>
<td>Simon Patrick (29) and Erasto Jeremia (53) were arrested by police in connection with raping of 5-year-old and 15-year-old girls respectively.</td>
<td>Nipashe Newspaper</td>
<td>22 Nov 2018</td>
</tr>
<tr>
<td>Rombo, Kilimanjaro</td>
<td>Rombo RC ordered arrest of a man, resident of Mafufuu area, who was accused engaging in sexual relationship with his 16-year-old daughter.</td>
<td>Nipashe Newspaper</td>
<td>17 Dec 2018</td>
</tr>
<tr>
<td>Tunduru, Ruvuma</td>
<td>A step-father, Mmanga Mrope (47), was sent to court, accused of raping an 8-year-old girl in December 2018.</td>
<td>Nipashe Newspaper</td>
<td>15 Dec 2018</td>
</tr>
</tbody>
</table>
Pwani: A young man (20-25 years old), was arrested for raping two primary school girls along the border of Dar es Salaam and Pwani Regions.

Nkasi, Rukwa: A head teacher, Eradi Kapyela, reportedly absconded from justice after impregnating a standard seven pupil at his school who was below the age of 14 years.

Mbozi, Mbeya: Mbozi District Court sentenced Mathias Mbaya, resident of Maleza Mkwashini, after he was convicted of raping two children in May 2018.

Kinondoni, Dar es Salaam: Riziki James (37), resident of Kimara, was arrested by police and sent to court, accused of defiling and sodomizing a 7-year-old child.

Chamwino, Dodoma: Police arrested a man, Wilton Mdenende, accused of defiling his 5-year-old child in September 2018. The father was living alone with the child following separation with his wife. It was reported that the father and daughter were sharing the same bed and neighbours would hear the young girl crying at night but the father would tell he was punishing her for wetting the bed.

Kinondoni, Dar es Salaam: Luhanga Godfrey (23), was brought before Kinondoni District Court, accused of raping a 14-year-old girl in May 2018 at Mabibo area.

Lindi: Unknown man threatened with a machete and raped a 13-year-old in the bushes when she was enroute to meet with her parents at a farm.

Bukoba, Kagera: Police arrested a man, Nelson Petro, accused of raping a 5-year-old girl.

<table>
<thead>
<tr>
<th>Location</th>
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<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pwani</td>
<td>A young man (20-25 years old), was arrested for raping two primary school girls along the border of Dar es Salaam and Pwani Regions.</td>
<td>LHRC Human Rights Monitoring Unit</td>
<td>November 2018</td>
</tr>
<tr>
<td>Nkasi, Rukwa</td>
<td>A head teacher, Eradi Kapyela, reportedly absconded from justice after impregnating a standard seven pupil at his school who was below the age of 14 years.</td>
<td>HABARILEO Newspaper</td>
<td>27 Jul 2018</td>
</tr>
<tr>
<td>Mbozi, Mbeya</td>
<td>Mbozi District Court sentenced Mathias Mbaya, resident of Maleza Mkwashini, after he was convicted of raping two children in May 2018.</td>
<td>Nipashe Newspaper</td>
<td>12 Jul 2018</td>
</tr>
<tr>
<td>Kinondoni, Dar es Salaam</td>
<td>Riziki James (37), resident of Kimara, was arrested by police and sent to court, accused of defiling and sodomizing a 7-year-old child.</td>
<td>Mtanzania Newspaper</td>
<td>17 Aug 2018</td>
</tr>
<tr>
<td>Chamwino, Dodoma</td>
<td>Police arrested a man, Wilton Mdenende, accused of defiling his 5-year-old child in September 2018. The father was living alone with the child following separation with his wife. It was reported that the father and daughter were sharing the same bed and neighbours would hear the young girl crying at night but the father would tell he was punishing her for wetting the bed.</td>
<td>HABARILEO Newspaper</td>
<td>26 Sep 2018</td>
</tr>
<tr>
<td>Kinondoni, Dar es Salaam</td>
<td>Luhanga Godfrey (23), was brought before Kinondoni District Court, accused of raping a 14-year-old girl in May 2018 at Mabibo area.</td>
<td>Mtanzania Newspaper</td>
<td>21 Sep 2018</td>
</tr>
<tr>
<td>Lindi</td>
<td>Unknown man threatened with a machete and raped a 13-year-old in the bushes when she was enroute to meet with her parents at a farm.</td>
<td>Nipashe Newspaper</td>
<td>20 Nov 2018</td>
</tr>
<tr>
<td>Bukoba, Kagera</td>
<td>Police arrested a man, Nelson Petro, accused of raping a 5-year-old girl.</td>
<td>Nipashe Newspaper</td>
<td>10 Nov 2018</td>
</tr>
</tbody>
</table>

Sexual violence was also mentioned as a major violation of children’s rights in all 20 districts of 10 regions that LHRC visited in 2018. Sexual VAC was said to be prevalent in 90% of districts that were visited, including those in Mbeya, Iringa, Kilimanjaro, Tabora, Mwanza and Arusha. Below are some of comments and cases on sexual VAC narrated by SWOs in various districts.
In January 2018, a man raped his relative’s child while on visit. He was sent to court and sentenced to 30 years in prison. The incident was motivated by witchcraft beliefs.

SWO, Songea

There is a 17-year-old girl, a form five student, who was raped by a man she met on her way back home. The man threatened her with a knife and proceeded to rape her, although she recognized him. She stays far from school, thus forced to walk long distance to reach school. Her parents were not ready to cooperate with the court because they consider the incident to have shamed the family. Her mother said “we did not wish for this matter to reach the court because it has now become a family shame!”

SWO, Songea

There was a girl who boarded a bus going to school. She fell asleep and was taken by unknown man who raped her all nights such that she could hardly walk. She was helped by a neighbour to report the matter and was able to identify the perpetrator during a parade at police station. However, the accused person was acquitted by court of law, and we do not know why.

SWO, Songea

In July 2018, a child aged 11 years was reportedly regularly raped by father. Following her parents’ separation, she went to live with her mother but was going to her father’s to get some supplies. However, her father raped her whenever she went to his house and has infected her with HIV. The matter is now before the court of law.

SWO, Mbeya CC

Most parents keep acts of VAC committed against their children a secret, not ready to report the incidents. However, we have now engaged teachers, a move which has led to increased reporting of the incidents due to increased awareness about VAC. The MTAKUWWA programme has really helped.

SWO, Meru
Other reports of sexual violence in Shinyanga, Mbeya and Iringa Regions

In 2018, LHRC received other reports of sexual violence against children from Regions of Shinyanga, Mbeya and Iringa, which are among regions notorious for sexual violence against children. Six incidents were reported from Shinyanga, including: a father who regularly raped his child, who has disability, when his wife goes to work; another of a father who repeatedly raped his daughter when his wife went to work; a girl, who was a food vender, raped by a young man after inviting her into his room when she was selling food; and a girl who was raped while going back home from school.411 In Mbeya Urban, it was reported that children are usually raped in the evening in abandoned houses. In Moshi-Kilimanjaro, it was reported that two male children were sodomized by their uncle. In Iringa, there was a report of a father raping his daughter due to witchcraft-related belief, so that he could become rich.412

Child rape incident - Chunya

A resident of Itewe Ward in Chunya District, Mbeya Region, was beaten by an angry mob after being accused of raping an 11-year-old girl.413 The girl was a Standard Five pupil and the incident took place in May 2018. Chunya District is one of the areas were sexual violence against children is prevalent in Tanzania.

Sexual violence putting girls at increased risk of HIV infection

Sexual violence against girls and young women puts them at increased risk of HIV infection. This will hamper Tanzania’s efforts to achieve its 90-90-90

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411 LHRC’s Human Rights Monitoring.
412 Ibid.
HIV infection reduction target and SDGs. Addressing sexual violence against girls and young women is thus key for achieving zero new infections among them.

**Child-on-child sexual abuse: Older children raping and sodomizing younger children at home and school**

In 2017, LHRC received complaints of child-on-child sexual abuse in some primary schools in Dar es Salaam, whereby some pupils were found by their teachers engaging in sexual abuse, particularly sodomy. In 2018, LHRC decided to probe into the matter when it visited 10 regions of Tanzania Mainland in October and November 2018. Generally, child-on-child sexual abuse was found to exist and becoming a major problem, especially at schools. This type of abuse was especially mentioned to be a problem in Kilimanjaro, Singida, Tabora and Mbeya.

In **Moshi MC**, it was revealed that over 90% of sexual violence cases sent to juvenile courts are of rape and sodomy; and that there are many cases of adolescent children sodomizing younger children and impregnating younger girls. Some adolescent children even engage in gang-rape. In Tabora MC, social welfare officers indicated that children as young as 3 to 5 years old were defiled/raped by older children, most of them secondary school students. In **Dodoma CC**, it was reported that there is a growing number of adolescent boys aged 14 to 17 years who are committing acts of rape and sodomy against children below the age of 14. In **Singida MC**, a SWO said, “We receive many cases of children perpetrating violence against fellow children in Singida MC, especially rape and sodomy. But child perpetrators of such violence enjoy protection under the Law of other Child Act. There is need to amend the law to impose stricter punishment for child perpetrators of sexual violence.” Similar remarks regarding stricter punishment were made by a SWO in **Moshi MC**.

In **Tabora MC** and **Nzega**, a SWO remarked that there is a need to conduct an advocacy campaign on GBV at boarding schools, as there are

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There is a child who was HIV positive and was sodomized by an adult, who was also doing the same to another child. The child got used to the act and started doing it on other children.

**SWO, Tabora MC**
many sodomy incidents. Children who are victimized at school also tend to do it to other children at home. Similar remarks were made by the social welfare department in Moshi.

Another SWO in Tabora mentioned that unrestricted access to phones and internet has contributed to moral decay and acts of sodomy due to children watching pornography copying what they see. Sodomy in boarding schools was said to be a major concern, such that in 2017 a secondary school suspended many students for engaging in the act while at school. In Mbeya CC, it was revealed that school owners are not ready to disclose information about sodomy incidents happening at their schools because they do not want to taint school image.

In Singida MC, it was reported that some children perpetrate acts of sexual violence on one another while at school, especially during breaks in toilets. In Meru DC, child-on-child sexual abuse was said to be a growing problem, with some parents, close relatives and guardians said to be contributing to it by sexually abusing their children at home. Some older children were said to continue sexually abusing younger children because they know they are protected under the Law of the Child Act 2009. In Moshi, adolescent boys were identified as among main perpetrators of child rape.

A 6-year-old child who was in boarding school was repeatedly sodomized at school. Once his health started to deteriorate, his parents took him to the hospital for checkup and he was found to be HIV positive. Supposedly, he acquired the virus due to sexual abuse suffered at school. His father was shocked, suffered from stroke and then died.

**SWO, Tabora MC**

A child aged 9 years was regularly sodomized by fellow pupils, aged 12 and 13. They would pull the child to the bushes while coming from school and do it. After some time teachers noticed that the child was not looking okay, looking very thoughtful. When they asked him what was wrong, he told them the whole story.

**SWO, Misungwi**
Witchcraft beliefs among reasons for sexual violence against children

Witchcraft beliefs continue to be a factor contributing to sexual violence against children, especially those below the age of 10 years. This factor has been mainly mentioned in Iringa, Mbeya and Tabora.

In Chunya-Mbeya, the social welfare department revealed that some of the people and perpetrators who had been interviewed by the department mentioned that they had been instructed by witch-doctors to rape young children to increase their chances of economic success in their mining activities.414 In Iringa DC, some of the acts of sexual violence/rape were said to be motivated by belief.

414 “Matukio ya ukatili wa kijinsia yakithiri Chunya” Mtanzania Newspaper, 12th October 2018.
in witchcraft, in order for men to become rich, especially in areas around mining areas.

In 2017, a girl was sodomized by her father, whom she was living with after her mother separated from him. This incident was connected to witchcraft beliefs.

SWO, Tabora MC

Long distance to school contributes to VAC, especially sexual violence

In Iringa and Moshi, long distance to school was mentioned to contribute to VAC, especially sexual VAC, as some girls are raped while on their way to or back from school. In some areas children have been advised to walk in groups. Bodaboda drivers try to take advantage of girls who schools are far from home. Bushes provide a perfect spot for perpetrators to commit such heinous act.

Long distance to and from school is a factor contributing to acts of violence (against children) as some of the girls have been raped while on their way to or from school. For instance, a 9-year-old girl was raped and sodomized by a man whom she met while on the way from school. The man grabbed her and took her to a nearby bush and raped and sodomized her. Her colleague ran and went to report the incident. The incident occurred in April 2018 in Uvanga Village, Iksumani Ward.

SWO, Iringa DC

Government move to establish gender desks at schools: A positive action

In October 2018, Deputy Minister of Health, Community Development, Gender and Children, Hon. Dr. Faustine Ndugulile, announced that the Government was planning to establish gender desks at primary and secondary schools to enable children to learn about and report violence against them.415 He noted that the move seeks to curb incidents of violence against children, which continue to be prevalent in the country. He mentioned parents, guardians, close relatives and neighbours as among main perpetrators of violence against children. He added that the Government

415 “Madawati ya jinsia kuanzishwa shuleni” Nipashe Newspaper, 9th October 2018.
was planning to improve the functioning of police gender desks across Tanzania Mainland.

LHRC commends this move by the Government, given the alarming rate of VAC incidents perpetrated against children at home, at school and on their way to and from school. This will give children a platform to learn about VAC, including its impact, and encourage them to report such incidents.

**Neighbours, close relatives, bodaboda drivers and teachers among main perpetrators of sexual violence against children in 2018**

Main perpetrators of sexual violence continue to be neighbours and close relatives. This was revealed to LHRC through various interviews with social welfare officers, community development officers and a section of community members across 10 regions of Tanzania Mainland, especially in **Mbeya, Tabora, Singida and Shinyanga**. Bodaboda drivers, step fathers and teachers have also been implicated in a good number of cases of sexual violence in various regions. For example, at least 7 teachers in 2018 were arrested and charged with raping and/or impregnating pupils/students. In Hai-Kilimanjaro, bodaboda drivers were among the main perpetrators of rape of 19 secondary students on the eve of the Uhuru torch celebrations.


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Main perpetrators of rape are close relatives and neighbours. There are a number of rape cases involving neighbours as perpetrators. For example, there is one case where a teacher found her 8-year-old pupil with Tshs. 25,000. When she forced the pupil to tell her where she got the money the pupil said she was given the money by her uncle (51 years-old), who is also their neighbor. She said that the uncle was regularly having sexual intercourse with her (raping). The uncle also had HIV, but luckily the young girl was not infected. However, the child has been severely harmed psychologically and physically. The main reason for men to sleep with young is witchcraft beliefs.

*SWO, Kyela*

There is a 5-year-old girl who was raped by her neighbour this year. The accused person denied the charges in court, but the evidence was clear that the child had been raped and testified in court.

*SWO, Tabora MC*

There are many incidents of rape, with close relatives and people around children being the main perpetrators, such as a father or an uncle. Very few cases involve strangers. There is a child, who was raped by her father and infected with HIV in May, 2018. The case is still proceeding in court.

*SWO department, Mbeya*

In Tabora, step-fathers were said to be among the major perpetrators of sexual violence against children. Single fathers who live with their female children also perpetrate acts of sexual violence, demanding they assume ‘wife’ duties, as reported in Mbeya – where it was further revealed that very few cases involved strangers as perpetrators in 2018.

A 6-year-old girl was raped by her step-father, whom she was living with together with her mother. The step-father was HIV positive, but luckily when she was tested, the girl was negative. When her mother went to work, she usually remained at home with her step-father. When asked about the health status of her husband, the mother claimed “my husband is of good health, he is taking his medicine (ARV), he has gained weight now.”

*SWO, Tabora MC*
Uncles have also been implicated in a number of VAC cases. For instance, in Mbeya, an 8-year-old boy was found to have been sodomized by his uncle. When they did, they informed the police and ensured the boy received survivor services, including health and counselling services.

In Mbeya, SWOs mentioned that they have started a campaign to inform parents not to allow visitors to sleep with their children, because most of the perpetrators of sexual violence against children are close relatives. Different forums are used to remind parents to increase protection of their children. They further noted that they have in place child protection teams at all levels (council, ward and mtaa (street)), which have a responsibility of providing education about GBV/VAC and protection to children. People are informed to report VAC incidents to the police or social welfare department. There is a 116 child helpline, which is used to report VAC incidents, especially by community members who want to remain anonymous.

Complaints about rise of sex crimes committed against children in several districts of Tanzania Mainland

LHRC’s media survey for the year 2018 revealed that sexual violence against children were reported to be on the rise in several districts of Tanzania Mainland. For instance, in August 2018 during a councilors’ meeting in Tarime-Mara it was reported that sexual harassment and abuse of children was becoming a big problem in schools, with complaints from
parents that their children, especially Standard One and Standard Two pupils, were sodomized by teachers. 417

In October 2018, police gender desk in Mpwapwa-Dodoma reported that many incidents of violence against children and child pregnancy were reported in the first 9 months of 2018. 418 Police gender desk officer, Magreth Lyaro, pointed out that during that period, 226 GBV incidents were reported, out of which 54 were rape incidents.

In October 2018, the social welfare department lamented the prevalence of sexual violence against children in Hai-Kilimanjaro, following rape incident of 19 secondary students during the event of the Uhuru torch celebrations. 419 Parents were said to be partly to blame for the situation for largely not living up to their parental responsibilities, including spending quality time with and being close to their children, being too busy earning their daily bread.

In October 2018, social welfare department in Chunya-Mbeya lamented the situation of sexual violence in the district. 420 SWO Theresia Mwendapole mentioned that for the year 2017/2018 there were many reported incidents of sexual violence against children, including against children below the age of 10 years. 421

In October 2018, District Commissioner of Kibiti-Pwani, Hon. Gula Hussein, mentioned that the district is faced with many cases of child rape and child pregnancy. 422 He lamented the role of village chairpersons in promoting sexual violence against children through resolving such disputes out of court, calling for family meetings instead.

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417 HABARILEO Newspaper, 2nd August 2018.
418 “Wanaume watakiwa kutokomeza ukatili wa kijinsia” HABARILEO Newspaper, 29th October 2018; See also Ludovick Kazoka “District registers GBV 226 cases in nine months” DAILY NEWS Newspaper, 26th October 2018 at https://dailynews.co.tz/news/2018-10-255bd1c73570a97, accessed 21st December 2018.
419 “Wazazi lawamani ukatili wa kingono kwa watoto” Nipashe Newspaper, 15th October 2018.
420 “Matukio ya ukatili wa kijinsia yakithiri Chunya” Mтанzania Newspaper, 12th October 2018.
421 Ibid.
422 “Kibiti kinara ubakaji wa watoto” Nipashe Newspaper, 25th October 2018.
Judicial action against perpetrators of sexual violence

Despite the various challenges in the justice system, including corruption and delays, courts of law in different parts of Tanzania continued to take action against perpetrators of sexual violence in different parts of Tanzania Mainland. Below are some of the prison sentences for perpetrators of sexual violence against children reported by the media in 2018.

Table 14: Judicial action against perpetrators of sexual violence reported by the media in 2018

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Siha, Kilimanjaro:</strong> Siha District Court sentenced Abrahamu Kaaya (23), to a total of 60 years in prison after convicting him of raping and impregnating a Form One student in October 2017.</td>
<td><em>Mtanzania Newspaper</em></td>
<td>23 Oct 2018</td>
</tr>
<tr>
<td><strong>Lindi:</strong> Lindi District Court sentenced Mussa Milanzi (29) to life in prison after finding him guilty of sodomizing a 5-year-old child in October 2017.</td>
<td><em>Nipashe Newspaper</em></td>
<td>20 Aug 2018</td>
</tr>
<tr>
<td><strong>Tabora:</strong> Tabora Resident Magistrate Court sentenced Masunga Ngele (30), after finding him guilty of defiling a 10-year-old pupil in December 2017.</td>
<td><em>HABARILEO Newspaper</em></td>
<td>17 Dec 2018</td>
</tr>
<tr>
<td><strong>Moshi, Kilimanjaro:</strong> Rashid Mohamed Sadick (61), popularly known as Babu Pipi, was sentenced to life in prison after he was found guilty of raping an 11-year-old girl in March 2017.</td>
<td><em>Mwananchi Newspaper</em></td>
<td>21 Dec 2018</td>
</tr>
<tr>
<td><strong>Moshi, Kilimanjaro:</strong> A tourist escort in Moshi was sentenced to life in prison for sodomizing three male children in 2017.</td>
<td><em>Mwananchi Newspaper</em></td>
<td>12 Dec 2018</td>
</tr>
<tr>
<td><strong>Siha, Kilimanjaro:</strong> In December 2018, Siha District Court sentenced Issa Ismail (20) to life in prison after finding him guilty of sodomizing a standard two pupil.</td>
<td><em>Mwananchi Newspaper</em></td>
<td>2 Dec 2018</td>
</tr>
<tr>
<td><strong>Bukombe, Geita:</strong> A resident of Segere Village, Rushanga Kisumo (37), was sentenced to life in prison for sodomizing a 6-year-old girl in April 2018.</td>
<td><em>Mwananchi Newspaper</em></td>
<td>2 Aug 2018</td>
</tr>
<tr>
<td><strong>Misungwi, Mwanza:</strong> Resident Magistrate Court of Misungwi sentenced a primary school teacher, Telesphory Revocatus (32), to 30 years in prison for raping and impregnating a primary school pupil.</td>
<td><em>Mtanzania Newspaper</em></td>
<td>27 Oct 2018</td>
</tr>
</tbody>
</table>
pupil.

**Misungwi, Mwanza:** Magige John (20), resident of Old Misungwi Village, was sentenced by court to 30 years in prison after being convicted of raping and impregnating a Standard Six pupil.

**Siha, Kilimanjaro:** Siha District Court sentenced a man, Abrahamu Kaaya (30), to 60 years in prison after convicting him of raping and impregnating a 15-year-old secondary school student.

**Misungwi, Mwanza:** Misungwi District Court sentenced 30-year-old Peter Fred to 30 years in prison, following conviction of impregnating a Standard Seven pupil.

**Misungwi, Mwanza:** Misungwi District Court sentenced 25-year-old Paul Masunga, resident of Mwemagembe Village, to 30 years in prison after he was convicted of raping and impregnating a 14-year-old girl.

**Tabora MC, Tabora:** Patrick Kabula (24), who was accused of raping a 5-year-old girl in February 2018, was sentenced to 30 years in prison.

**Misungwi, Mwanza:** Misungwi District Court sentenced a resident of Inonelwa Village, Nyanda Zephania (27), to 30 years in prison and payment of a fine of Tshs. 50,000 after he was convicted of trafficking, raping and impregnating a 16-year-old student.

**Mbeya:** Mbeya Resident Magistrate Court sentenced a 67-year-old man, resident of Iyunga area, after convicting him of raping a 6-year-old girl in Mbalizi area in March 2018.

**Hai, Kilimanjaro:** Hai District Court sentenced two men to 30 years in prison after finding them guilty of gang-raping a standard five pupil in October 2016.

**Chunya, Mbeya:** Chunya Resident Court sentenced Julius Joseph Isambi (35), resident of Mawelu Iwa Village, to life in prison after finding him guilty of defiling a 1-year-old baby.
7.2.3. Physical Violence and Psychological Violence

Through media survey and its Human Rights Monitoring Unit, LHRC was able to document 13 incidents of physical and psychological violence against children. One such incident was that of a 10-year-old child who was severely beaten by her teachers at school in Kilosa-Morogoro Region, such that she had to be admitted to Muhimbili Hospital in Dar es Salaam. However, many more incidents were reported to the police stations and social welfare departments across Tanzania Mainland, while many others are usually unreported.

In another incident – which drew a lot of public attention in Tanzania - a standard five pupil at Kibeta Primary School Bukoba-Kagera, Sperious Eradius, was severely beaten to death by his teacher, Respicious Patrick (also known as Mtazangira), on 27th August 2018 at the school. The incident was reported to the police the same day and the accused persons, the teacher who beat the deceased pupil and the teacher who claimed her wallet was stole, Harieth Gerald, were arrested. In court, it was revealed that Ms. Gerald had suspected Sperius had taken the wallet, but he denied doing so and when he was inspected in his bag the wallet was not there.423 The teacher beat him with a stick three times and then handed him to Mr. Respicious Patrick, who was the discipline master. It was further revealed that the discipline master beat the student with a stick and when he kept on denying taking the wallet he ordered other pupils to bring him some big sticks. He continued beating him and demanding that he shows where the wallet is, until he fainted.424 When he regained consciousness the discipline master continued beating him on different parts of his body, including the head, until he could no longer move; and even used a sharp object to inflict pain on his fingers, pulling out a nail in the process. Further testimony revealed that the beating lasted for about 3 hours. The court found the first accused person, Mr. Respicious Patrick, guilty of killing the boy, noting that he intended to cause grievous harm and/or kill him.425

423 Republic v. Respicious s/o Patrick @ Mtazangira & Herieth d/o Gerald, Criminal Session Case No. 56 of 2018, High Court of the United Republic of Tanzania at Bukoba, Judgement [22/2 & 6/3/2019].
424 Ibid.
425 Ibid.
In August 2018, the Secretary of the Teachers’ Service Commission, Ms. Winfrida Rutaindurwa, issued a strong warning to teachers who punish pupils and students beyond the law.\textsuperscript{426} She reminded teachers to punish pupils and students in line with the law and regulations, in particular the Education (Corporal Punishment) Regulations, G.N No. 294 of 2002. She noted that under the regulations, corporal punishment is only issued in case of serious misconduct, should not exceed four strikes and should take into consideration age, gender and health of a pupil/student. Teachers mandated to impose corporal punishment by head teacher or head master are also required to keep record of all such punishments, including number of strikes and reasons for punishment.

**Table 15: Reported incidents of physical and psychological violence against children**

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Misungwi, Mwanza:</strong> A 14-year-old form two student as Sumbugu Secondary School was reportedly beaten by her father with a heavy object, leading to her death, because of skipping school.</td>
<td>Mtanzania Newspaper</td>
<td>10 Aug 2018</td>
</tr>
<tr>
<td><strong>Iringa:</strong> A form four student of Old Tanga Secondary School was found killed and face skin removed.</td>
<td>Nipashe Newspaper</td>
<td>21 Aug 2018</td>
</tr>
<tr>
<td><strong>Mbeya:</strong> A woman and her son were arrested by police for subjecting a child to physical and psychological violence by beating him with a wire and burning him on different parts of his body in July 2018.</td>
<td>HABARILEO Newspaper</td>
<td>3 Aug 2018</td>
</tr>
<tr>
<td><strong>Bukoba, Kagera:</strong> In August 2018, a standard five pupil at Kibeta Primary School, Sperius Eradius (13), died after he was severely beaten by a teacher following accusations by another teacher teacher that he had stolen her wallet.</td>
<td>LHRC Human Rights Monitoring Unit</td>
<td>30 Aug 2018</td>
</tr>
<tr>
<td><strong>Bukoba, Kagera:</strong> 2 children from the same family aged 7 and 5 were found killed and dumped in the bush in Mashule Village. Another child aged 9 was reportedly found killed in the similar manner in nearby ward, Rubale.</td>
<td>HABARILEO Newspaper</td>
<td>24 Oct 2018</td>
</tr>
</tbody>
</table>

\textsuperscript{426} “Walimu wanaotoa adhabu kwa wanafunzi waonywa” Majira Newspaper, 31\textsuperscript{st} August 2018.
In 10 regions that were visited by LHRC in 2018, physical abuse against children was mentioned to continue being a challenge facing children, though not as prevalent as sexual abuse. For instance, in Tabora, it was revealed that a 14-year-old child was living with her aunt, who was working as a bar attendant. The aunt was constantly beating her and locking her inside the house. She was eventually rescued by neighbours, who alerted
the authorities and worked together with a SWO to locate her mother. She located the mother in Mwanza and sent back her child. Among the main perpetrators of physical abuse against children mentioned in Kahama, Moshi and Misungwi were step-parents, who were accused of usually inflicting severe pain on their step-children through beatings.

Recently, a 3-year-old child was severely beaten by a step-father just because the child pooped in clothes. The child sustained some serious injuries and had to be admitted to the Misungwi District Hospital for more than a week.

**SWO, Misungwi**

There is a child who told to wash the dishes, but decided to go and play. As punishment, had hands were tied by her sister, who then burned them. The damage was so severe that the hands had to be cut. She is 11 years old; and the incident occurred in Kilolo.

**SWO, Iringa DC**

### 7.2.4. Child Marriage, Child Pregnancy and FGM

**Child marriage widespread and still a major challenge for girls in Tanzania**

Child marriage is still prevalent in regions such as Shinyanga, Tabora, Mara and Dodoma Regions. Under the Maputo Protocol, Tanzania is required to undertake appropriate national legislative measures to guarantee that the minimum age of marriage for women is 18 years, while the African Children’s Charter prohibits child marriage and calls for states to take legislative action to ensure 18 is the minimum age of marriage. Nevertheless, Tanzania is yet to make the legal reforms to protect children from child marriage, as the Law of Marriage Act 1971 continues to allow girls aged 14 and 15 to be married.

In 2018, several incidents of child marriage were reported across several regions of Tanzania Mainland. In Nkasi-Rukwa, police managed to rescue a 15-year-old girl from child marriage, after a dowry of 45 cows had been

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427 Article 6 of the Maputo Protocol.

accepted by her father. The girl had passed her standard seven examinations and was due to commence her secondary education when her parents decided to marry her to a man aged around 45-50 years.\textsuperscript{429} In Same-Kilimanjaro, a standard two pupil aged 12 years was reportedly forced by her foster father to marry a 48-year-old man.\textsuperscript{430} In September 2018, district authorities in Nkasi-Rukwa ordered arrest of parents of a standard three pupil whom they wanted to marry off to a man in Mkinga Village.\textsuperscript{431} In Serengeti-Mara, a 30-year-old man, resident of Iseresere Village for marrying a standard two student in May 2018.\textsuperscript{432}

\textbf{Drivers of child marriage}

Poverty: is the key driver of child marriage. Child marriage is more likely to be practiced in groups or families with lowest income rather than well-off families. Bride is a major source of income for poor families.\textsuperscript{433} Other drivers include: traditions and socio-cultural norms such as FGM, initiation rites and traditional dances; gender discrimination; lack of educational opportunities; and fear of teenage pregnancy.\textsuperscript{434}

\textbf{Commendable efforts by the Tabora Regional Commissioner’s Office in addressing VAC, child marriage and promoting right to education for girls in the region}

The Regional Commissioner of Tabora, Hon. Aggrey Mwanri, has been a key figure in promotion of children rights in Tabora Region. The RC and his team have been working to ensure rights of children, including right to education, are respected and realized. In August, 2018, the RC called upon religious leaders to refrain from conducting/performing child marriages, unless the parties are above 18 years of age.\textsuperscript{435} He also called upon them to help the government combat child marriage and child/teenage pregnancy.\textsuperscript{436} In October 2018, the RC issued a stern warning to citizens in Tabora that

\textsuperscript{429} HabariLeo Newspaper, 16\textsuperscript{th} February 2018.
\textsuperscript{430} Nipashe Newspaper, 15\textsuperscript{th} February, 2018.
\textsuperscript{431} Mtanzania Newspaper, 19 Sep 2018.
\textsuperscript{432} Mtanzania Newspaper, 12 Sep 2018.
\textsuperscript{434} Ibid.
\textsuperscript{435} “Maharusi, viongozi wa dini kuswekwa rumande” Majira Newspaper, 14\textsuperscript{th} August 2018.
\textsuperscript{436} Ibid.
whoever will be found participating in a child marriage ceremony would be arrested and taken to court.\textsuperscript{437}

![Picture 14: Tabora RC, Hon. Aggrey Mwanri, who has been instrumental in addressing harmful cultural practices and promoting girls’ right to education in Tabora](Picture by Mwananchi Communications Limited)

During an interview with LHRC, Regional Administrative Secretary (RAS) of Tabora mentioned that the regional administration is working hard to address the problem of child marriage and ensure realization of girls’ rights, including right to education.\textsuperscript{438} He added that the administration has been working closely with education officers, whom he believes have a vital role to play in promoting right to education and combating child marriage and pregnancy in the region. He also hinted at strong belief in customs and traditions among community members and ignorance on the part of parents as factors contributing to child marriage, noting that there are still parents who value their cattle more than they do education for their children, especially girls. Rather than spending on girls’ education, the parents would rather they get married; and when the girls say no they are more likely to...

\textsuperscript{437} “RC kuwakomesha wanaooza wanafunzi” Nipashe Newspaper, 1\textsuperscript{st} October 2018.
\textsuperscript{438} LHRC Field Report, 2018.
be kicked out of their homes. The children rights campaign in the region has helped to ensure more than 60% of children who had dropped out return back to school.

**Child pregnancy among pupils and students an issue of great concern in 2018**

In 2018, many incidents of child pregnancy among pupils and students were reported across Tanzania Mainland. Through media survey, LHRC was able to document over 1000 cases of child pregnancy in less than 10 regions, as indicated below. Areas where many cases of child pregnancy were reported include Mwanza, Kilimanjaro, Simiyu and Rukwa.

*Table 16: Reported incidents of children pregnancy*

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamwino-Dodoma: 11 primary school pupils were said to have dropped out of school due to pregnancy from January to October 2018</td>
<td><em>Nipashe Newspaper</em></td>
<td>20 Oct 2018</td>
</tr>
<tr>
<td>Maswa-Simiyu: More than 80 pupils and students acquired pregnancy from 2017 to September 2018, forcing them to drop out of school. Child pregnancy cases increased from 23 in 2017 to 62 in 2018</td>
<td><em>Nipashe Newspaper</em></td>
<td>23 Oct 2018</td>
</tr>
<tr>
<td>Masasi-Mtwara: 11 pupils and students in Masasi District dropped out of school due to pregnancy, including a standard five pupil</td>
<td><em>Nipashe Newspaper</em></td>
<td>22 Nov 2018</td>
</tr>
<tr>
<td>Mtwara &amp; Kilosa-Morogoro: 212 girls were impregnated in Mtwara and Kilosa-Morogoro from January to November 2018, of which 150 are secondary school students and 38 are primary school pupils.</td>
<td><em>Mwananchi Newspaper</em></td>
<td>30 Dec 2018</td>
</tr>
<tr>
<td>Mwanza: A total of 412 girls reportedly dropped out of school due to child pregnancy in 2018</td>
<td><em>Majira Newspaper</em></td>
<td>25 Dec 2018</td>
</tr>
<tr>
<td>Muheza-Tanga: 35 girls at Muheza Secondary School became pregnant by August 2018, with</td>
<td><em>Nipashe Newspaper</em></td>
<td>19 Aug 2018</td>
</tr>
</tbody>
</table>

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439 Ibid.
440 Ibid.
adult men, young men and bodaboda drivers mentioned as main perpetrators

<table>
<thead>
<tr>
<th>Region</th>
<th>Events</th>
<th>Source/Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rukwa</td>
<td>121 girls from primary and secondary schools became pregnant in July 2017 to May 2018, forcing them to drop out of school. 46 of them were from primary schools and 75 from secondary schools.</td>
<td>Mwananchi Newspaper 23 Oct 2018</td>
</tr>
<tr>
<td>Kilimanjaro</td>
<td>214 girls from primary and secondary schools reportedly dropped out of school due to pregnancy from January to September 2018. 46 of them were from primary schools and 75 from secondary schools.</td>
<td>Mtanzania Newspaper 7 Dec 2018</td>
</tr>
<tr>
<td>Arumeru-Arusha</td>
<td>77 girls dropped out of school due to child pregnancy in 2017 and 2018 (by September). 46 of them were from primary schools and 75 from secondary schools.</td>
<td>HABARILEO Newspaper 10 Oct 2018</td>
</tr>
<tr>
<td>Misungwi-Mwanza</td>
<td>From January to June 2018, there were 80 reported cases of child pregnancy. 443</td>
<td>LHRC Human Rights Monitoring Unit October 2018</td>
</tr>
<tr>
<td>Kishapu-Shinyanga</td>
<td>56 secondary school students reportedly dropped out of school due to child pregnancy from January to September 2018.</td>
<td>Mwananchi Newspaper 21 Nov 2018</td>
</tr>
</tbody>
</table>

Source: LHRC Media Survey and Human Rights Monitoring Unit

Lack of parental care contributes to child pregnancy, as parents fail to be as close to their children as they should be. In some areas, income poverty and long distance to school have been mentioned as factors contributing to child pregnancy, as girls become vulnerable to advances by men. Bodaboda drivers have been mentioned among main parties responsible for child pregnancy in Dodoma.

Among the 10 regions that were visited by LHRC to probe on issues of women’s and children’s rights, child pregnancy was said to continue to be a main challenge in Dodoma, Tabora, Shinyanga and Kilimanjaro. In Ruvuma,

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441 “Wanafunzi 200 wakatisha masomo” Mtanzania Newspaper, 7th December 2018.
442 “Wanafunzi 77 wapata mimba, wakatisha masomo” HABARILEO Newspaper, 10th October 2018.
444 “Wanafunzi waaswa mimba za utotoni” Nipashe Newspaper, 9th October 2018.
445 “Bobaboda, makondakta watajwa kukatisha masomo” HABARLEO Newspaper, 24th October 2018.
bodaboda drivers were mentioned as major contributors to child pregnancy, while the drivers were also mentioned in Moshi-Kilimanjaro – targeting girls and offering them lifts to school.

Some girls become pregnant when they are subjected to sexual violence in the form of rape. For instance, it was reported October 2018 that in the first 9 months of 2018, total of 54 incidents of child rape were reported to police gender desk in Mpwapwa-Dodoma, 24 of which resulted into child pregnancy.446

![Picture 15: A cartoon depicting how child pregnancy can end a girl’s dreams](source:Nipashe Newspaper)

**Prevalence of child pregnancy means unprotected sex is common and girls are at increased risk of HIV infection**

High rate of child pregnancy incidents is an indicator of unprotected sex among girls. This puts them at increased risk of HIV infection and might hinder effective realization of achieving zero new infections among girls.

**Efforts by stakeholders contributing to FGM reduction**

Female genital mutilation (FGM) is a harmful traditional practice that has been found to have negative impact on rights and health of women and girls. In Tanzania, FGM has been prevalent in regions such as Manyara, Dodoma, Arusha, Mara, and Singida. Recent statistics indicate a decline of 5% from

446 HABARILEO Newspaper, 29th October 2018
15% prevalence rate in 2010 to 10% in 2015/16.\textsuperscript{447} This decline has been made possible by government action in collaboration with various stakeholders implanting anti-FGM projects in different parts of Tanzania. On its part, LHRC has been implementing such project together with Amref Health Africa from 2016 to 2018 in Serengeti District, Mara Region.

Amref Health Africa and LHRC’s implementation of anti-FGM project in Serengeti District-Mara Region has contributed to decline of FGM in the district as well as changing attitudes and perceptions towards the practice in communities of tribes such as the Kurya, the Ngureme and the Tatogase. Number of girls undergoing FGM declined from 14,000 in 2014 to 2,313 in 2016, while in 2018 the number stood at 175. Similar contributions have also been made in areas such as Handeni and Kilindi Districts in Tanga Region, where Amref interventions have reportedly saved 3070 girls from female genital mutilation (FGM) in Handeni and Kilindi districts, respectively, between 2014 and 2016.\textsuperscript{448}

Despite efforts to combat FGM, the practice is still practiced in different areas, albeit in secret. For instance, in June 2018, resident of Oloipili Village in Arusha Region was accused of forcing his female children to undergo FGM, threatening to kill himself if they refused.\textsuperscript{449}

\textbf{7.2.5. Discrimination and Stigma against Street Children and Children with Disabilities}

Street children and children with disabilities are the major victims of discriminations and social stigma. They usually do not enjoy their fundamental human rights as stipulated in various national, regional and international instruments providing for their rights equally with other children. The instruments in question include the Law of the Child Act of 2009, which is the domestic legislation; the African Charter on the Rights and Welfare of the Child (ACRWC), which is a regional treaty; and the United Nations Convention on the Rights of the Child (CRC), which is an international treaty. Street children in towns and cities in Tanzania constantly face harassment from authorities and other members of the

\textsuperscript{447} See LHRC(2018), Tanzania Human Rights Report 2017 at www.humanrights.or.tz
\textsuperscript{449} Mwananchi Newspaper, 13\textsuperscript{th} June 2018.
public, denying their fundamental rights such as freedom of association, freedom of assembly. They also face discrimination in terms of access to public spaces such as parks, usually forcibly removed from such spaces; and get round up every now and then. Street children are also more vulnerable to different forms of abuse and violence against children. Recognizing these vulnerabilities, in 2017, the UN Committee on the Rights of the Child issued a general comment, General Comment No. 21 (2017) on Children in Street Situations, which reminds States of their obligations under the Convention on the Rights of the Child in relation to street children.

In May 2018, a report on street children titled “Street-Connected Children in Tanzania: Headcount Findings 2017” was released. The report provides quantitative headcount of street-connected children or children living and working on the street (CLWS), which was conducted in six cities, namely: Arusha, Dar es Salaam, Dodoma, Iringa, Mbeya and Mwanza.\(^{450}\) The aim of the headcount was to establish an up to date, realistic baseline of the children in order to inform various interventions.\(^{451}\) The findings show that there are 6,393 street-connected children in these cities during the day, 76% of which are male and 24% are female. At night, there are 1,385 street-connected children, of which 70% are male and 30% are female.

The findings show that, on average, female CLWS increase from 24% during the day to 30% during the night. However, Iringa, Dodoma and Mbeya have a higher proportion of girls on the street at night than the national average.\(^{452}\)

Another key finding is that all cities had sharp increase of female CLWS at night, with the exception of Dar es Salaam. This sharp increase is more likely driven by sex work. Among female CLWS counted at night, the majority (86%) were found to engage in sex work.\(^{453}\) Moreover, 39 female CLWS aged 11-14 (44%) were also found to engage in sex work, which is


\(^{451}\) Ibid.

\(^{452}\) Ibid.

\(^{453}\) Ibid.
an alarming finding on child sex trade.\textsuperscript{454} This attests increased risk of violence against female CLWS, including sexual violence, on the streets. Number of female CLWS engaging in sex work at night is highest in Iringa and Arusha (33%) and lowest in Dar es Salaam (9%).\textsuperscript{455}

Children with disabilities also face discrimination from different members of the community, including their own parents. In 10 regions of Tanzania Mainland that LHRC visited in 2018, there reports of some parents ‘hiding’ their children with disabilities inside their homes, sometimes not even allowing them to come out. Some of these children are reportedly even denied their right to education because of their disability status. They also face difficulties at schools due to shortage or lack of relevant equipment and specialised learning materials.

\textbf{7.3. Rights of Persons with Disability}

Rights of persons with disabilities (PWDs) are provided for under the Convention of the Rights of Persons with Disabilities (CRPD). These rights include right to equality and non-discrimination, right to life, right to equality before the law, right to liberty and security of person, freedom from torture, freedom from violence, right to education, right to health and right to work and employment.\textsuperscript{456} Tanzania is party to this treaty and has an obligation to take measures to safeguard rights of PWDs. The treaty was domesticated in 2010 through the Persons with Disabilities Act. PWDs, especially children with disability, need special care to ensure they enjoy human rights equally with others.

This sub-chapter looks at discrimination and violence as major challenges faced by PWDs in 2018.

\textbf{7.3.1. Equality and Non-Discrimination}

CRPD requires States to guarantee the right of PWDs to work on equal basis with others and ensure their acceptance in the labour market and work environment that is open, inclusive and accessible to them.\textsuperscript{457} This

\textsuperscript{454} Ibid.
\textsuperscript{455} Ibid.
\textsuperscript{456} See CRPD.
\textsuperscript{457} Article 27(1) of CRPD.
right is safeguarded through various measures, including prohibiting discrimination on the basis of disability.\textsuperscript{458}

During its visits in 10 regions of Tanzania Mainland,\textsuperscript{459} LHRC also probed into challenges faced by persons with disabilities which prevent them from fully realizing their right to equality and non-discrimination. Among the key challenges mentioned were: inadequate budget allocated to address issues affecting PWDs; income poverty; inaccessibility of buildings due to lack of ramps; lack of learning tools for PWD children at schools (education not inclusive enough); lack of employment opportunities; and social stigma. In \textbf{Tabora}, it was mentioned that lack of/shortage of fit persons and families to take in persons with albinism (PWAs) who are at risk of attacks is a major challenge. In \textbf{Dodoma CC}, income poverty was said to contribute to parents failing to provide adequate care to or neglecting children with disabilities, while in \textbf{Singida MC} it was stated that social stigma is a major challenge for children with disabilities. It was further reported that children who are persons with albinism (PWAs) face stigma and exclusion, especially in schools; and some parents tend to hide their children who have disabilities, denying them their right to education. This issue was also raised in \textbf{Iringa DC}, where there is a tendency of parents, especially in rural areas, perceiving children with disabilities to be incapable of doing anything, including studying, hence deciding not to invest much in their education. Remarks on hiding children with disabilities and denying them their basic rights, especially education, were also made by social welfare officers (SWOs) and community development officers (CDOs) in \textbf{Shinyanga MC}, \textbf{Kahama DC}, \textbf{Tabora}, \textbf{Misungwi} and \textbf{Moshi DC}. Discrimination against PWDs was largely said to be non-existent in \textbf{Moshi MC} and \textbf{Manyoni}. Across all regions that were reached, is was stated that despite the existence of inclusive schools, there are barriers to quality education for children with disabilities, such as shortage of qualified special needs teachers, shortage of adequate teaching and learning materials and lack of accessible school infrastructure.

\textsuperscript{458} Ibid, Article 27(1)(a).
\textsuperscript{459} Ruvuma, Mbeya, Iringa, Dodoma, Singida, Tabora, Shinyanga, Mwanza, Arusha and Kilimanjaro.
In August 2018, the Deputy Minister of Prime Minister’s Office responsible for Policy, Parliamentary Affairs, Labour, Employment, Youth and the Disabled, Hon. Stella Ikupa, issued a stern warning to industries which do not hire PWDs in line with the Persons with Disabilities Act of 2010.\textsuperscript{460} The law required companies with 20 or more staff members to have PWDs constituting 3% of the staff. She issued a warning while visiting some industries in Shinyanga Region, where she found that two cotton processing industries in the region, Afrisian and Fresho had not complied with the law, with the former not having a single PWD among its staff.\textsuperscript{461}

In August 2018, the Tanzania Federation of Disabled People's Organizations (SHIVYAWATA) bemoaned lack of PWD-friendly infrastructure at buildings of primary and secondary schools in Dodoma.\textsuperscript{462}

7.3.2. Freedom from Violence

Under the CRPD States are required to take all appropriate legislative, administrative, social, educational and other measures to protect PWDs from all forms of exploitation, violence and abuse, including GBV.\textsuperscript{463} Like other groups, PWDs also face different forms of violence, including physical, psychological and sexual. For instance, in 2018 LHRC was able to document two incidents of sexual violence against women with disabilities (mental disability). Discrimination and stigma against PWDs amounts to psychological violence, as they are left with psychological trauma.

The group of PWDs that has over the years been facing most violence in Tanzania is that of Persons with Albinism (PWAs), who have been targeted for their body parts and are forced to live in fear. Although killings of PWAs

\textsuperscript{460} “Waziri aonya viwanda kutoajiri walemavu” \textit{Nipashe} Newspaper, 12\textsuperscript{th} August 2018.

\textsuperscript{461} Ibid.

\textsuperscript{462} “Miundombinu mibovu yatesa wanfunzi walemavu” \textit{Nipashe} Newspaper, 18\textsuperscript{th} August 2018.

\textsuperscript{463} Article 16(1) of CRPD.
have significantly declined over the past 3 years, as indicated in Chapter Two of this report. PWAs continue to be attacked for their body parts and forced to live in fear. In Mbeya CC, it was reported that in January 2018, unknown assailants attacked a PWA from Tunduma and cut and left with his fingers, an act believed to be motivated by witchcraft beliefs. In Singida MC, it was reported that a PWA man escaped death after he was informed by an innocent civilian while at a traditional liquor restaurant that some men from Dar es Salaam were plotting to kill him. He managed to run away and seek refuge.

7.4. Rights of the Elderly

Rights of the elderly are guaranteed and protected under various, regional, continental and international human rights instruments. These include the African Charter on Human and Peoples’ Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for elderly PWDs. We are yet to have in place a convention on the rights of the elderly.

According to HelpAge International, elderly-specific human rights convention is needed because existing human rights mechanisms do not guarantee and provide for adequate protection and promotion of rights of older people.\(^\text{464}\)

It states that the convention should: provide a comprehensive and systematic framework for the protection and promotion of all our human rights in older age; prohibit all forms of discrimination in older age in every aspect of our lives; articulate how each human right specifically applies to us in older age; and provide for a strong implementation, monitoring and accountability system.

According to the 2011 report of the Secretary General to the UN General Assembly, older persons around the world face four major challenges in terms of human rights.\(^\text{465}\) These challenges are discrimination, poverty, violence and abuse and lac of specific measures and services.\(^\text{466}\) These

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\(^{466}\) Ibid.
challenges are also major challenges faced by the elderly in Tanzania, who are believed be over four million people.

7.4.1. Freedom from Violence
In 2018, violence continued to be a key issue affecting the elderly persons in Tanzania Mainland. Violence experienced by the elderly included physical violence in the form of witchcraft-related killings. As discussed in Chapter Two of this report, LHRC documented at least 3 incidents of killings of older persons on witchcraft suspicion. These are: the incident involving a 65-year-old man in Kaliuwa - Tabora; the incident involving a 77-year old man was brutally killed by six people, including his own children, in Gairo- Morogoro; and killing of a 70-year old woman in Ileje-Songwe.

In October 2018, it was reported that older people in Mwanamali and Kishili Villages in Nzega-Tabora, complained about their children and youth demanding inheritance from them while they are still alive. In the same month, older people in Itilima Village in Kishapu-Shinyanga, bemoaned senseless killings of older persons in the village by people claimed to be their close relatives, including their own children. Two older persons were reportedly killed in the village in 2018, Nyabhamba Dohoi (70) and Nkamba Mhoja (70), both killed by their children because of demand for land inheritance. It was also claimed by another older person in the village, Salumu Kilymawe (76), that his nephew was plotting to kill him over a land dispute. Tabora, Mwanza and Shinyanga are still the most notorious regions for elderly killings.

LHRC also received information about older persons killed and attacked for witchcraft-related purposes in Misungwi-Mwanza, with some of them found missing body parts such as breasts and private parts. It was reported that more than 20 incidents of attacks and killings of the elderly were reported in the district in 2018, with killings believed to ‘help’

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467 According to the Tanzania National Age Policy 2003, these are people who are 60 years and above.
468 “Wazee wakamuruvi wa kusubuda w'ali" Mwananchi Newspaper, 4th October 2018.
470 Ibid.
471 Ibid.
472 “Mauaji ya wazee bado janga nchini” Nipashe Newspaper, 31st December 2018.
maximise profits generated through mining activities in the area.\textsuperscript{474} In Namtumbo-Ruvuma, it was reported that in September 2018, an older woman was attacked and raped while in \textit{shamba} (farm), an act that was motivated by witchcraft beliefs.\textsuperscript{475}

In his ministry’s budget speech for the financial year 2018/2019, the former Minister of Home Affairs, Hon. Dr. Mwigulu Nchemba (MP) noted that from July 2017 to March 2018, a total of 117 older people were killed in Tanzania Mainland (91 male, 26 female).\textsuperscript{476} Tabora leads with 25 killings, followed by Songwe with 12 and Kagera and Rukwa with 10 killings each, as indicated in the figure below. Fewest killings were reported in Kigoma (1), Iringa (1), Dodoma (1), Mara (2) and Morogoro (2).\textsuperscript{477} The Home Affairs Minister noted that 100 people had been arrested in connection with the killings.\textsuperscript{478}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{elderly_killings.png}
\caption{\# Elderly killings in 13 regions of Tanzania Mainland, July 2017-March 2018}
\textit{Source:} Budget speech of the Ministry of Home Affairs, 2018/19
\end{figure}

\textsuperscript{474} Ibid.
\textsuperscript{475} Ibid.
\textsuperscript{477} Ibid.
\textsuperscript{478} Ibid.
7.4.2. Non-Discrimination and access to health services

Regarding discrimination, a key challenge for the elderly is discrimination in accessing health services. They usually complain that they are harassed and discriminated against by healthcare workers when they seek health services. This complaint resurfaced in 2018, whereby older people bemoaned lack of effective implementation of the National Health Policy, which provides for free healthcare for older people. 479 For the elderly residing in rural areas, which are the majority, they also face a challenge of accessibility of health services, given shortage of health facilities in different parts of Tanzania Mainland, especially at village and ward level, as discussed in Chapter 5 of this report.

In June 2018, the committee member of the Tanzania Pensioners Union, Mr. Willy Mboga, raised alarm about non-implementation of the free-medical services for the elderly. 480 He noted that most of the elders and pensioners are facing a hard time to get health services, whereby they are usually told there are no funds to cover free medical services for them. 481

7.5. Rights of Persons Living with HIV/AIDS

Like other human beings, rights of persons living with HIV/AIDS are provided for and protected under various regional, continental and international conventions, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the African Charter on Human and Peoples’ Rights (ACHPR). In Tanzania, their rights are covered under the HIV and AIDS (Prevention and Control) Act of 2008, which provides for the right to non-discrimination and right to access social services, among others.

481 Ibid.
About 1.4 million people in Tanzania were PLHIVs in 2016.\textsuperscript{482} Efforts to combat HIV/AIDS in the past decade have helped to reduce infection rate. Groups such as women, young/adolescent girls, sex workers and men who are mobile are more vulnerable to HIV infection. HIV prevalence is highest in Njombe (11.6%), followed by Iringa (11.2%) and Mbeya (9.2%).

Combating HIV/AIDS is key for realization of Sustainable Development Goal (SDG) 3. UNAIDS adopted a 2016-2021 Strategy to combat HIV/AIDS, aligned to the Sustainable Development Goals. The Strategy consists of a total of eight result areas, which include: Children, adolescents and adults living with HIV access testing, know their status and are immediately offered and sustained on affordable quality treatment; New HIV infections among children eliminated and their mother’s health and well-being is sustained; Young people, especially young women and adolescent girls, access combination prevention services and are empowered to protect themselves from HIV; Women and men practice and promote healthy gender norms and work together to end gender-based, sexual and intimate partner violence to mitigate risk and impact of HIV; and Punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV are removed.\textsuperscript{483} Groups that continue to be at risk of HIV infection include: women; adolescent girls and young women; prisoners and remandees; and persons with disabilities.

7.5.1. Non-Discrimination

The HIV and Aids (Prevention and Control) Act of 2008 provides for the right to non-discrimination for PLHIVs; and prohibits formation of a policy, enactment of a law or acting in a manner that discriminates PLHIV, orphans or their families.\textsuperscript{484} It also provides for a health practitioner to provide health services to PLHIVs without any kind of stigma or discrimination.\textsuperscript{485} Furthermore, the Act prohibits denying a PLHIV right to employment, travelling (freedom of movement), and admission into any institution and


\textsuperscript{484} See Section 28 of the HIV and Aids (Prevention and Control) Act 2008.

\textsuperscript{485} Ibid, section 29.
living at residence of choice.\textsuperscript{486} Discrimination of PLHIV attracts a penalty of fine of not less than Tshs. 2 million or imprisonment for a term not exceeding 1 year or both.\textsuperscript{487}

For the year 2018, LHRC did not record any incidents of discrimination against PLHIVs. However, social stigma continues to be a key issue affecting PLHIVs and preventing them from fully realizing their human rights.

### 7.5.2. Access to Health Services

Stigma, discrimination, ignorance about HIV/AIDS (problem of right to information), lack of or poor knowledge about laws and human rights, and shortage of health centres continue to contribute to poor access to health services by PLHIVs. Stigma that PLHIVs face includes self-stigma and stigma and discrimination by health workers. Budgetary constraints in the health sector, discussed in Chapter Five above, also affect access to health services.

### Conclusion and Recommendations

#### 1. Conclusion

<table>
<thead>
<tr>
<th>Rights Group</th>
<th>Conclusion</th>
</tr>
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<tbody>
<tr>
<td>Women</td>
<td>Women’s rights continue to be affected by different forms of violence, including physical and psychological violence; sexual violence; marital sodomy; sexual corruption, especially at workplaces and in higher learning institutions; and economic violence. Reasons for VAW include witchcraft beliefs, jealousy and revenge, harmful traditional practices, lack of legal awareness, drunkenness among men, poor educational background and peer pressure to engage in marital sodomy among men. VAW-related challenges amount to discrimination against women and contribute to gender inequality in Tanzania.</td>
</tr>
<tr>
<td>Children</td>
<td>In 2018, LHRC observed that violence against children has significantly increased compared to the year 2017. Child rape is the most common form of violence against children. Sexual</td>
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\textsuperscript{486} Ibid, section 30.  
\textsuperscript{487} Ibid, section 32.
violence was mentioned as a major issue affecting girls in 90% of all the districts reached by LHRC in 2018. Child-on-child sexual abuse was found to be a major problem in most areas that were visited, including Kilimanjaro, Singida and Tabora. Sexual violence puts girls at increased risk of HIV infection. Major perpetrators are close relatives and neighbours.

Child/teenage pregnancy was also an issue of big concern in 2018. This was especially the case in regions such as Mtwara Simiyu, Mwanza, Kilimanjaro and Shinyanga. This also puts girls at increased risk of HIV infection.

Factors contributing to violence against children include long distance to school, witchcraft beliefs, household poverty and child neglect. Other factors include lack of children supervision, poor educational background of parents and domestic violence.

Street children and children with disabilities often face more discrimination and stigma than other children. Discrimination and violence against PWDs are major challenges for PWDs in Tanzania. PWD children cannot easily access education to realize their right to education, while PWAs continue to leave in fear due to attacks and violence against them, even when such attacks have declined in the past two years. Access to employment and economic opportunities also remains low for PWDs. Despite existence of various laws and policies on PWDs, effective implementation remains a challenge.

The elderly face discrimination in accessing social services and violence from other members of the community. For the year 2018 violence was a major issue for older people in Tanzania, who continue to be killed for various reasons, including witchcraft suspicion.
Persons Living with HIV

Major challenges faced by PLHIVs are discrimination, including when accessing HIV-related services, and social stigma. This makes them uncomfortable to reveal their status and freely enjoy their human rights.

2. Recommendations

State actors

⇒ The Government to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues;

⇒ The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.

⇒ The Government through the Ministry of Education to Integrate gender education in learning curriculums from elementary to higher learning.

⇒ The Government should increase backing for the police gender desk to enable it to effectively address gender-based violence and violence against children;

⇒ The Government, through Ministry of Constitutional and Legal Affairs, to harmonize laws on administration of deceased's estates to address the problem of conflict of laws applicable during administrate of estate.

⇒ The Government, through the Ministry of Health, Community Development, Gender, Elderly, and Children, and the Ministry of Home Affairs, to ensure that acts of gender-based violence (violence against women) are prevented and investigated.

⇒ The Judiciary to ensure that courts prosecute and punish acts of gender-based violence.

⇒ The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.
⇒ The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action to amend the Law of Marriage Act 1971.

⇒ The Members of Parliament to increase pressure on the Government to amend provisions on child marriage under the Law of Marriage Act which have been declared unconstitutional by the High Court.

⇒ The police and courts of law to increase the pace of investigation and prosecution of cases of violence against children and women;

⇒ The Ministry responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities should ensure increased jobs and employment opportunities for PWDs.

⇒ The Ministry of Home Affairs to ensure that police investigate and prosecute cases of violence against PWDs, especially PWAs.

⇒ The Judiciary to ensure that courts of law fast-track proceedings of violence against PWDs.

⇒ The Ministries responsible for housing and infrastructure to ensure that buildings and infrastructure built can be accessed by PWDs.

⇒ The Government, through the Ministry of Home Affairs, should ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.

⇒ The Government, through the Ministry of Constitution and Legal Affairs, to table a bill in Parliament to propose enactment of a specific law to cater for the promotion and protection of the elderly.

⇒ The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy.

⇒ The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, should move to implement the Convention on the Rights of the Child in line with the General Comment No. 21 on Children in Street Situations,
prepared by the UN Committee on the Rights of the Child, in order to safeguard rights of street children.

⇒ The Ministry of Health, Community Development, Gender, Elderly and Children to fast-track the process of introducing pension for the elderly.

⇒ Local government authorities to ensure that older people enjoy free medical care and are not discriminated as directed by the Government.

**Non-state actors**

⇒ CSOs and social welfare departments within local governments to increase awareness on violence against women and children and encourage community members to report incidents to relevant authorities so that the perpetrators can be brought to justice.

⇒ CSOs should collaborate with the Government to ensure effective implementation of the Convention on the Rights of the Child in order to safeguard rights of all children, including street children and children with disabilities.

⇒ CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.

⇒ Stakeholders should strengthen mechanisms to enable women to report abuse instantly as they happen, especially women in remote areas of Tanzania.

**Members of the public**

⇒ Community members to perform their duties of protecting and safeguarding children’s rights refraining from conducting acts of abuse to children.

⇒ Community members should refrain from discriminating all children, including street children and children with disabilities.

⇒ Community members to refrain from protecting perpetrators of violence against children simply because they need ‘to conceal family shame.’

⇒ Women and children are encouraged to come forward and report acts of violence against them in order to receive relevant assistance,
including legal and health services. They are also encouraged to cooperate with the Prosecution and social welfare, including testifying in court, in order to ensure perpetrators of violence are held accountable and justice is achieved.
Chapter 8: Corruption, Good Governance and Human Rights

Introduction
Transparency International defines corruption as abuse of public power or officer for private gain or benefit.\(^{488}\) According to the Prevention and Combating of Corruption Act (PCCA) of 2007, corruption includes: soliciting, accepting or obtaining, or attempting to obtain any advantage as inducement or reward for any agent, whether or not such agent has authority; and giving, promising or offering any advantage to any person for the benefit of that or another person as inducement or reward to agent with or without authority.\(^{489}\) There is petty corruption and big or grand corruption;\(^{490}\) forms of corruption include bribery, embezzlement, extortion, sexual corruption, favouritism and fraud.

If not addressed, corruption may have a negative impact on human rights and good governance. This is why the negative impact of corruption on the protection of human rights is highlighted in various international, continental and regional instruments.

8.1. Impact of Corruption on Human Rights
According to the United Nations Human Rights Council, corruption has serious negative impact on all categories of human rights – civil, political, economic, social and cultural.\(^{491}\) It also hinders realization of the right to development. In terms of economic, social and cultural rights, corruption affects the ability of the Government to achieve progressive realization of these rights to the maximum of its available resources in line with the International Covenant on Economic, Social and Cultural Rights

\(^{488}\) See Transparency International’s definition at \url{http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/}, accessed 28\(^{\text{th}}\) December 2017.

\(^{489}\) Prevention and Combating of Corruption Act 2007, s. 15(a).


(ICESCR). Embezzlement and mismanage of public resources may hinder the Government from effectively safeguarding key social rights such as the right to education, right to health and right to water by delivering quality education, health and water services. Due to corruption, people may also suffer discrimination in accessing public services in favour of those who can bribe officials, given the fact that majority of people in Tanzania are poor.

Civil and political rights such as right to life, access to justice, right to equality before the law and right to fair trial may also be affected by corruption. This could be in terms of the Government being unable to fully and progressively realize social and economic rights such as right to health, right to food and right to water, hence jeopardizing right to life. Corruption within the justice system creates corrupt police officers, investigators, magistrates and judges, who tend to deny rights to equality before the law and right to fair trial. It thus weakens judicial institutions. Rights of access to justice and effective remedy are also compromised by corruption in the justice system. Corruption during elections may also discourage people from exercising their political rights, such as right to vote.

Lack of faith in the justice system, usually due to corruption, is the major factor for people resorting to mob violence. Right to development, which is both an individual and collective human rights, is also affected by corrupt practices and transactions by government officials. Corruption in revenue collection means less revenue for the Government, which affects its delivery of social services and implementation of development projects, hence affecting realization of socio-economic rights and collective rights.

Moreover, good governance can be affected by corruption through weakening rule of law and undermining democracy. Corruption therefore poses a big threat to enjoyment of human rights in any country, particularly third world countries like Tanzania.

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8.2. State of Corruption

Perceived decrease in corruption

Recent studies on corruption in Tanzania by Twaweza, REPOA and Transparency International paint a picture of perceived decrease in corruption in Tanzania. This could be attributed to intensified anti-corrupt effort on the part of the Prevention and Combating of Corruption Bureau (PCCB). But more importantly, the political will to curb the vice, under the administration of President John Magufuli may have played a greater role in the current state of affairs. Having run on anti-corruption platform during the 2015 general elections in Tanzania, President Magufuli has been keen on fighting corruption, including in key sectors such as the mining sector and revenue collection. Since then he has made changes within PCCB and demanded more action, replacing former Director General, Dr. Edward Hosea, in 2016 with Valentino Mlowola, who was also replaced by Diwani Athumani in 2018.

Nevertheless, corruption continues to be a major challenge in Tanzania, including in key sectors such as the justice sector, the mining sector, the health sector and the land sector.

Reported incidents of corruption in 2018

Through media survey, LHRC was able to document the following incidents of corruption in Tanzania Mainland for the year 2018.

<table>
<thead>
<tr>
<th>Description</th>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morogoro: PCCB in the region reported that it had filed 34 corruption cases before district courts from July 2017 to June 2018.</td>
<td>HABARILEO Newspaper</td>
<td>22 Aug 2018</td>
</tr>
<tr>
<td>Manyara: PCCB in the region announced that local government authorities lead in corruption, followed by the police force. Previously, it was</td>
<td>Mtanzania Newspaper</td>
<td>10 Aug 2018</td>
</tr>
</tbody>
</table>

the judiciary which was perceived to the most corrupt in the region.

**Dar es Salaam:** In July 2018, Ilala PCCB head, Zainabu Bakari, mentioned that sectors which are claimed to be most corrupt are private sector, police and judiciary. Other institutions/sectors are TAMISEMI, health sector, land sector, education sector and insurance companies. She also mentioned that PCCB had received 352 corruption complaints in the period of 2017/2018.

**Kiteto:** A ranger from Mkungunero Game Reserve was arrested and brought before Kiteto Resident Magistrate’s Court, accused of demanding a bribe of Tshs. 5 million from pastoralists in May 2018.

**Tabora:** Police and PCCB in Igunga District arrested nine local government and village leaders for embezzlement of Tshs. 141 million belonging to Bulangamilwa Village.

**Dar es Salaam:** PCCB brought before a court of law a director of a company in Dar es Salaam, who was accused of attempting to bribe the minister responsible for land with Tshs. 90 million.

**Kagera:** PCCB in Biharamulo District sent to court Kishapu Member of Parliament, Suleiman Nchambi, plus two other people on accusations of corruption involving a Tshs. 5 million bribe.

**Ruvuma:** PCCB regional office revealed that from July 2017 to June 2018 it had received 298 corruption complaints, with local government topping the list with 70 complaints, followed by land sector, police and judiciary.

**Dodoma:** PCCB in Dodoma arrested a lecturer from University of Dodoma, Jacob Nyagusi, who was accused of demanding a sex bribe from a first year student at the university in exchange for help in examinations.

**Mara:** PCCB in Mara Region arrested seven individuals who were implicated in the North Mara Gold Mine corruption scandal.
North Mara Gold Mine implicated in grand corruption scandal

In 2018, Acacia Mining Company’s North Mara Gold Mine was implicated in some serious corruption charges involving the mine and government officials to influence the valuation process. Among those reportedly arraigned before the Resident Magistrate’s Court in Tarime District on corruption charges in October 2018 were two North Mara Mining in Tanzania (NMML) officials, Marteen Van Der and Johanness Jansen. It was revealed during court proceedings that in May 2013, the two officials bribed Adam Yusuph, who was the Principal Government Valuer, Tshs. 93,869,000 in order to ensure the mining company is favoured during the valuation process to expand the mining areas. They also allegedly gave Tshs. 30,000,000 to Peter Elias Mrrema, who was also a principal government valuer to favour the company in valuation process to guarantee expansion. Consequently, Peter Elias Mrrema was also charged with receiving the bribe, in contravention of the Prevention and Combating of Corruption Act (PCCA) of 2007.

Other government officials who were charged with corruption are Joseph Thomas Kleruu, who allegedly corruptly obtained land valuation consultancy in order to help the North Mara Gold Mine acquire an area for expansion (USD 681,572) and received USD 243,650 to favour the mine in valuation process; and Abel Mnyakibari, former Chairperson of Nyakunguru Village, who in January 2013 and December 2017 reportedly received Tshs. 966,687,343 from the company to ‘deal’ with villagers, whom he also refused to pay their compensation dues. Bogomba Chichake, who was Ward Councilor of Kamambo Ward, and Tanzania O’Mtima, who was Managing Director and Shareholder of Mara Kaskazini Enterprises, were charged with corruptly obtaining tenders worth Tshs 7,709,575,914.19/= and Tshs.1,102, 880, 903 respectively from North Mara Gold Mine between January 2006 and My 2018 in order to prevent Nyabigena Primary School from being transferred from Mrwambe area to Mgema area. Tanzania O’Mtima, while being Chairperson of Kewanja Village, also reportedly

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494 “TAKUKURU yakunjua makucha North Mara” Majira Newspaper, 12th October 2018; Seven in court over 11 billion/- gold mine bribery allegations” The Guardian Newspaper, 12th October 2018.
495 Ibid.
496 Ibid.
Sexual corruption rampant at universities

In November 2018, a lecturer at the University of Dar es Salaam, Dr. Vincensia Shule, took to her Twitter account to expose sexual corruption at the university, shortly after the visit of the President of Tanzania, Hon. Joseph Pombe Magufuli. In her tweet she urged the President to intervene on the matter, stating that sexual corruption at the university is rampant. The tweet stimulated public debate, particularly on social media; and human rights activists commended her for her bravery in fighting against sexual violence, which is among key issues affecting women in Tanzania. The lecturer was later called before the ethics committee at the university to discuss and see how to address the matter. A study conducted by Internews in 2018 also points to the sexual corruption at universities and workplaces in Tanzania. In December 2018, Iringa District Commissioner, Hon. Richard Kasesela, also bemoaned growing incidence of sexual corruption in the district, calling for concrete action to address the problem.

Sexual corruption presents a big challenge for women and girls in Tanzania to fully enjoy their fundamental human rights. It is also a form of violence

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497 Ibid.
500 An international nonprofit organization, works to ensure access to trusted, quality information that empowers people to have a voice in their future and to live healthy, secure, and rewarding lives.
502 “Takukuru yatakiwa kukomesha rushwa ya ngono” Mtanzania Newspaper, 12th December 2018.
against women and constitutes violation of human rights. LHRC calls upon the PCCB to look closely into sexual corruption allegations at workplaces and universities and ensure those responsible are brought to justice. Members of the public are also encouraged to report these incidents so that action can be taken against the perpetrators.

**Tanzania maintains score in the Corruption Perceptions Index 2018, but restrictions on freedom of expression imposed by new laws and regulations may affect the fight against corruption**

Since 1996, Transparency International\(^{503}\) has been publishing Corruption Perceptions Index, ranking 180 countries worldwide depending on the level of corruption, using a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean.\(^{504}\) Tanzania scored 36 out of 100 and is ranked 103 in 2017, jumping 13 places compared to the ranking of 2016. The score is the highest in the past 5 years as indicated in the figure below.

In 2017, Tanzania scored 36 out of 100 in the index, jumping 13 places compared to 2016. In 2018, Tanzania has maintained the score of 36 out of 100 and jumped 4 places, ranked 99.\(^{th}\) The figure below shows score trend from 2014 to 2018.

![Figure 10: Tanzania’s scores in the Corruption Perceptions Indexes 2014-2018](image)

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\(^{503}\) A global civil society organization that seeks to combat global corruption.

While improved performance in the fight against corruption is 2018 is a welcome news, restrictions on freedom of expression imposed by new laws and regulations, such as the Media Services Act and the Online Content Regulations, are more likely to hamper anti-corruption efforts in the long run. Media is a key weapon in the fight against corruption, as are anonymous users of the internet. Unfortunately the recently enacted laws and regulations severely curtail their freedom of expression.  

Likelihood of corruption in the projects within Local Government Authorities (LGAs): CAG Report

The Annual General Report on the Audit of the Local Government Authorities (LGAs) for the Financial Year 2017/2018 reveals likelihood of corruption in several projects within the LGAs. For instance, out of 26 projects /contracts that were assessed in this financial year, 4 contracts had high corruption likelihood in its overall, 5 contracts had high corruption likelihood in pre-bid phase, 5 contracts had high corruption likelihood in evaluation and award phase and 12 contracts had high corruption likelihood in contract management and audit phase.

Conclusion and Recommendations

Conclusion

LHRC commends the Government’s efforts to combat corruption in Tanzania Mainland. However, corruption is still pervasive in most sectors and more action is needed to address this vice, especially grand corruption. A collaborative effort with other stakeholders, including the media and civil society is key in this regard. Therefore, it is in the Government’s best interest to remove the hurdles that are currently hindering these key stakeholders from effectively contributing to Tanzania’s development, such laws and regulations that restrict civic space. The Government and PCCB can achieve more in terms of fighting corruption if the space for civil society is not restricted, democracy is left to prevail and basic human rights such as freedom of expression are fully safeguarded.

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505 For discussion on the laws and regulations see Chapter 2 of this report.
Recommendations

State actors

⇒ The Government, through the Prevention and Combating of Corruption Bureau (PCCB), to intensify the pace of fighting corruption, especially grand corruption, as key measure to ensure progressive realization of social and economic right.
⇒ PCCB to work with stakeholders such as CSOs, workers’ unions, and the Judiciary to address sexual corruption at workplaces and universities.
⇒ The Government should ensure provision of improved social services as a way of reducing corruption in provision of such services.

Non-state actors

⇒ CSOs to sensitize the public about the impact of corruption on human rights and promote behaviour change.

Members of the public

⇒ Community members must refrain from corrupt practices and report corruption to PCCB or other relevant authorities.
Chapter 9: Human Rights Mechanisms

Introduction
This chapter looks at local, regional and international human rights mechanisms in Tanzania. These human rights mechanisms comprise of laws and institutions that protect and promote human rights. The national mechanisms highlighted in this chapter the national human rights institution (CHRAGG), the judiciary and law enforcement organs. Regional and international human rights mechanisms covered in this chapter are the Universal Periodic Review (UPR) mechanism and mechanisms established by treaties, namely the Human Rights Committee, Committee on the Elimination of Discrimination Against Women, Committee on the Rights of the Child, and the African Committee on the Rights and Welfare of the Child.

9.1. National Human Rights Mechanisms
9.1.1. Key National Human Rights Mechanisms
In Tanzania, key national human rights institutions include the Commission for Human Rights and Good Governance (CHRAGG), the Judiciary, the Tanzania Police Force and the Tanzania Prisons Services (TPS).

The Commission for Human Rights and Good Governance (CHRAGG)
The Commission for Human Rights and Good Governance (CHRAGG) is an independent national human rights institution established under the Constitution of the United Republic of Tanzania of 1977.\(^{507}\) It has an overall mandate to promote, protect, and safeguard human rights and good governance in Tanzania. Among the functions of CHRAGG are sensitizing about preservation of human rights and duties and receiving complaints on human rights violations.\(^{508}\) CHRAGG is also tasked with advising the Government and its institutions on issues of human rights and good governance.\(^{509}\)

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\(^{507}\) See Article 129(1) of the Constitution of Tanzania 1977.

\(^{508}\) Article 130(1) of the Constitution of Tanzania 1977.

\(^{509}\) Ibid.
Judiciary
Judicial organs are key in protection of human rights, interpretation of human rights laws, development of human rights jurisprudence, and providing remedies when human rights have been violated. The main judicial organs in this regard are courts of law, which deal with criminal and civil cases. With regard to criminal cases, courts have a duty to ensure key human rights of the accused person such as rights to equality before the law, legal representation and bail are not breached. In civil cases, the courts and tribunals have a duty to ensure the rights of the parties involved are protected and provide the right to effective remedy. They conduct judicial review of laws and administrative actions, and in this way they have a role of ensuring that the Parliament and the Executive abide by the Constitution in order to protect people from laws and practices that infringe in their human rights. Courts, particularly the High Court, provide a forum for people whose rights have been violated to seek remedy.

Law enforcement organs
Law enforcement organs, particularly the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS) play an important role of protecting citizens and their properties. Police ensure justice is done through conducting investigations and taking suspected criminals to face justice. Prisons protect the society from convicted criminals and act to reform such individuals so that they can fit in back into the society, should they be released.

9.1.2. Challenges faced by the National Human Rights Mechanisms
National human rights mechanisms in Tanzania are faced with a number of challenges, which affect their ability to ensure respect and protection of human rights in Tanzania. For the year 2018, the following challenges were identified by LHRC:

- Corruption: As discussed in Chapter Eight of this report, corruption is one of the major challenges facing the Judiciary and law enforcement organs (especially the Police Force). This hinders the ability of these institutions to always protect human rights. Corrupt elements tend to bribe their way out of trouble or deliberately delay proceedings.
• **Delays in investigation and prosecution of cases**: Delays during investigation of cases by police and delays in proceedings in court undermine the efficiency of national human rights mechanisms to ensure protection of human rights in Tanzania. Delays may be caused by factors such as corruption or poor working environment.

• **Poor working environment due to shortage of equipment**: Police officers are faced with a challenge of poor working environment, which is largely contributed by not just having enough equipment, but modern equipment as well.

• **Overcrowding of prisoners**: This is a major challenge for the Tanzania Prison Service (TPS). In 2018, the former Minister of Home Affairs, Hon. Dr. Mwigulu Lameck Nchemba (MP), mentioned in his budget speech that by March 2018, TPS had a total of 39,763 prisoners (20,312 male and 19,451 female), while its capacity is to hold 29,902 prisoners – causing overcrowding by 33%. He mentioned that to address this problem, the government has established alternative sentencing programme as well as constructing more prison buildings.

• **Budgetary constraints**: Budget constraints is another challenge for some of the national human rights mechanisms, such as the Commission for Human Rights and Good Governance (CHRAGG) – which makes it difficult for this national human rights institution to reach more segments of the society.

• **Shortage of facilities**: Some areas do not have police posts/stations, thus forced to travel far to access such services. The same problem applies to the Judiciary, whereby – as discussed in Chapter Two of this report – there is a shortage of court buildings in different parts of Tanzania Mainland. This significantly affects protection of human rights by the Judiciary.

• **Poor knowledge about human rights**: This is particularly a problem for police and prison officers. Through its engagement with these

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511 Ibid.
officers and complaints received by LHRC from its clients, it has been observed by the organisation that knowledge about human rights is still lacking in minds of most law enforcement officers, especially those of lower ranks.

9.2. Regional and International Human Rights Mechanisms

Tanzania has access to several regional and international human rights mechanisms. These include the Universal Periodic Review Mechanism (UPR) - whereby it submits its report on protection and promotion of human rights; and bodies established under various human rights treaties.

UPR is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation on the ground of each of the 193 United Nations (UN) Member States. Under this mechanism human rights situation of all UN Member States, Tanzania inclusive, is reviewed every 5 years to ascertain the extent states have taken action to improve human rights and fulfil their international human rights obligations. The last UPR process was 2016, whereby Tanzania submitted its report and CSOs submitted shadow report. Several recommendations were made for Tanzania to improve human rights, whereby some accepted and some were rejected.

Treaty bodies are established by the human rights treaties that have been ratified, with the aim of monitoring the implementation of such treaties by States parties. The provisions of the treaties require States parties to submit to the treaty bodies periodic reports on their efforts to implement the treaties. The major international and regional treaty bodies are the Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and

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513 Ibid.

**Conclusion and Recommendations**

1. **Conclusion**

<table>
<thead>
<tr>
<th>Rights Issue</th>
<th>Conclusion</th>
</tr>
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<tbody>
<tr>
<td>National human rights mechanisms</td>
<td>Key national human rights mechanisms are the law enforcement organs, mainly the Tanzania Police Force and the Tanzania Prison Services; the Judiciary; and the Commission for Human Rights and Good Governance (CHRAGG). Their role is to protect human right under different capacities. However, they are faced with several challenges, including: corruption; delays in investigation and prosecution of cases; poor working environment; prison overcrowding; budgetary constraints; shortage of facilities; and poor knowledge about human rights.</td>
</tr>
<tr>
<td>Regional and international human rights mechanisms</td>
<td>International, continental and regional human rights mechanisms include: Universal Periodic Review Mechanism, Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Tanzania has access to all these mechanisms, some of which are based in Arusha – one of its regions. However, these mechanisms have not been adequately engaged by individuals, lawyers and CSOs in Tanzania.</td>
</tr>
</tbody>
</table>
2. Recommendations

**State actors**

- The Government should strengthen national human rights mechanisms to ensure better protection of human rights. Adequate budget should be allocated for CHRAGG as the national human rights institution, to enable it to effectively carry out their mandate.

- The Government, through the Prevention and Combating of Corruption Bureau (PCCB), should move to address corruption in the justice system to boost protection of human rights and their ability to ensure justice.

**Non-state actors**

- CSOs must collaborate with CHRAGG build capacity for law enforcement officials to apply a rights-based approach in their work.

- CSOs could also collaborate with CHRAGG to prepare rights-based approach guides for law enforcement officials.

- CSOs to engage human rights mechanisms at national, regional, continental and international levels as a way of promoting and protecting human rights. CSOs should apply for observer status at some of the human rights mechanisms, such as the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples’ Rights.

- CSOs should engage regional and international human rights mechanisms as part of their regional and international level advocacy and influencing the Government to improve its human rights record and ratifying key human rights treaties that it is yet to ratify.

- The Media should report about different human rights mechanisms and how they can be engaged.

- CSOs should sensitize the public about different national, regional/continental and international human rights mechanisms.

**Members of the public**

- Members of the public are encouraged to engage different levels of human rights mechanisms, either individually, or with assistance of CSOs when their human rights are violated, as a way of seeking remedy.
Chapter 10: Other Issues of Human Rights Concern

Introduction
This short chapter looks at issues of human rights concern other than those discussed under Chapters 2 to 9. The first issue looked at is political tolerance in Tanzania Mainland. The second issue is the responsibility of state and non-state actors in promotion and protection of human rights in Tanzania.

10.1. Political Tolerance
Political tolerance can be defined as accepting and respecting the basic rights and civil liberties of persons and groups whose viewpoints differ from one’s own. Duty to practice political tolerance is there for all people, including political leaders. Political intolerance, which is the opposite of political tolerance, is a threat to democracy.

In 2018, LHRC continued to observe trends of political tension between ruling party members and those of the opposition, especially during by-elections in Dar es Salaam and other parts of Tanzania Mainland such as Kilimanjaro, Arusha and Kigoma. Violent acts were reportedly perpetrated against members of opposing political parties during the by-elections held in these areas. There was also tension among members of the Civic United Front (CUF), between those who support Prof. Ibrahim Lipumba and those who support Seif Sharif Hamad. The tension is also felt on the social media, especially between members of the ruling party and those of the major opposition parties.

The tensions can be attributed to a number of factors, majority of which have been discussed above, including arbitrary restrictions on basic human rights such as freedom of expression and freedom of assembly. As a result, there has been a tendency of citizens who are members of these political parties to exchange bad words and even hate each other because of political affiliations. This has also been observed in the Parliament, whereby members of parliament may not support each other on issues of national importance simply because of political ideology or affiliation. While such

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516 Ibid.
tensions have also existed even in the past, LHRC has observed that the situation is worsening little by little, which is not a good indication for human rights protection. It is important for the Government, political parties and community members to come together and promote political tolerance, especially at this time as Tanzania heads to the 2019 and 2020 elections, so that we have peaceful elections.

10.2. Responsibility of the State and Non-state Actors to Promote and Protect Human Rights

Under international, regional and domestic law, States are charged with primary responsibility of promoting and protecting human rights and are required to refrain from interfering with them arbitrarily. This responsibility extends to individuals, groups and organs in the society as indicated by the UN General Assembly through its declaration called “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.” This Declaration provides for the right to promote human rights and highlights the responsibility of state and non-state actors in promoting and protecting human rights.

States must take necessary steps to create all conditions necessary for social, economic, political and other fields and adopt such legislative, administrative and other steps to ensure that human rights and freedoms are effectively guaranteed. “Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.”

517 See various human rights treaties discussed above, such as ICCPR, CRC, ACHPR and Maputo Protocol.

518 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 Adopted at 85th plenary meeting 9 December 1998.

519 Ibid, Article 2(1).

520 Ibid, Article 16.
must also play a role in safeguarding democracy, promoting human rights and advancing democratic societies, institutions and processes.\textsuperscript{521}

LHRC recognizes the role of the media in promoting and advancing protection of human rights in Tanzania, as well as exposing corrupt practices. As an important advocacy tool for promotion and protection of human rights, LHRC urges media outlets to increase investigation and reporting of human rights issues and provide more airtime for human rights-related programmes.

Individual citizens have a duty to obey laws and follow legal procedures, as well as to report crimes and incidents of human rights violations, and intervene to protect human rights when possible. They also have a duty to respect other peoples’ rights, which includes paying taxes in order to enable progressive realization of economic, social and cultural rights in the community.

Law enforcement officers also have a big role in promotion and protection of human rights. LHRC has noted with concern tendency of police officers, especially of lower ranks, to either disregard or not take seriously issues of human rights, not knowing that they too may be victims of human rights violations someday and in need of protection. LHRC recognizes the challenges our brothers and sisters in uniform face in performing their duties, but they have a responsibility to serve and protect, which includes protecting and respecting human rights. Other actors like religious and traditional leaders must also play a role in ensuring respect for human rights within communities, including by continually speaking out against human rights violations and urging community members to refrain from practices that violate such rights.

\textsuperscript{521} Ibid, Article 18(2).
Annex 1: Status of International Human Rights Ratifications in 2018

As of December 2018, Tanzania has ratified 10 out of 18 international human rights treaties/ conventions. The table below indicates the number of regional and international treaties ratified by Tanzania so far.

<table>
<thead>
<tr>
<th>Convention/Treaty</th>
<th>Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Elimination of All forms of Racial Discrimination 1965</td>
<td>1972</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights (ICCPR) 1966</td>
<td>1976</td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966</td>
<td>1976</td>
</tr>
<tr>
<td>Convention on the Rights of Persons with Disabilities 2008</td>
<td>2009</td>
</tr>
<tr>
<td>Convention Relating to the Status of Refugees 1951</td>
<td>1983</td>
</tr>
<tr>
<td>Optional Protocol on the Convention on</td>
<td>2009</td>
</tr>
<tr>
<td>Convention/Treaty</td>
<td>Ratification</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Regional</td>
<td></td>
</tr>
</tbody>
</table>

Tanzania is yet to ratify the following treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2003;
- International Convention for the Protection of all Persons from Enforced Disappearance 2010;
- Optional Protocol to the International Covenant on Civil and Political Rights 1976;
- Second Optional Protocol to the International Covenant and Political Rights, aiming at the abolition of the death penalty 1991;
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2013;
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2006; and

LHRC calls upon the Government to ratify the conventions which are yet to be ratified in order to safeguard human rights and strengthen human rights mechanisms in Tanzania. Members of the Parliament can play a key role in putting pressure on the Government to act fast and ratify these important human rights treaties.

Annex 2: Status of Tanzania’s Reportage to Treaty Bodies

The table below shows the status of Tanzania’s reporting to the treaty bodies.

<table>
<thead>
<tr>
<th>Treaty Body</th>
<th>Mandate</th>
<th>Tanzania Reports</th>
</tr>
</thead>
</table>
| Human Rights Committee                           | Monitoring implementation of the ICCPR (Article 40 ICCPR) | First report submitted on 20th August 1979.  
Fourth and last report submitted on 8th October 2007.  
Fifth report was due on 1st August 2013. |
Third report was due on 30th November 2017. |
Fourth and last report submitted on 10th |
<table>
<thead>
<tr>
<th>Treaty Body</th>
<th>Mandate</th>
<th>Tanzania Reports</th>
</tr>
</thead>
</table>
| Committee on the Elimination of Racial Discrimination | Monitoring implementation of CERD (Article 9 of CERD) | First report submitted on 22nd March 1976.  
Third report submitted on 1st October 1982.  
Fifth report submitted on 17th July 1986.  
Sixth and last report submitted on 27th October 2004.  
Seventh report was due on 26th November 2007. |
| Committee on the Rights of Persons with Disabilities | Monitoring implementation of CRPD (Article 35 of CRPD) | Report was due on 10th December 2011, yet to be submitted. |
Third report submitted on 13th January 2012.  
Next report due on 9th January 2020. |
Consolidated 2nd, 3rd and 4th reports submitted in October 2015. |

The table above indicates the extent to which Tanzania has complied with its reporting obligations under the treaties it has ratified. While Tanzania has done well in its reporting obligations under the ICESCR, CEDAW, CRC, and ACRWC, it has not done so with regard to its reporting obligations under the CRPD and recently under the ICCPR and CERD. LHRC calls upon the Government, under the Ministry of Constitutional and Legal Affairs to comply with its treaty reporting obligations by preparing and
submitting timely reports on actions taken to improve, promote and protect human rights in Tanzania.

**Annex 3: List of Regional and International Human Rights Instruments**

- African Charter on Human and Peoples Rights (ACHPR)
- African Charter on the Rights and Welfare of the Child (ACRWC)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)
- Convention on the Elimination of all forms of Racial Discrimination (CERD)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Rights of the Child (CRC)
- Declaration on the Elimination of Discrimination against Women
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 Adopted at 85th plenary meeting 9 December 1998.
- Economic and Organized Crimes Act
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Universal Declaration of Human Rights (UDHR)
Part Two: Zanzibar - Zanzibar Legal Services Centre (ZLSC)
## LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AAKIA</td>
<td>Abeid Amani Karume International Airport</td>
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<tr>
<td>AAPAM</td>
<td>African Association of Public Administration and Management</td>
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<td>AC</td>
<td>Appeal Cases</td>
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<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights (ACHPR)</td>
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<tr>
<td>ADB</td>
<td>Africa Development Bank</td>
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<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>AG</td>
<td>Attorney General</td>
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<td>AIR</td>
<td>All India Law Report</td>
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<td>ASP</td>
<td>Afro Shirazi Party</td>
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<tr>
<td>ASP</td>
<td>Afro-Shirazi Party</td>
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<tr>
<td>BADEA</td>
<td>Arab Bank for Economic Development in Africa</td>
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<td>CAG</td>
<td>Controller and Auditor General</td>
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<td>CCM</td>
<td>Chama Cha Mapinduzi</td>
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<td>CHADEMA</td>
<td>Chama Cha Demokrasia na Maendeleo</td>
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<tr>
<td>CHRAGG</td>
<td>Commission for Human Rights and Good Governance</td>
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<td>CJ</td>
<td>Chief Justice</td>
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<tr>
<td>CUF</td>
<td>Civic United Front</td>
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<tr>
<td>DNA</td>
<td>Deoxyribo Nucleic Acid</td>
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<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<td>ERP</td>
<td>Economic Recovery Programs</td>
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<td>FAWE</td>
<td>Forum for African Women Educationalists</td>
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<td>GBS</td>
<td>General Budget Support</td>
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<td>GBV</td>
<td>Gender Based Violence</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GNU</td>
<td>Government of National Unity</td>
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<td>GSO</td>
<td>Government Security Office</td>
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<td>HC</td>
<td>High Court</td>
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<td>HCD</td>
<td>High Court Digest</td>
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<td>HCZ</td>
<td>High Court of Zanzibar</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICE</td>
<td>Institute of Continuing Education</td>
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ICSEC  International Covenant on Social Economic and Cultural Rights
IFMS  Integrated Financial Management System
IPU  World Future Council, the Inter-Parliamentary Union
ITUC  International Trade Union Confederation
JSC  Judicial Service Commission
JSC  Judicial Services Commission
JUMIKI  Jumuiya ya Uamsho na Mihadhara ya Kiislamu
LEGCO  Legislative Council
LRC  Law Review Commission
LRCZ  Law Review Commission of Zanzibar
LRT  Law Report of Tanzania
MACEMP  Marine and Coastal Environment Management Project
MCT  Media Council of Tanzania
MDG  Millennium Developments Goals
MKUZA  Mkakati wa Kukuza Uchumi na Kupunguza Umaskini Zanzibar
MoEVT  Ministry of Education and Vocational Trainings
MV  Marine Vessel
NGO  Non-Governmental Organization
NIDA  National Identity Card Authority
OAU  Organization of African Union
OUT  Open University of Tanzania
PVR  Permanent Voters Register
SACCOS  Saving and Credits Cooperatives Societies
SAP  Structural Adjustment Program
SC  Supreme Court
SEP  Structural Economic Programme
SMOLE  Sustainable Management of Land and Environment
SMZ  Serikali ya Mapinduzi Zanzibar
TAMWA  Tanzania Media Women Association
TANU  Tanganyika African National Union
TEMCO  Tanzania Election Monitoring Committee
TLR  Tanzania Law Report
TMA  Tanzania Meteorology Agency
TPDF  Tanzania People Defence Force
TWA  Trans World Aviation
UDHR  Universal Declaration of Human Rights
UN  United Nations
UNESCO  The United Nations Educational, Scientific and Cultural Organization is a specialized agency of the United Nations
UP  Umma Party
ZAA  Zanzibar Airports Authority
ZABEIPO  Zanzibar Strategy for Growth and Reduction of Poverty
ZACPO  Zanzibar Clove Producers Organization
ZAECA  Zanzibar Anti-Corruption and Economic Crimes Authority
ZAFELA  Zanzibar Female Lawyers Association
ZANGOC  The Zanzibar NGO Cluster for HIV and AIDS Prevention and Control
ZAN-ID  Zanzibar Identity Card
ZAPDD  Zanzibar Association of People with Development Disabilities
ZAT  Zanzibar Aviation Services & Travel Limited
ZATU  Zanzibar Association of Teachers Union
ZATUC  Zanzibar Association of Trade Union Confederation
ZAWA  Zanzibar Water Authority
ZBC  Zanzibar Broadcasting Corporation
ZLR  Zanzibar Law Report
ZLS  Zanzibar Law Society
ZLSC  Zanzibar Legal Services Centre
ZNP  Zanzibar Nationalist Party
ZPPP  Zanzibar and Pemba People’s Party
CHAPTER ONE

CONTEXTUAL OVERVIEW

1.1. Introduction

Every human being has got ‘rights’ that are equal to the rights of each other. These rights include the rights to life, liberty, equality and dignity of his person. The rights are inherent in him merely because he is born human. These rights are so called Human Rights in the sense that they are naturally part and parcel of his ‘being human’. Human Rights are universal and every human being has right to enjoy them regardless their recognition and protection under their national Constitutions and laws of their lands.\textsuperscript{522}

Despite the inherent nature of these rights, people have long ago been struggling for their recognition, respect and protection. The struggle has characterised numerous efforts taking place at different social stratifications both international (global and regional) and national wise. As a result, it is widely accepted that every human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\textsuperscript{523}

Tanzania on its side, apart from recognising the human rights norms in the International and regional treaties, it had emphatically recognised and protected them under the laws of the land. The Constitution of the United Republic of Tanzania for instance has recognised Human Rights and incorporated the Bill of Rights as the Basic Rights and Duties in the Part III.\textsuperscript{524}

Under the Constitution of Zanzibar 1984, the human rights have been protected under Part III of the Chapter One\textsuperscript{525}. Under these provisions of the Constitution, any one has got a right to defend his right before the Courts of law against any infringement done by any one.

\textsuperscript{523} United Nations, Handbook for UN Staff, p.2
\textsuperscript{524} Article 12 to Article 30 of the Constitution of the United Republic of Tanzania, 1977.
\textsuperscript{525} Section 11 to 25 of the Zanzibar Constitution of 1984.
1.2. Historical Overview

As far Zanzibar is concerned, it has been a home to human beings since the beginning of the late Stone Age. One can understand it on reading different scriptures, including Greco-Roman text and the Periplus of the Erythraean Sea which were written between the 1st and 3rd centuries BC, had mentioned the island of Menuthias which is believed to be Unguja, the main island that, together with Pemba, it forms Zanzibar.

The first settlements of Zanzibar are believed to have been established by immigrants from numerous sections of the African Mainland. At that time, there was contact between the people of Zanzibar and outsiders. The word Zanzibar is believed to be derived from Arabic word ‘Zanjibar’ which means coast of the blacks.

Autonomous African societies existed in Zanzibar since ancient times, before the isles became increasingly a good geographical and strategic location that attracted visitors from many foreign nations, some of whom established their political bases in the isles. Henceforth, the historical print of Zanzibar drew mainly from African settlers, Persians traders and invasion by foreign nationals. Persians and Arabs are said to be the first foreigners who settled in Zanzibar prior to the coming of Sultan of Oman.

The interactions of the local people and foreigners had derived from the responses of development marked by indigenous African parallel with imported notions from other parts of Africa, the Middle East, especially from Oman and Yemen in Arabia and from Shiraz in Persia.

During the 16th Century, the Portuguese who were the first foreign visitors arriving from the South to Zanzibar were also the first European power to gain control of Zanzibar from 1503 to 1698. The Portuguese established friendly relations with the ruler and introduced Christianity in the Isles. However, the Muslim of Oman did start a forceful campaign along the coast.

526 Pearce F.B. Zanzibar(1920), the Island Metropolls of East Africa, p.120
527 Michael F (1965), Zanzibar Background to Revolution, p.29
528 Bhacher M.R(1994), Trade and Empire in Muscat and Zanzibar:p.5-6
529 ibid
against the Portuguese in the late of 17th Century. Consequently, the Portuguese were defeated and fell and thus, their colonial powers and Christian presence came to an end.530

The people of Zanzibar have also been socially influenced by the coming of Persians (Shirazi) who began landing in Zanzibar from about the 10th Century. It is common even nowadays to find a good number of Zanzibaris as “Shirazi” with the Persians origin.531

Politically, the people of Zanzibar have a long political relationship with Arabs from Oman.532 The Omani Arabs, who expelled the Portuguese from Muscat in 1650 and were the leading force against them in the entire region, gradually established at least nominal control over many settlements, including Zanzibar. After a lengthy turmoil of dynastic wars and losses and gains on the African coast, the ruling sultan of Oman, Said bin Sultan, decided to relocate his capital from Muscat to Zanzibar.533

Zanzibar then became an increasingly important part of the Omani empire due to its value as the main slave market of the East African coast. It was the slave trade which was originally responsible for generating the increased economic interest of the Omanis in the Swahili Coast. Universal Declaration of Human Rights condemns slavery as one of the violation of human rights, as this said “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”534 It is the strength of international pressure as founded under the provisions of the international Bill of Rights that slavery was abolished in most countries that were practicing slavery, including Zanzibar.

The involvement of British rule in Zanzibar had led a human right agenda to take another shape in the islands. The British rule remained the colonial power with its well-established political presence signified by the abrupt

530 J. Middleton and another (1965), Zanzibar, its society and politics, p.3-4
531 Ibid.
533 https://www.britannica.com/place/Zanzibar-island-Tanzania
534 Article 4 of UDHR
redistribution of the Sultan’s inland territories. This was brought about by the Heligoland–Zanzibar Treaty (German: Helgoland-Sansibar-Vertrag; also known as the Anglo-German Agreement of 1890) which was an agreement signed on 1st July 1890, between Germany and Great Britain. Germany gained the small but strategic island of Heligoland, which its new navy needed for the control of the new Kiel Canal and approaches to Germany’s North Sea ports.

Upon the approval of Sultan, the exchange agreement between the two allowed Zanzibar and its narrow coastal regions to be declared a British protectorate in 1890. The joint colonial leadership between British and Sultan took place for virtually 70 years from 1890. Their rule came to an end after the islands got their independence in 1963. Despite bringing into the end the Sultanate regime in Zanzibar, the social relationship between the people of Zanzibar and the Oman people continued to be significantly in existence. The main cause behind this social link appears to be inter-marriage and, therefore, blood relationships between Zanzibaris of African origin and Zanzibari of Arabs. However, the official link or tie between the Revolutionary Government of Zanzibar and Omani Government has been the ‘ups and downs’ topic.

For example, in 1932, the relationship between Oman and Zanzibar was strongly laid down by the Sayyid Said bin Sultan who made the two territories under his rule. Consequently, the link between Zanzibar and Oman was broken after death of Sayyid Said bin Sultan in 1856. Zanzibar remained an independent Arab state for sixty years until Great Britain, extending its own empire in East Africa, made Zanzibar its Protectorate.

There are also a number of instances in which these kinds of links are demonstrated within the history of Oman and Zanzibar. Recently, in March 2015, the House of Representatives of Zanzibar conducted a quite bitter discussion on the disappearance of some vital historical documents from Zanzibar archives. At the end of the discussion, the House perceived the Oman Embassy and Zanzibar and some senior officials of the Zanzibar

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535 Majamba H.I, (2007), Perspectives on the Kadhis’ Courts in Zanzibar, p.2
archives to be responsible for the loss of the documents. Hence, the House passed the resolution directing the Revolutionary Government of Zanzibar to necessarily take appropriate measures against the Omani Ambassador in Zanzibar and the responsible archives officials for the loss of the documents.537

On the other hand, in strengthening the socio-economic relationship between these two countries, Oman had been helping Zanzibar in a number of projects. It is Oman that assists the government of Zanzibar in health, education, culture and other economic support. It is in strengthening this relationship that, on Thursday 12, 2017, a delegation of 300 dignitaries from Omani Government representing King Sheikh Sultan Qabous bin Said had arrived in Zanzibar aboard a ship named 'Fulk Al Salamah' officially used by the royal family, with the view to strengthening the existing ties between the two sides.

Directly from Muscat Oman to Malindi Port of Zanzibar, the delegation had been received by Second Vice President Hon. SeifAli Iddi who was accompanied by cabinet Ministers including Minister of State in the Second Vice president's Office, Mr Mohamed Aboud Mohamed; Minister for Water, Energy, Land and Environment, Ms Salama Aboud Talib; and Minister for Finance and Planning, Dr Khalid Salum Mohamed. Other ministers who participated in the delegation were Minister for Information, Tourism, Culture and Sports, Mr Rashid Ali Juma, and Ms Amina Salum Ali, Minister of Trade and Markets. Involved in the delegation was Regional Commissioner of the Urban Western Region of Unguja, Hon. Ayoub Mohamed Mahmoud.

Oman delegation which was led by Minister of oil and gas, Mr. Mohamed Alramh, had strengthened the diplomatic and economic relations of the two countries which shared a long history.538

On the history of human rights in Zanzibar, the independence of 10th December, 1963, had rewarded Zanzibar with the first and remarkable Constitution which had enclosed the Bill of Rights. The independence

538 The Citizen, Thursday, 12th October, 2017
further made Zanzibar to become a member of the British Commonwealth and a member state of the United Nations on 16th December 1963. The Independence was possible on the coalition between the Zanzibar Nationalist party (ZNP) and its offshoot the Zanzibar and Pemba People’s party (ZPPP), both of which principally represented the Arabs against the Afro-Shirazi party (ASP), whose followers were Africans.539

It was the Constitution that followed the Westminster model of government, since the ZPPP formed government, while the Sultan as Head of the State. However, one month later after that December independence, on 12th January 1964 the Revolution had overthrown the existent regime and abrogated the Independence Constitution of 1963.540

The Bill of Rights which was respected under the Independence Constitution of 1963 became the day dream under the Presidential Decrees which always become a signal of revolution. Political parties were abolished and the State made several changes, some of which are said to be positive and others negative. Within the first year of the Revolution, the President introduced several radical changes in the political, economic and social spheres. The liberty of the people was declared, land and other properties were confiscated, mortgages were cancelled, rickshaws publicly burned, all clubs and schools based on religion, race or wealth were nationalised or banned by the Government.541

The Legislative Power Law said to be the first law and acted as the Constitution of Zanzibar after 1964 revolution.542 Other more prominent legislations that had effects similar to that of the Constitution were ‘Constitutional Government and the Rule of Law Decree, 1964’ and, ‘Equality, Reconciliation and Unity of Zanzibar People Decree, 1964.543 All legislations were passed by the Revolutionary Council which bad both, the

539 http://zanzibar.go.tz/index.php?rgo=history
540 Martin E.B (1978), Zanzibar Traditional and Revolution, p.57
541 Zanzibar Human Rights Report, 2016
543 Zanzibar People Decree, No.6 of 1964
legislative and judicial powers and headed by Hon. Abeid Aman Karume as the Chairman and the First President post revolution of 1964.

Zanzibar united with Tanganyika to form one sovereign state, the United Republic of Tanzania with Mwalimu Julius Nyerere as president, and Abeid Amani Karume as Vice President. A special session of the Tanganyika National Assembly approved the Articles of the Union on 25th April 1964 with no substantive discussion. The United Republic of Tanganyika and Zanzibar which was officially proclaimed on 26th April 1964 was renamed the United Republic of Tanzania on 28th October, 1964.

Since the formation of the union, Zanzibar has her own Executive headed by the President of Zanzibar who is also the Chairman of the Revolutionary Council, its own legislative body, namely, the House of Representatives which consist of two parts, the President of Zanzibar on one part and the House of Representatives on the other. It also has an independent High Court of Zanzibar headed by the Chief Justice and other judges of which not less than two are referred to as High Court Judges.

In 1969, Revolutionary Council of Zanzibar had brought the fundamental changes on the Court system and human rights history by establishing the Peoples’ Courts which came into effect on 1st January 1970. The Courts were presided over by lay people and some of them completely illiterate and were not bound by rules of evidence and procedure, but had to formulate their own regulations of the proceedings.

The Human rights had started taking its merits in 1979 when the second president Hon. Aboud Jumbe had established the Constitution of Zanzibar in that year. One important development of this constitution was the separation of powers of the legislative from those of the executive. The House of Representative was for the first time established to pass all laws

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544 Kituo cha Katiba, (2003) p.21
545 United Republic Declaration of Name Act, No.61 of 1964
546 ibid
547 Section 1 of the Presidential Decree, No. 11 of 1969
to be applied in Zanzibar. This Constitution brought remarkable development towards the strengthening of democracy and the rule of law.

The Zanzibar government introduced a new constitution, entitled Katiba ya Zanzibar 1984 which was enacted by House of Representatives in 1984. The Constitution had recognised the Bill of Rights under its Chapter III that had remained to date.

In 2010, Zanzibar had further developed its constitutional development though it had neither change any provision of Bill of Rights. The government had introduced for the first time, a Government of National Unity, where there are to be two Vice Presidents (the First Vice and the Second Vice Presidents), ministers and other members of the Revolutionary Council (i.e. the Cabinet as the President deems fit to appoint.

1.3. Geography and Population

Geographically, Zanzibar is located between 15 and 20 miles from Tanzania Mainland. Apart from two bigger islands, Zanzibar has many small islands surrounding. Between the two bigger islands, the Unguja which also known as Zanzibar is the Capital which shelter the most historical monument of the island an old quarter, called Stone Town- which is one of the World Heritage Sites. And it was the Stone Town where the Slave Market was once upon a time located. After the Slave trade was abolished, the market was destroyed and an Anglican Cathedral was built at its place. Zanzibar is characterised by beautiful sandy beaches with fringing coral reefs, and the magic of the historic Stone Town - said to be the only functioning ancient town in East Africa.

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549 Section 39 of Zanzibar Constitution 1984
Zanzibar had been blessed with the brilliant white beaches round by the warm turquoise waters of the Indian Ocean, provide the perfect place to relax, soak up the sun and take a break from some busy sightseeing. One who finds and get relax in Zanzibar beaches, finds himself in paradise, intermingled with picturesque fishing villages, where the people live a simple way of life, unchanged over the years. There are more than 25 fantastic beaches in Zanzibar, and some are so peaceful and remote that the only noise breaking the silence is likely to be the ocean.\footnote{http://zanzibar.net/paradise-beaches/}

Notwithstanding the God’s bless of beautiful beaches in Zanzibar, the sea-level rise imperils them to be not in the same place in the future. If the Zanzibar beaches still exist throughout the sea-level rise, many of the buildings may not. Efforts therefore should be taken to save beaches, such as seashore armouring structures.\footnote{http://coastalcare.org/sections/inform/sea-level-rise/page/3/} Sea-level rise in Zanzibar is caused by number of reasons, including the increase in global ocean volume due to thermal expansion from oceanic temperature and salinity changes; and the
additional melting of land-based ice caps and glaciers, and the ice sheets of Greenland and Antarctica.\textsuperscript{554}

It is further stressed that sea-level rise is a gradual process, with a much longer response time than for temperature. Newly detected rising sea-levels in parts of the Indian Ocean, including Zanzibar coastlines, appears to be at least partly a result of human-induced increases of atmospheric greenhouse gases. The sea level rise could have far-reaching impacts on both future regional and global climate.\textsuperscript{555}

United Nations predicts that world population will be 9 billion by 2050, while massive areas of land are available throughout the interiors of many countries, the same rule that applied in the ancient times that people are attracted to settle near seas, oceans and rivers. And on that ground, about half of the world's population lives within 100 km of water, and this trend continues to grow.

The demand for additional land for housing, industry and recreation along the coasts is becoming steadily more acute. If cities can’t grow outward, they grow upwards resulting in more congestion in terms of industry, roads and demand for services. While this trend might have at one time seemed impossible, from the 1970s onwards the dredging industry has developed new technologies for creating new land in the water. As a result, “buying” new land by “making” it through reclamation is turning out to be less expensive than developing old land.\textsuperscript{556}

On the same situation to Zanzibar, her geographical location in particular beaches, has been expanded through land reclamation. One of the common and great reclamation is that construction of a tourist resort at Mtoni, north of the Stone Town of Zanzibar, operated under Coastal Dredging & Construction Company Tanzania Limited (CDCC), of Bakhresa.

\textsuperscript{554}RoZ (2012), Technical Report on the Economics of Climate Change in Zanzibar: Projections of Climate Change and Sea Level Rise for Zanzibar, P.13
\textsuperscript{555} http://kibunango.blogspot.com/2010/07/indian-ocean-sea-levels-on-rise.html
\textsuperscript{556} By René Kolman, New Land by the Sea: Economically and Socially, Land Reclamation Pays, p.1
Group, incorporated in Zanzibar, with a motive to venture into the Dredging Business.  

By 2017, 70 percent of the project has so far been implemented and was expected to be completed in August 2018. For the purpose of human rights, the land reclamation at Mtoni has created jobs for thousands of Zanzibaris and several more are expected to be created once it is completed. The said land reclamation project is expected to consist 106 rooms, six of which will be presidential rooms that can accommodate the same number of Presidents at one go.

The land reclamation with a height of 150 meters and width of 50 meters, after completion of the water park project, expected to accommodate at least 3,500 families in one go and the marine is expected to accommodate at least 30 boats of height 30 metres in one go.

Zanzibar government had intended to change geographical view of Zanzibar with modern houses, by construction fourteen new cities in different areas in Zanzibar. The government in collaboration with different construction companies, including Engineering Consultants Group of Egypt, aimed at changing the geography of the islands to be Smart City. The construction of 14 Smart City will increase employment to the people of Zanzibar and as humans, they will be able to serve their lives. The construction will also enhance technology and making Zanzibar a destination for visitors.

The Climate of Zanzibar is usually warm and humid (equatorial). However, there are four common and long climate changes experienced in Zanzibar. Masika is the longer and heavy rains and some time comes with consequences, normally occurs between March and May; Kipupwe which is cold season usually comes on June and August; the hot season is known as

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557 Tanzania Daily News, 21st June 2016
559 http://zanzibar24.co.tz/2017/04/24/misri-kuisaidia-zanzibar-kujenga-miji-mipy/
561 Zanzibar Institute for Tourist Development (2014) p.33
Kaskazi or Kiangazi always comes between December and February and the fourth is Vuli where short rains are experienced, usually happens on October and November.\textsuperscript{562}

Administratively, Zanzibar is divided under five regions and eleven districts. Among the five, Unguja is divided to three which are Urban West, South Unguja and North Unguja. The urban west region has three districts which are Urban district, West A and West B districts. South Unguja region has Central and South districts. The North region of Unguja has North A and North B districts.

Pemba as the second part of Zanzibar, is administered under two regions. The North Pemba and South Pemba regions. North Pemba has the two districts of Wete and Micheweni, while the South Pemba region has the two Districts of Mkoani and Chake Chake. Each district is divided into a number of smaller localities called 'Shehias'. There are 384 Shehias in Zanzibar.\textsuperscript{563}

The majority of Zanzibaris are Muslim of Sunni sect, however there are also Christians and Hindu followers. Zanzibaris are an eclectic mixture of ethnic backgrounds, indicative of the islands’ colourful history. Widespread intermarriages between Shirazis and Africans gave rise to a coastal community with distinctive features, using a highly Arabicized form of language, known as Kiswahili, which is the country’s national language. However, while the official languages are both Kiswahili and English, English generally is used as a medium of instruction in academic institutions. The language of the court and all official documents and public recordings is either Kiswahili or English.\textsuperscript{564}

Around the late 11th or 12th Century, number of traders who had settled in Zanzibar had intermarried with the indigenous Africans. Ultimately, a hereditary ruler (known as the Mwinyi Mkuu or Jumbe), emerged from among the Hadimu, and a similar ruler, called the Sheha, was set up among

\textsuperscript{562}Zanzibar Human Rights Report, 2016
\textsuperscript{563}Ibid.
\textsuperscript{564}Zanzibar Human Rights Reports, 2016
the Tumbatu. With the coming of British in Zanzibar, the inhabitants were grouped mainly into Europeans, Arabs and African whereas the natives (Africans) were sub-grouped into Wahadimu, Watumbatu and Wapemba. The Swahili groups formed about eighty per cent of the total population, about ten per cent were Arabs, nine per cent Indo-Pakistanis, and the rest were Somalis, Comorians and Goans.\textsuperscript{565}

The government had carried out the population census carried in August 2012, which indicates that Zanzibar has a population of about 1,303,569 people compared to that of 2002, which was 984,624. This is to say that the growth rate increased from 3.0 per cent in 1988 to 3.1 per cent during 2002 and then declined to 2.8 per cent in 2012. The population density of Zanzibar has increased from 400 person/sq. km in 2002 to 530 person/sq. km in 2012.

Despite Zanzibar having five regions, the most populated is the Urban West Region with the highest growth rates of 4.2 percent and a population of 593,678; while the region with the least population is South Region of Unguja with a population of 115,588. It is further indicated that the proportion of females has marginally increased compared to males.\textsuperscript{566}

\textbf{1.4. Economic Situation}

It is a historical phenomenon for Zanzibar’s economy to base on agriculture and tourism. In agriculture, Zanzibar grows and exports cloves as the first products and monopolised by the government seconded by coconuts, chilies, copra and seaweed. Fishing on the seas surrounding Zanzibar, becomes the wealth for the local economy. Therefore, Zanzibar economy can be classified into four major sectors; the agriculture sector, production and construction sector, distribution sector, and services sector. These sectors are climate dependent and a large proportion of Gross Domestic Product (GDP), employment and livelihoods are associated with climate sensitive activities. Higher temperatures, unpredictable rainfall patterns and

\textsuperscript{565} ibid
\textsuperscript{566} ibid
high tide levels can lead to droughts and floods which are likely to affect the Isles’ economy and the GDP.\textsuperscript{567}

Cloves which is the economic backbone of the island’ economy, was historically introduced in Zanzibar by the Omani Arabs in the first half of the 19\textsuperscript{th} Century and has been a major foreign exchange earner in Zanzibar for over a hundred years. Cloves were originally grown by Arabs on their large plantation with the manual labour being provided for by slaves. Despite hard labour was not at that time considered being a violation of the human rights, it had contributed to the change of legal system with the beginning of colonialism. During the British colonialism, private ownership as opposed to communal system, was believed to be not only progressive but also absolutely necessary in order to ensure that slaves continue to work and contribute to clove economy.\textsuperscript{568}

Cloves continued to be the main source of the national income until the time when the slavery was totally abolished and even after the revolution of 1964. The economy of Zanzibar, however, collapsed in 1970 because of a decline in clove exports.\textsuperscript{569} Efforts to boost the economy of Zanzibar were made in the late 1970s, enforced materially by the Revolutionary Government of Zanzibar in the mid-1980s and deepened during the decade of 1995–2005. This generated some positive results at the Macro-level.

Several reasons led to legal and economic reforms in Zanzibar, but the failure of the mission of the Government to adequately provide for basic social services was the driving reason for the legal sector reform.\textsuperscript{570} The legal economic reforms aimed at boosting the economy of Zanzibar. The government had to do all it could to meet the conditions of securing aid from IMF and WB. These included the Structural Adjustment Program (SAP) and Economic Recovery Programs (ERP) which underlined a market

\textsuperscript{567} SMOLE Report 2012 p.18  
\textsuperscript{568} Zanzibar Human Rights Report, 2016  
\textsuperscript{569} Martin (supra), p.60-67  
\textsuperscript{570} Moshi et al (2004) Zanzibar, Challenges of Globalization and Poverty Reduction, p.31
Based economy\textsuperscript{571}. These programmes encouraged privatization in the economy.

Ultimately, the main role of government was to ensure law and orders are formulated to enable public policies for the private sectors are flourished in economic development and service delivery. The government had another role of ensuring promoting democratic governance, mobilizing resources for provision of public services and delivering effective and efficient public services. As a result, positive measures were taken by the government to promote private sector development include formulation of the investment policy, programmes to promote business entrepreneurship, creation of investment promotion institutions, as well as the establishment and operation of the Zanzibar Business Council (ZBC).

Despite reforms made, cloves still continued to contribute largely to Zanzibar economy, and therefore, the government had taken several measures to improve its production. From 2012 the government has been distributing, free of charge, clove seedlings in a bid to boost the clove cultivation.\textsuperscript{572}

In spite of wide spread demands coming mostly from farmers and businessmen who want the Zanzibar government to liberalize the cloves trade, the government still monopolises clove industry in the Isles and maintains the law prohibiting anyone from transporting cloves without its permission.\textsuperscript{573}

Furthermore, the government still puts its efforts to revive the cloves by developing good business relations with the farmers. For example, up to 5\textsuperscript{th} January 2018, the total tones of 8,182.04 of cloves which valued 114.14 billion shillings have been purchased from the farmers for the financial year 2017/2018. On the side of selling, the government had sold the total tones of 5,881 which valued 103.49 billion Tanzania shillings for the financial year, 2017/2018. The government in process to agree with the cloves farmers to

\textsuperscript{571} Hartmann J (1994), the state of Tanzania, p.218-233  
\textsuperscript{572} Issa Yussuf (2015), Isles maintain a Higher Clove Price Despite Global Slam, p.12  
\textsuperscript{573} ibid
pay them 80% of the world market price. For six years now, the government of Zanzibar has been buying the cloves on price of Tsh.14,000 per kilogram from the cloves farmers.\textsuperscript{574}

Notwithstanding the government efforts on cloves and of being a major foreign exchange in Zanzibar for the last 150 years ago, there has been a noteworthy steady decline in production of cloves over the last decade from an annual average of about 16,000 tons in 1970s to a current average of between 1,500 to 3,500 tons. The decline in production is attributed to climate changes, insecurity of the three acre land tenure system, diseases, poor management and limited replacement and ageing of cloves trees.\textsuperscript{575}

To save national economy due to decline of cloves production, Zanzibar has moved from cloves dependency to tourism industry during the mid-80s. The tourism sector in Zanzibar had been in existence for a long time but was not regarded as a key factor to the economy of Zanzibar. It was not until the mid-eighties when tourism gained impetus. The enactment of Tourism Promotion Act of 1991 had promoted and strengthened tourism in the country. Tourism industry had been strengthened further eight years later, on the enactment of new Promotion of Tourism Act, of 1996 and repealed the former of 1991\textsuperscript{576} which, among other things, established the Commission for Tourism as independent body.\textsuperscript{577} Subsequently, this Act was repealed by the Zanzibar Tourism Act, 2009,\textsuperscript{578} as amended by the Zanzibar Tourism (Amendment) Act 2012.

Currently, Tourism is a major sector of Zanzibar’s economy which generates foreign exchange earnings, employment opportunities, stimulates local economy, and supports other sectors such as agriculture, and small scale handcraft industry. Above all, it is a way of economic diversification. This move towards diversification was initiated in 1980’s where the Structural Economic Programme (SEP), among other things, proposed a

\textsuperscript{574} The speech of President of Zanzibar on the 54\textsuperscript{th} anniversaries of Zanzibar Revolution on 12\textsuperscript{th} January, 2018
\textsuperscript{575} Zanzibar Human Rights Report, 2016
\textsuperscript{576} Section 35(1) of Act No.9, 1996
\textsuperscript{577} Section 3(1) of Act No.9 of 1996
\textsuperscript{578} Section 32(1) of Act No. 6 of 2009
move towards a Free Economic Policy and Trade Liberalization. Thus, from mid-1980’s, Zanzibar adopted liberalized economic policies in relation to the role of Private Sector Investments, Free Trade and liberal exchange rate.

For further promotion of tourism industry, the government had established Zanzibar Investment Promotion Authority (ZIPA) in 2004, for promotion and facilitation of investments in Zanzibar. The Authority had flourished tourism industry in Zanzibar and fastened it as a fast growing sector in the Zanzibar economy contributing around 80% of foreign exchange earnings and about 27% of the Growth Domestic Product (GDP). Tourism had further generated employment which is estimated to reach 12,500, out of whom 8,600 people are employed in hotels and guest houses subsector alone. The rest are employed in other tourist investments such as tourist shops and tour operators.

Tourism is estimated to drive economic development in Zanzibar by generating all employments over 50% by 2020. This is viewed under the National Growth Strategy (MKUZA II), which is based on both Zanzibar Vision 2020 and Millennium Developments Goals (MDG). In order to make this vision achievable, a series of goals and objectives have been devised to optimize the likelihood of achievement. Such goals and objectives embrace Zanzibar’s rich natural assets; developing integrated coastal experiences; promotion of special interest (niche) markets; targeting the most profitable prospects; applying a collaborative approach to marketing. It is envisaged that the expedited growth of tourism will lead to (a) higher GDP growth rates, (b) increased employment, (c) high Government revenue, and (d) better quality of life for all the people.

Zanzibar currently has a substantial number of tourism offerings. The tourism sector had been flourishing every year. The number of tourists who find Zanzibar as a cute place for their visits has been increasing. For this year, 2017 the total number of 433,116 had increased from 379,242 for

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579 Section 3(1) of Act No. 11, 2004
580 Ibid, section 4(1)
2016. This makes the escalating of 14.2% for one year. The Government of Zanzibar has a goal to increase the number of tourists to 500,000 for 2020, which is probably will be reached before that year (2020).  

Tourism in Zanzibar also based on cultural activities. Museums, monuments, artisans and their handmade products are a large part of Zanzibar’s culture and heritage. There are number of artisans in Zanzibar who craft goods and exhibit them at various places, but Zanzibar government has yet make centralised market for its own local arts and crafts, as well as its artisans.

Zanzibar had further been bestowed with natural and attractive beauty for tourism industry. Ngezi forest, Kiwengwa forest, natural caves, dolphin spotting and Jozani wilderness are some of the more popular lovely attractions in Zanzibar. There are other attractions such as Zanzibar Butterfly Centre that offers a unique view of nature and its various inhabitants.

In Pemba, a unique kind of hotel with underwater rooms marked another attraction for tourists. The Manta Resort is located 250 metres off the coast on Pemba Island, part of the Zanzibar archipelago off the coast of East Africa, has underwater rooms that forms part of a holiday retreat of the main island, and comprises of a three-storey floating structure with its lowest level positioned four meters beneath the water.

Another economic activity which helps to raise livelihood of people is seaweed farming. Seaweeds were introduced in Zanzibar from Philippines in 1988 and now had developed to form a local industry that provides employment opportunities to hundreds of Zanzibaris, particularly women. Seaweeds farms are generally located in shallow, calm and constantly warm waters, but only where the bottom is sandy. This farming has become well known and perfectly developed at different coastal areas including Pwani Mchangani, Bwejuu, Jambiani, Michamvi, but mostly at Uroa.

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582 The Speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018
583 Zanzibar Human Rights Reports, 2016
584 http://www.tourzanzibar.info/activities/seaweed_farming.html
Zanzibar has a number of economic activities which are used to boost the economy and provide Zanzibar's income. The economy of Zanzibar keeps growing year by year thereby improving the living standards of the people. In 2017, for example, the total internal revenue was 548.571 billion as compared to 487.474 billion of 2016, and therefore the total of 61.097 billion (equal to 12.5%) had increased in comparison to the 2016.585

The budget of revolutionary government of Zanzibar had increased to the estimation of Tsh.2,827 billion for the financial year 2017 as contrary to Tsh.2,628 billion for financial year 2016/2017. The national income increased by 7.0% in comparison to 6.8 for 2016, while the individual income for the people of Zanzibar increased to Tsh.1,806,000 from 1,632,000 Tanzania Shillings for 2016. The inflation rate is 5.6% for 2017 from 6.7% of 2016586.

On business activities, goods valued 145.76 billion shillings were exported in 2017, when compared to 94.94 billion shillings of 2016. Imported goods were of value 211.42 billion shillings in 2016 when compared to 167.09 billion shillings of 2016. For the business activities between Zanzibar and Tanzania Mainland had also been increasing and well flourished. For this year, goods valued 32.32 billion shillings exported to Tanzania Mainland while the goods valued 184.84 billion shillings were imported in Zanzibar from Tanzania Mainland from January to December, 2017.587

Zanzibar government had been constructing its Abeid Amani Karume International Airports for years now with the purpose of keeping it in up-to-date working conditions so that more international flights will be attracted to choose Zanzibar as one of their destination. This went together with the construction of the new terminal which unfortunately is completed yet. The delay of construction for months had obviously affected the economic growth and deprived the public right to benefit with their national developments.

585 The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018
586 ibid
587 ibid
The construction was to recommence by the end of 2017 and upon completion, the new terminal II is meant to meet the future growth on international arrivals by extending capacity to six million passengers per annum in a total terminal area of 60,000 square metres. This on the other hands will increase the number of tourists and other passengers since the terminal is expected to serve 1.6 million passengers.  

1.5. Political and Governance Systems

Political and governance system of Zanzibar had embarked very early in organised governance including political decentralization. Zanzibar governance system and its politics have been influenced by its history which is formally started on the coming of the British who declared it a British protectorate in 1890. Under the British, the Sultan was reserved for ceremonial purpose but most major decisions were made by the British Resident.

For the purpose of divide and rule governance system, the British led the formation of different associations based on ethnic groups which later were changed into political parties. The ethnic based associations categorised people as Shirazis, Arabs, Indians and other African tribes and created ethnic tensions that have plagued Zanzibar since. For the first time of its history, Zanzibar has witnessed the formation of political parties fighting for independence from British which included the Zanzibar Nationalist Party (ZNP), Afro Shirazi Party (ASP) and the Zanzibar and Pemba Peoples Party (ZPPP) – these were all the products of ethnic associations.

The ethnic based political parties were the core of dirty politics in the islands and led to many conflicts which continued even after independence, the revolution, the union and before Government of National Unity in 2010. Zanzibar attained its independence on 10th December, 1963 with the first government formed by a coalition of ZNP and ZPPP. However, the said government only survived for one month and was followed by bloody revolution led by John Okello on 12th January, 1964. Zanzibar united with

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588 The Guardian News Letter, 20th November 2017
590 ibid
Tanganyika soon after the revolution to form the United Republic of Tanzania on 26th April, 1964.\(^{591}\)

The ruling party CCM remained the only political party until the multiparty system was reintroduced in Zanzibar in 1992. CCM was formed when the then existing parties, namely Tanganyika African National Union (TANU) merged with the Afro-Shirazi Party (ASP) on 5th February 1977. The first multi-party general election which was held in 1995 was marked with irregularities where the ruling party (CCM) was accused of having rigged the election for its own benefit. Since then, problems of political unfairness were reported election after election, normally followed by hatred among Zanzibaris and destruction of properties and even loss of life.\(^{592}\)

In 2010, an agreement intended to solve the problem was reached after the discussions between the then Zanzibar President Amani Abeid Karume of the ruling party (CCM) and Maalim Seif Sharif Hamad, the Secretary General of the opposition party (CUF) to have power sharing. The Constitution of Zanzibar was amended after a referendum held in July 2010 to support certain features of the agreement.

The 10\(^{th}\) constitutional amendment had, thus, introduced a power sharing in the government between the parties that has emerged the winner in the general election and the opposition party or parties, as the case may be. The tenth amendment has introduced two positions which are the first Vice President and the Second Vice President.\(^{593}\) The President comes from the party that wins the election, the First Vice President may be appointed by the President from the party that holds second in presidency position during the general election,\(^{594}\) while the second Vice President is nominated from the President's party\(^{595}\) to be head of government's affairs in the House of Representatives.\(^{596}\)

\(^{591}\) Martin E.B. (1978) Zanzibar Traditions and Revolution, p.57
\(^{592}\) Zanzibar Human Rights Report, 2016
\(^{593}\) Section 39(1) of the Zanzibar Constitution, 1984
\(^{594}\) Section 39(3) of the Zanzibar Constitution, 1984
\(^{595}\) Section 39(6) of the Zanzibar Constitution, 1984
\(^{596}\) Section 39(7) of the Zanzibar Constitution, 1984
The cabinet which in Zanzibar referred as the Revolutionary Council is composed of by the President, the First and Second Vice Presidents and other members from parties which have representation in the House of Representatives, depending on the number of seats each party wins in the constituency elections for members of the House. The Attorney General of Zanzibar who is appointed by the President becomes an ex-officio member of the Revolutionary Council of Zanzibar.

As said above, Zanzibar adopted multiparty system in 1992, and had gone through general elections five times from 1995 to date. For the first time of the elections history since 1992, Zanzibar had undergone two general elections within six months. It is because the entire general election of 2015 was nullified by the Chairman of Zanzibar Electoral Commission (ZEC) on the ground of irregularities and therefore, the election was re-run on 20th March, 2016. The issue whether the Chairman had power to nullify the entire election or the entire electoral process remained disputed, since there was no explicit provision for the same in any law of Zanzibar. The Civic United Front (C.U.F) who found itself as was the winner on the nullified election of 2015, despite no official results were declared by ZEC, did boycott the re-run election of 2016, and therefore, the ruling party, Chama cha Mapinduzi (CCM) is still ruling the country.

To solve the confusion happened in 2015, the government had established the new Elections Act (Act. No.4 of 2018) to repeal the previous Elections Act, No.11 of 1984. The New Elections Act among others had vested power to the Election Commission to nullify an entire election results or any part of it on the ground of irregularities, abuse or violation of election process. Section 14(1) and (2) of the said Act stipulates:

“Where the Commission is satisfied prior to declare the election results that there has been irregularities, abuse or violation of elections process; or

597 Section 43(1) and (2) of the Zanzibar Constitution, 1984.
598 Section 43(3) of the Zanzibar Constitution, 1984
Where there is a tying of results between the candidates who obtained the highest votes; the Commission shall either suspend or nullify the elections or any part thereof, and shall declare another date for Re-run elections.”

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Section 14 of Act, No. 4 of 2018
CHAPTER TWO

CIVIL RIGHTS

Introduction
"Civil rights" refer to personal liberties that belong to an individual, owing to his or her status as a citizen or resident of a particular country or community. They are a class of rights that protect individuals' freedom from infringement by governments, social organisations and private individuals. They ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression. Civil and political rights constitute the first part of the Universal Declaration of Human Rights (UDHR) of 1948, whereas economic, social and cultural rights form the second part of the Declaration. These are known as the first generation of human rights, pointing to their significance to people.

Civil rights include the ensuring of peoples' physical and mental integrity, life and safety; protection from discrimination on grounds such as race, gender, national origin, colour, age, political affiliation, ethnicity, religion, sexual orientation, gender identity, and disability and individual rights such as privacy and the freedoms of thought, speech, religion, press, assembly, and movement.

This chapter discusses the situation of fundamental civil rights in Zanzibar in the year 2018. These rights are: right to life; freedom of opinion and expression; rights to equality before the law and effective remedy; right to liberty and personal security; and freedom from torture.

2.1. Right to Life

Introduction
Right to life is the most important of all human rights. This is the cornerstone of human rights. Right to life lays the foundations for enjoyment of other human rights. It is therefore understandable that all

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important human rights provide for the protection of the right to life. The Universal Declaration of Human Rights gave primary emphasis to the protection of human life and made direct reference to everyone’s right to life. Article 3 of the Universal Declaration of Human Rights of 1948, provides that:

“Everyone has the rights to life, liberty and security of person.”

This provision is echoed in even more elaborate terms in the International Covenant on Civil and Political Rights (ICCPR) 1966, which in its Article 6 (1) provides:

“Every human being has the right to life, the rights shall be protected by law and no one shall be arbitrarily deprived of his life.”

In the African Charter on Human and Peoples’ Rights 1981, the provision on the right to life is very brief, but to the point. It states:

Human rights are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right.

Though not so clearly put, right to life under the African Charter is not absolute. What seems to be prohibited under the Charter is an arbitrary killing. This position implies that right to life may still be deprived under certain circumstances which do not amount to arbitrariness.

As far the Zanzibar legal system is concerned, protection of right to life is covered under Section 13 of the Constitution of Zanzibar, 1984. The Section makes provisions that:-

13 (1) Every person has the right to the preservation of his life.
(2) Every person has the right to live and to the protection of his life by the society in accordance with the law.

In the year 2018, the right to life continued to be affected by incidents or threats of mob violence, extra-judicial killings, death penalty and road accidents. However, based on the reported incidents, the overall situation of right to life slightly improved in 2018, as fewer incidents of mob violence

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and road accidents were reported, while ZLSC did not receive reports of extra-judicial killings or death penalty.

2.1.1. Mob Violence

Mob violence (sometimes called ‘Jungle Justice’) refers to the act of a group of people taking the law into their own hands in exercising violent justice over an alleged criminal.\(^{604}\) The major cause of mob violence is lack of faith in the justice system of Zanzibar. Corruption (including favouritism), incompetence and irresponsible tendencies, among other factors, have contributed to somewhat crippling the criminal justice system.\(^{605}\) Many law enforcers in Tanzania, including Zanzibar, have failed to deliver and people have to live with the fear that they are not well protected. Corruption has affected the police department, the courts and other government agencies dealing with administration of justice in one way or another. When a suspected criminal is apprehended and handed over to the police, many are able to either negotiate their way out using the intricacies of the law or through corruption. This further alienates the public who think that the police and courts favour criminals.

One reason behind the apparent rampant increase in crimes such as sexual violence against women and children, robbery and stealing, road traffic offences, among others, is perceived to be the failure of the country’s justice system; with its natural result to having social groups developed to dispense their own systems of mob justice.

In 2018, Zanzibar Legal Services Centre (ZLSC) was able to record a few incidents of mob violence in Zanzibar. One such incident occurred in February 2018 at Maziwani area, where a resident of the area - Nassor Abdalla Nassor (22) – was severely beaten by an angry mob after being accused of stealing from a civilian in Mzambarauni Patini – Wete District. Fortunately, the police were able to intervene in time to prevent his death, who then rushed him to the district hospital.


2.1.2. Extra-judicial Killings

It is acceptable all over the world that extra judicial killings constitute violation of human rights, as this is identified under international law, regional and municipal laws of many countries. In curbing the extra judicial killings, the International laws oblige the respective state to bring to justice people who have been identified as having participated in extra-judicial killings and other unlawful killings committed in their states.⁶⁰⁶ And the superior officers or other public officials who did not obey the said laws, shall be held responsible, since they knew or have known that their subordinates are resorting or have resorted to the unlawful use of force and firearms, and they did not take measures in their power to prevent, suppress or report such use.⁶⁰⁷

In 2018, ZLSC did receive or record any reported incidents of extrajudicial killings.

2.1.3. Death Penalty

The death penalty is a government sanctioned practice whereby a person is put sentenced to death by the state as a result of conviction and punishment passed by the court in a criminal case. It is also called capital punishment. In Zanzibar, the death penalty is recognized as one of the punishments which are provided for under the law. It is inflicted when a person is convicted of offences either of murder, treason or any other such offences punishable by death sentence.⁶⁰⁸

Death penalty is considered to be one of the most controversial issues in almost all judicial and political systems. There are movements almost all over the world both for abolition, retention or introduction of this form of punishment.⁶⁰⁹ The debate on the death penalty is complicated one on the fact that most States consider this form of punishment to be a purely municipal or domestic issue which is best dealt with under the respective criminal regime. Those arguing for the retention of the death penalty say

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⁶⁰⁶ See: Principle 19 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
⁶⁰⁷ ibid
⁶⁰⁹ Chris Maina Peter, Human Rights in Tanzania: ..., op. cit., p.27.
that this form of punishment is the only means of dealing with incorrigible individuals and a general deterrent from crime.\textsuperscript{610} This penalty has also received ideological justification from the main religions, in our case Christianity and Islam. Many believers would not wish to question anything which they consider to have been sanctioned by their religion as taught by their religious leaders.\textsuperscript{611} In penological terms, capital punishment is a reflection of retributive justice, embodying the ancient maxim of ‘an eye for an eye, a tooth for a tooth.’ It is based on vengeance channelling public outrage into a legalized form of punishment. It is argued by its proponents that, in its absence, outraged people may be forced to seek vengeance through mob justice or individualized forms of revenge. These are, however, mere impressions not supported by any data.\textsuperscript{612}

For those arguing against the death penalty and its abolition argue that this form of punishment is unacceptable as it is irrevocable once it has been carried out, even by judicial mistake. Death penalty also found unacceptable as being a cruel, inhuman and degrading punishment; and that it offends the right to human dignity in the course of executing the sentence; the death penalty infringes the right to life; and it is not in public interest.\textsuperscript{613}

In 2018, the situation of death penalty in Zanzibar continued to be threatened by law imposing death sentences. In August 2018, the High Court of Zanzibar imposed a death sentence on Abdallah Mohamed Kangoba (43) after convicting him of attacking his wife and killing her in 2013 in Donge Mtabile Village, Unguja North Region. This was the only death sentence that ZLSC was able to record for the year 2018, which makes it a total of two prisoners who are in death row in Zanzibar’s Institute of Offenders’ Education.

\textsuperscript{612} Ibid.
\textsuperscript{613} Chris Maina Peter, Human Rights in Tanzania: …, op. cit., p.29 and p. 43.
2.1.4. Road Accidents

The problem of road accidents in Zanzibar continued to be a serious issue in 2018. These accidents claim the lives of people virtually every day. Road accidents in Zanzibar have been increasing from year to year and so also has the rate of resultant deaths. It has been reported that road accidents take peoples’ lives more than diseases which are normally treated in Zanzibar hospitals. These accidents are usually caused by reckless behaviour and negligence on the part of motor vehicle drives, hence jeopardizing right to life.

For the year 2018, ZLSC was able to document several incidents of road accidents. One such accident occurred in Mkanyageni-Pemba, leading to death of one person and causing serious injuries to eight other people, who had to be rushed to a nearby hospital for treatment. Onlookers reportedly commented that the passenger vehicle was in high speed; and the driver lost control and hit a tree on the side of a road. The vehicle was speeding with another passenger vehicle. The police force in Zanzibar commented that most accidents in Zanzibar are caused by reckless driving and over speeding; and noted that the drivers of the passenger vehicles who caused and contributed to the accident were arrested and will brought to justice.

Picture 16: A passenger vehicle which was involved in road accidents, killing one person and injuring eight others, in Mkanyageni-Pemba
In another incident, a 30-year-old resident of Chanjaani in Chakechake, Mohamed Ali Mohamed, reportedly drove a car while drunk and caused an accident in April 2018. His reckless driving in a stated of intoxication resulted into a death of one person and injuries to 3 others. The accused person was arrested and arraigned in Chakechake Court, where he received a 7-year jail term.

In another incident, a motorcycle driver - Mohamed Ahmed Tafuta (aged 50 years), resident of Uwandani in Chakechake District was killed in a road accident. It was reported that the motorcycle driver was hit by a passenger bus which was over speeding in one of the feeder roads in Uwandani area. One of the people who witnessed the incident said, “I thought the car was being chased by police, because it was in such a high speed, while the road is not even a main road. It is not normal for a car to be driven in such high speed in a feeder road.”
Conclusion and Recommendations
Right to life is the most fundamental human rights. As such, the Government needs to intensify efforts to ensure this right is protected by addressing threats posed by issues such as mob violence, extra-judicial killings, death penalty and road accidents. Corruption within the justice system must be addressed in order to restore peoples' faith in the in police and courts of law.

The laws are there, but what is lacking is effective implementation and respect for rule of law by both citizens and state officials or public servants. As such, the Government must ensure effective realization of laws and respect for rule of law. Police and judicial officers must refrain from corrupt tendencies in order to ensure justice. Citizens are also encouraged to refrain from taking matters into their own hands, instead trust the justice system and seek assistance, including from NGOs, to ensure justice is done. Citizens should also obey the law and exercise their duty to report crime in order to preserve and protect human rights.

2.2. Freedom of Opinion and Expression
Introduction
Freedom of expression is defined as a right to communicate one’s opinions and ideas to anyone who is willing or entitled to receive them. It includes any act of seeking, receiving and imparting information or ideas regardless
of the medium of the information used.\footnote{ZHRR 2015, P.73} This right is provided for and protected under various international and regional human rights instruments, such as the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the African Charter on Human and People’s Rights (ACHPR) of 1981.

Under its Article 19, the UDHR provides that:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

This right under the UDHR is given legal force under Article 19 of ICCPR, which states:

*Everyone shall have right to hold opinions without interference and everyone shall have right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers either orally, in writing or in print.*

ACHPR, which is specific for African countries, provides for the right to freedom of expression as follows:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinion within the law.*
3. 

Freedom of expression is also protected domestically under the Constitution of Zanzibar of 1984. Section 18 of the Constitution provides that:

*(1) Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.*
(2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.

Several principles under international law allow some restrictions on such rights and freedoms but only where they meet certain thresholds or restrictive conditions. Interference with the right to freedom of opinion or freedom of expression has to qualify as being “necessary in a democratic society” and to the extent strictly required to achieve the legitimate aim sought to be achieved.” In other words, a state must not only demonstrate that its interference with a person’s right meets a “pressing social need” criteria but also it is proportionate to the legitimate aim pursued, which appears to be necessary in a democratic State.615 Zanzibar Government action to restrict freedom of opinion and express must thus meet these conditions, but in practice these conditions are usually not met, hence arbitrary interference with this fundamental human right.

In 2018, the situation of freedom of opinion and expression in Zanzibar continued to be threatened by several restrictive laws. These laws include the Registration of News Agents, Newspaper and Books Act 1988, which provides discretionary power to the Minister concerned to ban or close down any newspaper under given circumstances.616 Generally, the freedom of expression continued to be restricted, especially expression of opinions on political issues. Also, as was the case in 2017, political rallies - a key platform to exercise freedom of expression - continued to be banned, allegedly to ensure maintenance of peace and security.

2.2.1. Media Freedom
Under Article 19 of the United Nations Declaration of Human Rights 1948, freedom of expression is recognized to be one of the fundamental human rights.617 Under the provision, everyone has the right to freedom of opinion and expression. This right includes the right to hold opinions without

615 ZHRR 2015, p.74
616 Section 30(1) of the News Agents, Newspaper and Books Act, 1988.
617 UN General Assembly Resolution 217A (III), adopted 10 December 1948.
interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Furthermore, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of opinion and expression in very similar terms to the UDHR. These guarantees are not absolute. They allow some restrictions on the right to freedom of opinion and expression, but only to the extent that is prescribed by law, in pursuance a legitimate aim, and is necessary in a democratic society.

As narrated in the preceding part, in Zanzibar, the right to freedoms of opinion and expression is provided for under Section 18 (1) of the Constitution of Zanzibar 1984. The question is, then, whether the right to freedom of press may be inferred from the existing provision on the right to the freedom of expression? Othman Masoud, in his paper titled “Legal and Regulatory Framework of the Media in Zanzibar”, having cited several decided cases from India, concluded that freedom of speech and right of information enshrined in the Zanzibar Constitution 1984 cover also the right to free press.

It is well noted that Subsection (2) of section 18 of the Zanzibar Constitution 1984 guarantees every citizen with a right to be informed of various events in the country and in the world at large which are important to the society. Thus, right to excess of information is impliedly part and parcel of the fundamental right to freedoms of opinion and expression, under section 18 of the Zanzibar Constitution 1984. But, how restricted is the right to freedom of information under the Zanzibar legal system?

In 2018, realisation of the right to media freedom in Zanzibar continued to be affected by a number of factors, most notably: self-censorship; limited access to information; journalists operating in fear due to restrictive laws, including the Online Content Regulations – which were introduced in 2017; and concerns over the independence of the broadcasting regulatory body.

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Regarding self-censorship, restrictive laws introduced starting 2015, such as the Cybercrimes Act of 2015, the Media Services Act of 2016 and the Statistics Act of 2015 (as amended in 2018), continued to put pressure on journalists to practice self-censorship for fear of facing jail terms and hefty fines for violations of the provisions of these laws. This has made journalists to take too much time and care in deciding what to air or publish. They are also forced to not contradict the wishes of their bosses (media outlet owners) for fear of losing their jobs. Authorities continued to possess power to largely control media content. Existence of this environment means journalists operating in fear of repercussions and not knowing or being sure if they would get in legal trouble for broadcasting or publishing certain information, given the wide interpretation of vague provisions in the laws and prohibitions and conditions which are not in line with the international standards on freedom of expression. Arbitrary restrictions on this fundamental freedom contravene the International Covenant on Civil and Political Rights (ICCPR) of 1966, the African Charter on Human and Peoples’ Rights (ACHPR) of 1981, and other regional and international human rights conventions that Tanzania (including Zanzibar) has ratified. It is also contrary to the Declaration of Principles of Freedom of Expression in Africa.620

Limited access to information also affected media freedom in Zanzibar in 2018, including information from government authorities. Restrictive laws such as Cyber Crimes Act and Online Content Regulations also affected flow of information between the people and the journalists, including whistle-blowers.

620 Adopted in 2002 by the African Commission on Human and Peoples’ Rights.
In its 2017 Zanzibar Human Rights Report, ZLSC highlighted that the Zanzibar Broadcasting Policy does not guarantee the independence of broadcast regulatory body, which is not in line with the African Charter on Broadcasting of 2001. According to the Charter, any public authority that exercises powers in the areas of broadcast or telecommunications regulation be independent and adequately protected against interference, particularly of a political or economic nature.621

Restrictions on media freedom in Tanzania Mainland and Zanzibar, through government action and restrictive laws, contributed to Tanzania further dropping in the World Press Freedom Index of 2018. Reporters Without Borders (RSF) is an international NGO that promotes and defends the freedom to be informed and to inform others throughout the world. It’s 2018 World Press Freedom Index shows decline in press freedom in various parts of the world, including Tanzania. According to the report, Tanzania has further dropped in the index by 10 places, from 83rd in 2017 to 93rd in 2018, having dropped by 12 places in 2017.

2.2.2. Access to Information
Access to information is a key component of freedom of expression. According to the Report of the UN Special Rapporteur on Freedom of Opinion and Expression of 2000, public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information.622 It also provides that all public bodies should

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621 See the African Charter on Broadcasting at http://archive.niza.nl/docs/200207191410309398.pdf

be required to establish open, accessible internal systems for ensuring the public’s right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal; and the cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself.  

Arbitrary restrictions on freedom of expression imposed by laws and regulations mentioned above are contrary to international standards on such freedom as contained in international and regional instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Declaration of Principles on Freedom of Expression in Africa and African Declaration on Internet Rights and Freedoms. Introduction of the Electronic and Postal Communications (Online Content) Regulations 2017 (popularly known as the Online Content Regulations) further compounded the problem of access to information in both Tanzania Mainland and Zanzibar in 2018.

The Online Content Regulations contains some important provisions and minimum standards geared towards protecting online users from extremism and hate speech, as well as protecting children online. They also promote online user responsibilities and digital security practices.

However, the Online Content Regulations also contain provisions that have been found to arbitrarily restrict freedom of expression, including right to information. In July 2018, the African Commission on Human and Peoples’ Rights, which is based in Banjul-Gambia, issued a press release on the growing trend on stringent regulation of the Internet in East African States. For Tanzania, the Commission was particularly concerned with the adoption the Electronic and Postal Communications (Online Content)
Regulations 2018. Analysis of the Online Content Regulations by various stakeholders, both domestic and international, shows that regulations contain the following problematic provisions:

- Unclear, ambiguous definitions and words or phrases: Some of the provisions on definitions, prohibitions and obligations are ambiguous or unclear, hence subject to misinterpretation and abuse and with potential to arbitrarily restrict freedom of expression. Examples include words/phrases like hate “speech”, content that causes annoyance”, content likely to mislead or deceive the public”, and “current standards of accepted behaviour.”

- Too much power vested in the regulatory authority (Tanzania Communications Regulatory Authority): The regulations grant the regulatory authority too much power, including power to remove prohibited content. These powers may promote fear to exercise freedom of expression on the internet. The powers amount to infringement of right to privacy and prevent people to share information anonymously.

- Imposing too much and intrusive obligations on content service providers: The regulations burden content service providers with obligations to moderate and filter content. This obligation is hectic and contrary to the Declaration of Principles of Freedom of Expression in Africa of 2002. According to the Online Content Regulations, an online content provider has obligations to: use moderating tools to filter prohibited content; have in place mechanisms to identify source of content; and ensure prohibited content is removed within twelve hours upon being notified.

- Registration, licensing and fee requirements: Under the Regulations, registration and licensing of bloggers is mandatory. Bloggers are also required to pay annual fees and other fees. Application fee is Tshs. 100,000, initial license fee is Tshs. 1,000,000, annual license fee is...

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626 See Regulation 5(1) of Electronic and Postal Communications (Online Content) Regulations 2017.
1,000,000 and renewal is Tshs. 1,000,000. These fees are too much for earning of many bloggers.

- Severe punishment for failure to comply with regulations: All offences prescribed in the regulations carry a uniform punishment; which is a fine of not less than Tshs. 5 million or imprisonment of not less than 1 year, or both. 627

- Internet café owners to install video cameras and record activities of internet users and keep recordings for at least a year: The Regulations require owners of internet cafes to install surveillance cameras to record and archive activities of internet users and keep the recordings for at least 12 months. This requirement is asking too much of the owners and serves to arbitrarily limit access to internet and information and contrary to the Joint Declaration on Freedom of Expression and the Internet. 628

**Conclusion and Recommendations**

The overall situation of freedom of expression in Zanzibar in 2018 has contributed to majority of people in Zanzibar questioning the quality of media reports. Freedom of expression is key for development and the fight against corruption in Zanzibar. It is therefore in the Government’s best interest not to interfere with realisation of this fundamental human right, including through enactment of restrictive laws. Freedom of expression in Zanzibar was affected by application of restrictive laws such as Cyber Crimes Act, Media Services Act and Statistics Act, as well as introduction of the Online Content Regulations.

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627 See Regulation 18 [Any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine of not less than five million Tanzanian shillings or to imprisonment for a term of not less than twelve months or to both]

To improve the situation of freedom of expression in Zanzibar, ZLSC recommends the following:

⇒ The Government of the United Republic of Tanzania to amend and review laws that restrict freedom of expression and make relevant amendments in order to guarantee such freedom;

⇒ Government and regulatory body officials should refrain from arbitrarily interfering with freedom of expression and ensure journalists operate in a friendly environment and not operate in fear;

⇒ The Government to ensure that public and private media are regulated by a body that is independent of political interference;

⇒ The Government, through Ministry of Information, Tourism and Archives, to move to amend unclear and unambiguous definitions and working in the Online Content Regulations; and

⇒ Media practitioners and owners to abide media ethics and seek judicial remedy when they feel their rights have been violated.

2.3. Rights to Equality before the Law and Effective Remedy

Introduction

Equality before is one of the basic characteristics of the rule of law doctrine. Equality before the law entails that no one is above the law. That is every man, whatever his rank or position or place in society is subject to the law of the land and amenable to the jurisdiction of the courts and tribunals established by law.629

In other words, the rule of law demands further that all subjects should be treated equally before the law. Equality before the law then means that all classes of people in a civil society should be treated alike by the law itself and before all law enforcement bodies and agencies which are created by the law.630

Rights to equality before the law and effective remedy are guaranteed and protected under various regional, continental and international human rights instruments. These include the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples’ Rights

629 Chris Maina Peter, Human Rights in Tanzania …, op. cit., p. 304.
(ACHPR) and the International Covenant on Civil and Political Rights (ICCPR). This right is also guaranteed under the Constitution of Zanzibar, 1984, which provides under Section 12 that: “All people are equal before the law and they are entitled, without any discrimination, to be protected and provided with equal right before the law.”

2.3.1. Access to Justice

The right to equal access to justice is a key component of equality before the law. The equality before the law principle is founded upon the fundamental truth that all human beings are equal in dignity and have to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. This principle is enshrined in the Universal Declaration of Human Rights 1948 in the following words:

“All people are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

Access to justice is a key component of rule of law and the international community has recognized “the right to equal access to justice for all” and committed itself to “taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.” Key conditions for access to justice include: availability of independent and impartial courts and tribunals; good laws; courts/tribunals to be accessible and have sufficient resources to administer justice; availability of qualified lawyers for legal representation; and fair trial and timely justice.

631 Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.
632 See Article 7 of the Universal Declaration of Human Rights 1948.
In 2018, the Government and Judiciary of Zanzibar continued to take steps to improve access to justice in Zanzibar. These include renovation of the Mkaoni District Court; provision of trainings for new judicial staff; and using ICT to entertain proceedings in courts of law, including video conferences and electronic filing system. The chart below shows the case flow from Unguja Courts.\textsuperscript{634}

\begin{figure}
\centering
\includegraphics[width=0.8\textwidth]{chart1.png}
\caption{The chart below shows the case flow from Unguja Courts.\textsuperscript{635}}
\end{figure}

\begin{figure}
\centering
\includegraphics[width=0.8\textwidth]{chart2.png}
\caption{The chart below shows the case flow from Pemba Courts.\textsuperscript{635}}
\end{figure}

\textsuperscript{634} Source from the Office of Court Registrar.
\textsuperscript{635} Ibid.
In 2018, access to justice in Zanzibar was mainly boosted by proposed Legal Aid Act, which seeks to extend legal aid to different parts of the isles. According to the Principal State Attorney, Saleh Mubarak, and Director of Public Prosecutions (DPP), Ibrahim Mzee, free legal aid will be provided to all poor people in Zanzibar, except those charged with economic crimes or cases of sexual offences, drugs and corruption. The Legal Aid Act will enable legal recognition of all providers of legal aid, who will be registered and provided with certificates.

While the proposed Legal Aid Act served to boost access to justice in Zanzibar, this right continued to face several challenges in 2018, akin to those faced in Tanzania Mainland. These challenges include violation of rights of accused persons, including denial of bail; high costs of effective legal representation; corruption within the justice system (police and courts of law); low awareness about human rights, laws and legal procedures; delays in administration of justice (investigations and prosecutions); and shortage of resources and facilities within the Judiciary.

For the Financial Year 2017/2018, lack of Office of Attorney General in Pemba was found to affect access to justice for residents in the island, forcing them to access such services in Unguja. In Pemba, the Judiciary is faced with the several challenges, including: court buildings being in poor/dilapidated condition; shortage of judicial staff; budgetary constraints; shortage of vehicles; and witnesses refusing to come forward and give their testimonies. Mkokotoni District Court was also found to be faced with challenges such as poor conditions of buildings; shortage of offices; shortage of facilities such as chairs and tables; and delays in investigation of cases. Similar challenges are faced by Konde District Court, hence negatively affecting access to justice for residents of the district. Moreover, in 2018 the Office of the DPP continued to be faced with challenges such as:

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638 Ibid.
shortage of motor vehicles; delays in disbursement of funds; and witnesses refusing to cooperate and testify in court. ⁶³⁹

2.3.2. Right to Legal Representation

It is well established that in Zanzibar, the right to legal representation before the court of law is provided via two arms, namely, constitutional rights and statutory rights. A trial becomes a nullified one in the circumstance where the constitutional and statutory rights of the appellant were denied legal representation.

There is still a problem of the legal representation as a move to get people closer to access to justice. The government offers legal representation support to those persons accused of serious crimes only, but it does not do the same to the person accused with lesser serious offences or even for people found to be in serious need legal support. However, the good working relationship to different CSOs which providing free legal aid in the Isles accommodate the needs. For instance, ZLSC, ZAFELA and ZLS provide legal representation and pro bono cases. ZLSC provides legal assistance and representation to 56 children have been attended to and assisted in the Institute of Education for Offenders by the Centre’s Officers in Unguja.

People with mental illness and psychiatric disabilities face similar issues of lack of legal representation within the criminal justice system as people with intellectual disabilities, whether suspects or victims. Most people would appreciate if people with disabilities are, to a much higher degree, given the right to access of justice and legal representation like other groups such as victims of crime. This is often because they are vulnerable and find themselves in situations that are dangerous and violent.

In addition, the law still imposes fees for indigent civil litigants even if they are poor unless a special procedure to file a case on the basis on the incapacities is applied. There is also the challenge of sign language at the court and other offices when dealing with the administration of justice. It

⁶³⁹ Ibid.
can therefore be submitted that the lack of legal representation and legal aid contribute to the denial of the right to justice.

Nevertheless, in 2018, realisation of the right to legal representation continued to be mainly affected by high costs of effective legal representation. Another key challenge affecting right to legal representation in Zanzibar is shortage of state attorneys and advocates. In April 2018, the Director of Public Prosecutions (DPP), Ibrahim Mzee Ibrahim, revealed that shortage of state attorneys is a big challenge for his office, causing cases/proceedings in court to take long to conclude.\(^{640}\) He noted that crime is on the rise in Zanzibar and there are too many cases for available attorneys to effectively and efficiently handle.\(^{641}\) The DPP further stated that there are only 57 attorneys operating in Unguja and Pemba.\(^{642}\)

### 2.3.3. Rights to Fair Trial and Effective Remedy

The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person.\(^{643}\) It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”\(^{644}\)

Right to fair trial includes the right to legal representation, right to be heard, right to be presumed innocent until proven guilty and right to be tried without undue delay by an independent, impartial and

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\(^{641}\) Ibid.

\(^{642}\) Ibid.


competent tribunal. Right to effective remedy is closely associated to the right to fair trial; and is also protected under the Constitution of Tanzania and international human rights instruments, including ICCPR.

In 2018, realisation of the right to fair trial in Zanzibar continued to be hampered by high costs of legal representation. Since many people are poor and thus cannot afford good lawyers, they find it difficult to be well represented in court, which in turn affects the fairness of the trial. This also automatically affected the right to effective remedy as well. Another key issue which affected the right to fair trial in 2018 was delays in dispensation of justice. In February 2018, the Regional Commissioner of Kusini Pemba, Hemed Suleiman Abdalla, urged the Zanzibar Judiciary to ensure that the problem of backlog of cases in Zanzibar courts is addressed, so that cases do not take too long to conclude. Judge of the High Court of Zanzibar, Abdul-hakim Ameir Issa, urged fellow judges, magistrates and kadhis to ensure timely justice, by providing judgement within 60 days as required by law.

Conclusion and Recommendations
Right to equality before the law is very important in realization of civil and political rights. People need to feel they are all equal before the law in order to freely enjoy their human rights. Access to justice is a key component of this right; and while government action boosted action to justice in 2018, several challenges remain to be a thorn in accessing justice for Zanzibaris. These challenges include violation of rights of accused persons, including denial of bail; high costs of effective legal representation; corruption within the justice system (police and courts of law); low awareness about human rights, laws and legal procedures; delays in administration of justice (investigations and prosecutions); and shortage of resources and facilities within the Judiciary. Similar challenges hinder effective realisation of the right to legal representation and right to effective remedy.

645 See Article 14 of ICCPR; Article 13 of Tanzania Constitution; & Article 7 of ACHPR.
647 Article 2(3)(b) of ICCPR.
649 Ibid.
Government and Judiciary needs to intensify efforts to address challenges affecting access to justice, in order to make justice easily accessible by all people and boost the right to equality before the law. The anti-corruption body in Zanzibar, ZAECA, should work with the Judiciary and Police Force to address corruption in the justice system, which hinders effective realization of the right to equality before the law. CSOs should also play their part by raising legal awareness to the public and providing legal assistance.

2.4. Right to Liberty and Personal Security

Introduction

Right to liberty is provided for in Section 14 of the Constitution of Zanzibar, 1984. The provision guarantees the right of every person to be free and to live like a free person. It is also an essential human right, guaranteed under regional and international human rights instruments, including UDHR and ICCPR. In order to preserve the personal liberty of an individual, in essence, the provision prohibits for any person to be arrested, jailed, kept in custody, detained, forcibly deported, or to be deprived of his freedom. The overall purpose of this section in Zanzibar Constitution is to ensure that no one should be dispossessed of his liberty in an 'arbitrary fashion'. The right also safeguards the individual against the illegal deprivation of liberty conducted in contrary to Section 14 of the Constitution of Zanzibar 1984. This constitutional provision also takes care of a situation where an individual does not exist alone, but as part of the community and hence the need to be sensitive of the rights and freedoms of the rest members of the society. This means that the right to liberty is not absolute. Though the right is not an absolute one, its curtailment can only be done in limited circumstances. These include where it is expressly...
provided by law, or in the process of implementing a judgment or order or a punishment imposed by a court of law following a conviction.\textsuperscript{654}

In 2018, right to liberty and personal security was threatened by a several incidents, reported in various parts of Zanzibar. These incidents, documented by ZLSC, include unknown people torching a house of a youth economic group called Kujikomboa Group, based in Wete District in Pemba in January 2018.

![Image of three young men]

\textit{Picture 19: Some of the people who were abducted, reportedly tortured and later released in Mtambwe - Kaskazini Pemba}

In another incident, reported in Mtambwe in Kaskazini Pemba Region, six people reported missing in April 2018. The missing persons, feared to have been abducted, are Thuwein Nassor (30), Khamis Abdalla Matar (22), Juma Kombo (17), Said Shanani (16), Khalid Khamis (29) and Abdalla Khamis (19). It was reported that they had been taken by about 15 people at night, some of whom were armed. Three of the abducted persons were released a few days later, on 8\textsuperscript{th} April 2018, while the other three were released some few days after that. When questioned about their abductors, they noted that they could not identify them, but they might have been dumped at Kengeja area in the region. Others were found at areas such as Mzambarauni and Likoni areas. Most of them appeared to have been tortured and could not

\textsuperscript{654} Section 14 (2)(a) and (b).
stand or walk properly, while others could not even talk properly and had scars on their backs.

2.4.1. Freedom from Arbitrary Arrest and Detention

The meaning of the term detention differs from one jurisdiction to another and from different points in time.\(^{655}\) Essentially, it involves deprivation of personal liberty before conviction and, in most jurisdictions, it relates to pre-trial incarceration of the suspect or the accused person. For example, the accused is detained in police custody without being sent to court. That is, detention without trial.\(^{656}\)

Article 9(1) of the ICCPR provides that “everyone has the right to liberty and security of person.” The liberty of a person has been interpreted narrowly, to mean freedom of bodily movement, which is interfered with when an individual is confined to a specific space such as a prison or a detention facility.\(^{657}\)

Security has been taken to mean the right to be free from interference with personal integrity by private persons. Under Article 9(2) “No one shall be subjected to arbitrary arrest or detention” and “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The principle of legality embodied in the latter sentence both substantively (“on such grounds”) and procedurally (“in accordance with such procedure”) mandates that the term “law” should be understood as referring to an abstract norm, applicable and accessible to all, whether laid down in a statute or forming part of the unwritten, common law. The prohibition of arbitrariness mentioned in the previous sentence serves to ensure that the law itself is not arbitrary, i.e. that the deprivation of liberty permitted by law is not “manifestly unproportional, unjust or unpredictable, and [that] the specific manner in which an arrest is made must not be discriminatory and must be able to be

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\(^{656}\) C.M. Peter, op. cit., p. 579-580.

\(^{657}\) Nowak, Manfred, Covenant on Civil and Political Rights: CCPR Commentary, Ailing: N.P. Engel, 1993, p. 244.
deemed appropriate and proportional in view of the circumstances of the case.” \(^{658}\)

In Zanzibar, there are several laws that ‘legalise’ detention without trial. These laws authorise certain category of functionaries in the executive arm of the State to detain individuals for specific period(s) or indefinitely for imagined commission of offences.\(^{659}\) For example, under Section 13 of the Regional Administration Act (No. 8), 2014, there is provided powers of the Regional Commission and District Commissioner to effect arrest and detention of individuals without trial under certain circumstances.

In Zanzibar legal system, the requirement to this effect is founded under Section 12 (6)(f) of the Constitution of Zanzibar 1984 which makes provisions that any person suspected of a crime shall be given opportunity to be defended by an advocate of his choice. Although literatures on Zanzibar practice in these aspects are not apparently available, there also seems to be no record of allegations of open violations of the individual’s rights as discussed in this part.

In 2018, ZLSC received 12 complaints on denial of bail and arbitrary arrest and detention, whereby 6 people were reported unlawfully detained for more than 12 days without being sent to court. This forced ZLSC to file a Chamber Summons under Certificate of Urgency in High Court to order, among other things, the release of the detainees from police custody and to prohibit the Deputy Director of Criminal Investigation Zanzibar from unlawfully detaining the applicant or any other persons for longer period than permitted by law. However, such incidents are usually not reported; and this could be attributed to fear among citizens to report such incidents; as such incidents have been relatively common in the past.

### 2.4.2. Right to Bail

Bail may generally be defined to mean a temporary release of an accused person upon certain conditions pending the finalisation of court

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\(^{658}\) Ibid, p. 258.

\(^{659}\) C.M. Peter, op. cit., p. 594.
proceedings.\textsuperscript{660} It is like a conditional discharge in the sense that person’s liberty at that particular time is tied up with bail conditions.

There are three types of bail. These are the police bail, bail pending trial and bail pending appeal. Under all situations, bail is considered to be a right of the person whose liberty is at stake pending the due process of the law. Though righteous in essence, the right to bail is not an absolute one as it granted in the exercise of court’s discretion.

Bail as an aspect of criminal justice has a long history. While its origin could be traced in medieval justice, in the modern times, it is traced to the Magna Carter which provided, inter alia, that no free man shall be arrested or detained in prison unless by the law of the land.\textsuperscript{661} In England, bail has also been related to Petition of Right of 1628; the Habeas Corpus Act of 1679 and the Bill of Rights of 1689.\textsuperscript{662}

Presumption of innocence is one of the pillars of the rule of law doctrine. In substance, rule of law is one of the cardinal principles of the Zanzibar constitution which enshrined under Section 12(6)(b) of the Constitution of Zanzibar, 1984. The Section makes provisions that:

“no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.”

As indicated above, in 2018, ZLSC received 12 complaints of relating to denial of bail; and managed to assist 10 clients to obtain bail. Furthermore, the Centre managed to assist all 98 children in conflict with law to be granted bail before the courts.

In 2018, right to bail was boosted by a warning by the Ministry of Home Affairs of the United Republic of Tanzania, Hon. Kangi Lugola, against police officers denying police bail and ordered that bail should be granted by police even during weekends.

\textsuperscript{660} Chris Maina Peter, Human Rights in Tanzania: …, op. cit., p.527.
\textsuperscript{661} Magna Carter, Chapter 39.
Conclusion and Recommendations
The right to liberty is everyone fundamental right that prohibits the state and other individual to detain others without due process of law. Detention as contrary to liberty, on the reasons provided and subject to the provisions of law, may be applied to deter the liberty of others, should not be misused to deter the rights of others.

Right to bail, which is line with the principle and right to presumption of innocence, is essential for realisation of the right to liberty. Any criminal suspect should be granted bail as long as the crime for which he or she is charged with is bailable. This is a constitutional guarantee and should thus be respected and granted.

2.5. Freedom from Torture and inhuman or Degrading Treatment

Introduction
There are several definitions of torture. The internationally accepted definition of torture is that set out under Article 1 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) 1984:

‘... torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the investigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

The Tokyo Declaration made by the World Medical Association (WMA) in 1975 defines torture as:

The deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the order of
any authority, to force another person to yield information, to make a confession or for any other reason.\textsuperscript{663}

With reference to the above definitions, it can be said that torture is the intentional infliction of severe mental or physical pain or suffering by or with the consent of the state authorities or by an individual or group of persons for a specific purpose. It is often used to punish, to obtain information or a confession, to take revenge on a person or persons or create terror and fear within a population.\textsuperscript{664} Some of the most common methods of physical torture include beating, electric shocks, stretching, submersion, suffocation, burning, rape and sexual assault. It can also include psychological forms of torture and ill-treatment, which very often have the most long-lasting consequences for victims and commonly include isolation, threats, humiliation, mock executions, mock amputations, and witnessing the torture of others.\textsuperscript{665}

National and international legal prohibitions on torture derive from a consensus that torture and its similar ill-treatments are immoral, as well as impractical, and information obtained by torture is far less reliable than that obtained by other techniques. Despite these findings and international conventions, organizations that monitor abuses of human rights (e.g., Amnesty International, the International Rehabilitation Council for Torture Victims, Freedom from Torture, etc.) report widespread use condoned by states in many regions of the world.\textsuperscript{666}

\textbf{2.5.1. Torture by State}

People face torture in many countries. Some are targeted for criticizing the authorities or because they take part in peaceful political activities, such as protesting or leafleting, or even because a friend or relative had done so. Other individuals are targeted because of aspects of their identity, like their originality, affiliation, sexuality, e.t.c. It has been established that wherever


\textsuperscript{664} www.irct.org/definition of torture (accessed on 20/11/2017)

\textsuperscript{665} Ibid.

\textsuperscript{666} https://www.freedomfromtorture.org/page/where_does_torture (accessed on 18th October, 2017).
and whenever torture happens, it intends to intimidate, silence and break people.\(^{667}\)

While the global fight against torture requires the active support of all people, the government of a given territory is ultimately held responsible for any torture that occurs within its boundaries. Individual governments, therefore, must take it upon themselves to take part in the struggle against torture. Ratification of the Convention is often a necessary first step in this process. At the international level, Article 5 of the UDHR and Article 7 of the ICCPR, as well as Article 5 of the ACHPR, condemn the acts of torture, inhuman or degrading treatment of human beings.

It is believed that freedom from torture is amongst the most important aspect of the rights to life. Amplifying the constitutional provisions on the right to dignity of human persons, Section 13(3) of the Constitution of Zanzibar 1984 provides that:

\[
\text{"It is prohibited for a person to be tortured, inhumanly punished or to be given punishments which are degrading and humiliating."}
\]

Incidence of torture has been a key issue in Zanzibar since the violence that erupted during the 2015 elections and re-run election, with many incidents of abductions and torture reported. In 2018, ZLSC documented five reports of torture by state officials. Two complaints were directed to police officers from Bububu Police Stations and 3 were for SMZ special departments (“vikosi”). However, no action has been taken in response to the acts of torture.

\subsection*{2.5.2. Torture by individuals}

It is hard to find one precise definition of the term torture by individuals as it is simple to relate it by the state. In practice, torture can be carried out by individuals, as it is done by the group of people and by the state. The individuals can inflict torture against individual human being or against the group, as the same group of non-state officials can torture the individual, on several reasons including that of punishment, revenge, deterrence and coercion. Since every individual has the equal right to the respect of his dignity inherent in a human being and to the recognition of his legal status,
any form of torture, whether is done to the individual by the state or by his fellow individual is prohibited.668

It is common to get information of torture by state if you peruse the information relating to Zanzibar, but it is almost not common to get knowledge on what happens in the Zanzibar community on how the individuals are tortured by other individual persons or group. This might be caused by several reasons, not forgetting the culture of the people reside in Zanzibar are very kind and shy. It is hard for instance to get information on what and how wives are tortured by their husbands, but it is shame to find a husband narrating how he is tortured by his wife or wives.669

In 2018, ZLSC received report of abduction and torture of six people, resident of Mtabwe in Pemba North, who were reported missing in April 2018. It was reported that they had been taken by about unknown 15 people at night, some of whom were armed. When they were eventually released, most of them appeared to have been tortured and could not stand or walk properly, while others could not even talk properly and had scars on their backs. Moreover, in July 2018 it was reported by the relatives of Hamad Haji Juma, Juma Suleiman and Haji Khamis, islamic leaders (maimamu) were missing for more than 7 days and the police denied to have any information.

Conclusion and Recommendations
Zanzibar society had experienced the civil and political life since the coming of British who despite their merits, had divided people on political base and having granting their civil rights on the division of their wish. The political life that the people of Zanzibar do have today has been to its high percentage influenced by the past. Incidents of torture, whether by state or non-state actors are not acceptable; and legal action should be taken against perpetrators of torture. A key step towards addressing the problem of torture in Zanzibar would be for Tanzania to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), in order to safeguard freedom from torture.

668 Article 5 of the African Charter of Human and Peoples Rights
669 JUMAZA
CHAPTER THREE

POLITICAL RIGHTS

Introduction

Political rights are those rights that involve participation in the establishment or administration of a government; right to exercise franchise; right of holding a public office; and the right to engagement in political activities, generally. These rights are very important as they explain a sense of individual’s right to belong to a given society.

Political rights which are recognized and protected under International Instruments are the right to take part in governance, freedom of peaceful assembly and freedom of association. The International Instruments (relevant to Zanzibar being part of Tanzania) which recognize and protect these rights include Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) 1966, and African Charter on Human and Peoples Rights (ACHPR) 1981.

Article 20 of the UDHR sets international standards for the exercise of righteous freedom of peaceful assembly and association. While Article 20(1) of the UDHR makes provision for the right of freedom of peaceful assembly and association; sub-article (2) of this Article prohibits compelling any one to belong to an association. Therefore, this Article guarantees the right to assembly and association to every individual670. But such assembly and association must be lawful, peaceful and should be exercised as of right or freedom and not under compulsion.

Furthermore, UDHR guarantees everyone the right to take part in the government of his country.671 It may be directly or through any one freely chosen representative. It also guarantees that everyone has the right to equal access to public service of this country. It finally provides that the will of the people shall be the basis of the authority of the government. It requires that the will of the people shall be expressed in periodic and

670 Article 20(2) of UDHR, 1948
671 Article 21 of UDHR, 1948
genuine elections which shall be by universal and equal suffrage; and shall be held by secret vote or by equivalent free voting procedure.

3.1. Freedom of Assembly and Association

The terms freedom of assembly and freedom of association may be used to distinguish between the freedom to assemble in public places and the freedom to join an association. Freedom of assembly is often used in the context of the right to protest, while freedom of association is used in the context of labor rights. Section 20(1) of the Constitution of Zanzibar, 1984 makes provisions that, save in his own free will, no person shall be prevented to exercise his freedom to assemble and associate with other persons in whatever manner he likes, and especially for establishing and become a member of workers’ unions, human rights organizations, or other useful associations and that are legally accepted. That is, the right to associate and to assemble is voluntary, in the sense that one is allowed to form and join trade union, human right associations and any other association for his or her benefit. However, Section 20(2) provides for limitations in the exercise of these two rights, including in case of matters related to the interest of defense and security of the citizens, health aspects and those of society; and matters related to the preservation of right and freedoms of other persons.

In 2018, freedoms of assembly and association in Zanzibar were affected by a number of factors, including continued ban on political assembly, unless it is within a constituency of a politician; and introduction of the Political Parties Bill. These were the two factors that mainly affected freedoms of assembly and association in Zanzibar in 2018. Freedom of assembly continued to be limited due a ban issued by the President of the United Republic of Tanzania, Hon. John Pombe Magufuli in June 2016. The ban included also limiting internal meetings, unless specific authorization is granted.

In November 2018, the Parliament of the United Republic of Tanzania had the bill on Political Parties Act of 1992 tabled before it. The bill proposed

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672 See Sharon Sauwa “Muswada wa vyama vya siasa watua rasmi bungeni” Mwananchi Newspaper, 16 November 2018, at https://www.mwananchi.co.tz/habari/Kitaifa/Muswada-
several amendments to the Political Parties Act, which will serve to further limit freedoms of assembly and association for political parties. The bill was widely criticized by various stakeholders, including CSOs and opposition political parties such as CUF, ACT Wazalendo and CHADEMA, who called for changes to the proposed amendments so that they conform to the Constitution of the United Republic of Tanzania of 1977 and regional and international human rights standards. However, the Bill was passed by the Parliament without accommodating any changes. Provisions within the amendments which were found by stakeholders to be arbitrarily limiting freedoms of assembly and association include: vague provision, which leave loopholes for multiple interpretations and abuse; severe penalties for contravention of offences;\textsuperscript{673} disregard of the principles of natural justice; and discretionary powers of the Registrar of Political Parties, including policing and regulating of internal affairs of political parties.

On 9\textsuperscript{th} December 2018, fifteen (15) opposition political parties issued a statement against the proposed bill to amend the Political Parties Act of 1992.\textsuperscript{674} The political parties include: ACT-Wazalendo, NLD, ADC, Chauma, Chadema, CTK, CUF, UDP and NCCR Mageuzi. Chadema Secretary General and Dr. Vicent Mashinji, noted that the Bill arbitrarily limits freedom of opposition political parties to collaborate in political activities and gives the Registrar of Political Parties immunity against legal proceedings and denies political parties an opportunity to challenge his decision within the justice system.\textsuperscript{675} Zitto Kabwe (Member of Parliament) from ACT Wazalendo mentioned that the Bill will lead to death of multiparty system in Tanzania.\textsuperscript{676} On his part, the Chairperson of Chaumma, Hashim Rungwe, expressed that opposition political parties had joined

\textsuperscript{673} For instance, a person who contravenes the requirement of conducting civic education or training to a political party and without approval of the Registrar is liable to a fine of not less than one million shillings but not exceeding five million shillings or to imprisonment for a term of not less than six months but not exceeding twelve months or to both.


\textsuperscript{675} Ibid.

\textsuperscript{676} Ibid.
hands to strongly oppose the Bill because it infringes on constitutionally-guaranteed freedoms of assembly and association for political parties.

The limitation and interference of freedom of association and assembly in Zanzibar was also imposed on Kituo cha Katiba (KCK), which in collaboration with CSOs in Zanzibar, sought to conduct a validation meeting on the findings of a fact-finding on Zanzibar’s Government of National Unity (GNU). The meeting was stopped on 8 August 2018 by police officers, citing the security reasons.

Conclusion and Recommendations
The situation of freedoms of assembly and association in 2018 was mainly affected by the proposed amendments of the Political Parties Act, which pose a threat for political parties. ZLSC recommends review of the amendments and all key actors to come together and reach a consensus on how best to protect freedoms of assembly and association for political parties, in both Tanzania Mainland and Zanzibar. The Police Force is also encouraged to objectively apply the Police Force and Auxiliary Services Act in relation to freedom of assembly in line with the Guidelines on Freedom of Association and Assembly in Africa and international human rights standards.

3.2. Right to Take Part in Governance
Introduction
This part examines two important governance issues relating to Zanzibar political society. These two issues are (i) right to vote and (ii) right to participate in political life.

3.2.1. Right to Vote
The right to vote is provided for under Section 7 of the Constitution. There is universal suffrage in the exercise of this right to those who have attained the age of 18 years. This right is subject to a number of limitations as provided under the Constitution. For example, one must prove, among other things, his residence, age and be in possession of a voter’s identity card. The House of Representatives has been empowered to enact law(s)

to regulate all matters necessary for the election to be conducted and the exercise of the right to vote.\textsuperscript{678}

In October 2018, residents of Jang’ombe Constituency in Zanzibar participated in a by-election of a representative in the House of Representatives. CCM’s Ramadhan Hamza Chande emerged the winner with 90.5% of the votes (6,581 votes). The Civic United Front (CUF), the main opposition party in Zanzibar, however, announced boycotting the by-elections, stating that participating in the by-election means accepting the results of general elections re-run of March 2016, which put President Dr. Ali Mohammed Shein in the Office.\textsuperscript{679}

3.2.2. Right to Participate in Political Life

Section 9 of the Constitution of Zanzibar 1984, though providing a directive principle that cannot be upheld by courts,\textsuperscript{680} it deals with government and the people. It declares Zanzibar to be a democratic society. It acknowledges that the basis of government powers is the people of Zanzibar themselves; and that the Constitution of Zanzibar shall guarantee that people participate in the governance of their society.

Section 21 of the Constitution provides among other things that the right to freedom of participating in public affairs including public services, in that, every Zanzibari is guaranteed the right to participate in the decision making for matters that affect him/herself or the interest of the nation. Also every Zanzibar is guaranteed the right to participate in the governance of Zanzibar either directly or through representatives who are voluntarily elected.\textsuperscript{681} Thus, the Constitution of Zanzibar makes meaningful, provisions that their implementation has brought some kind of peoples' participation in different capacities of the country leadership.\textsuperscript{682}

In 2018, the right to participate in political life in Zanzibar continued to be affected by the political tension which started after the 2015 general

\textsuperscript{678} Zanzibar Human Rights Report, 2016
\textsuperscript{680} Section 10A of the Constitution of Zanzibar 1984.
\textsuperscript{681} Section 21 of Zanzibar Constitution, 1984
\textsuperscript{682} Zanzibar Human Rights Report, 2016
elections – which faced several controversies following nullification of election results. Since then, there has been tension and political disagreements between leaders and members of the ruling party – CCM – and the main opposition party in Zanzibar, CUF.

ZLSC calls upon the leaders of CCM and CUF to sit and reconcile their differences in order to preserve peace and promote democracy ahead of the upcoming elections in 2019 and 2020. All issues which are controversial as well as complaints by opposition political parties must be addressed in order to guarantee and promote the right to participate in political life.

**Conclusion and Recommendations**

Right to take part in governance or participate in political life, as well as right to vote are essential and should be protected and promoted by the Government. As Tanzania heads into the elections in 2019 and 2020, it is important that these rights are safeguarded, in order to lay foundation for free and peaceful elections and avoid post-election violence like during the last elections. To this end, political tensions, especially between the ruling party (CCM) and the main opposition party (CUF) should be addressed.
CHAPTER FOUR

ECONOMIC RIGHTS

4.0 Introduction
Economic rights include right to own property and right to work. The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees promotion of economic rights in an equal manner. Each State is duty bound to ensure progressive realization of economic rights to the maximum of its available resources. Economic rights include the right to own property, land being one of them; and the right to work. This highlights the situation of these key economic rights in Zanzibar for the year 2018.

4.1 Right to Own Property
Article 17 of the Universal Declaration of Human Rights of 1948 recognizes the right of everyone to own property alone as well as in association with others; and that they shall not be deprived of that right arbitrarily by anyone.683

Right to acquire land in Zanzibar is governed by various laws. The main laws are: the Constitution of Zanzibar of 1984; the Land Tenure Act 1992; the Land Acquisition Decree of 1909; the Acquisition of Land (Assessment of Compensation) Decree 1949; and the Town and Country Planning Decree 1955. Section 17 of the Constitution of Zanzibar declares that the government shall not acquire any private property, which in this sense includes immovable properties, unless that the acquisition is of ‘utmost importance’ and ‘absolutely important’ to legalise acquisition of a person’s property.

Although the Constitution of Zanzibar 1984 directs the government, when it acquires the private lands for public interest, has to compensate a holder fairly and adequately,684 there exists no interpretation on what constitutes fair and adequate compensation. The Land Tenure Act 1992 declares that a

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683 Article 17 of the Universal Declaration of Human Rights,
684 Section 17 of the Constitution of Zanzibar, 1984
holder would be compensated according to the market value and unexhausted improvements.\textsuperscript{685}

In 2018, the situation of realizaiton of the right to own property in Zanzibar was more or less the same as that of 2017. No significant events occurred to change the situation. Effective realization of this right continued to be threatened by climate changes, which have a negative impact on land use systems, resulting into both direct and indirect repercussions for land access and land tenure. An assessment conducted in 2016 indicates that shifts in climatic regions, rising sea levels and increases in extreme climatic events are likely to reduce the availability of land suitable for human settlement and agricultural production.\textsuperscript{686} This is due to ‘temperature increase, sea level rise and associated flooding, and restrictions in water supply, leading to population migration and displacement and the need to adjust livelihood patterns to new circumstances.’\textsuperscript{687} Consequently, there will be increase competition for land, hence threatening land access and tenure for the majority of people.

In response to threats posed by climatic changes, the Zanzibar Government established the Department of Disaster Management, which is tasked with monitoring climate changes and improving information based on disasters. However, the department is faced with a number of challenges, including shortage of professional staff, shortage of relevant equipment, as well as shortage of centres for conducting monitoring.\textsuperscript{688}

Moreover, a large amount of urban land in Zanzibar remains unplanned and many people live in areas of high risk, which are prone to floods. A large section of the society has limited access to planned land. This is due to affordability of planned land and most land suitable for human settlement and agriculture being acquired by a few well-off individuals and politicians. This presents a threat to effective realization of the right to acquire and own land property in Zanzibar.

\textsuperscript{685} Section 56 of the Land Tenure Act, 1992
\textsuperscript{687} Ibid.
\textsuperscript{688} Ibid.
4.1.2 Conclusion and Recommendations
It takes time to build a just society in terms of property rights. This is due to human behaviour who always fights to acquire property more and more and deprive others even if his brothers from owning and enjoying the same. The right to acquire and own property particularly land in Zanzibar faces number of challenges including the nature of the island itself. Zanzibar is small while the number of its inhabitants is increasing daily.

In order to guarantee access to land property for majority of Zanzibaris, the Government needs to ensure land planned land is accessible and affordable. This will also ensure fair distribution of land resource, instead of the current practice of a few rich individuals, including politicians, owning large tracts of land, while common Zanzibaris struggle. Land is also essential for realisation of the right to adequate standard of living, which includes right to adequate shelter or decent housing.

4.2 Right to Work
Introduction
The right to work implies the opportunity and freedom of working and engaging in productive employment without being deprived of such doing by any one. Under International Covenant on Economic, Social and Cultural Rights (ICESCR) the State Parties are duty bound to recognize the right to work in their domestic legislations, which shall contain among others, the provisions that grants everyone with the opportunity to gain a living by work.\(^{689}\) Right to work is provided for under the Constitution of Zanzibar; and several legislations have been enacted over the years to ensure protection of this right. These include the Employment Act, No.11 of 2005; The Labour Relations Act, No.1 of 2005; The Public Service Act, No.2 of 2011; The Zanzibar Social Security Fund, Act no.2 of 2005; The Occupational Safety and Health Act, No.8 of 2005; and The Worker’s Compensation Act, No.15 of 1986.

This subchapter looks at the situation of the right to gain living by work and right to just and favourable working conditions, as key components of the right to work, in Zanzibar in the year 2018.

\(^{689}\) ICESCR, Article 6(1)
4.3 Right to Gain Living by Work

**Government efforts to improve situation of right to gain living by work**

In an effort to improve the situation of the right to gain living by work and ease the problem of unemployment in the isles, the Zanzibar Government continued to take several measures, as follows:

**Intention to increase salaries to workers**

During the commemoration of May Day in 2018 in Wete, Pemba North Region, the President of the Revolutionary Government of Zanzibar, Hon. Dr. Ali Mohamed Shein, expressed that his Government intends to increase salaries of workers as efforts to improve the economic situation continue. One of the targets is to increase the minimum wage from Tshs. 150,000 to Tshs. 300,000.

**Loans to facilitate self-employment**

Through implementation of the *Feed the Future Tanzania Mboga na Matunda* Project, funded by USAID, the Government has enabled smallholder horticulture farmers to secure loans for self-employment. The project has given 46 loans worth Tshs. 83,000,000 to small scale farmers. 12 loans worth Tshs. 30,000,000 to 84 farmers in Pemba and 22 Loans worth Tshs. 53,000,000 were provided to 112 farmers in Unguja.

**Training for youth to instil in them employability skills**

The Government has trained 1000 youth in Unguja and Pemba (470 male and 530 female) in order to boost their employability skills and make them more competitive in the job market. Also, through the Alternative Learning and Skills Development Project (ALSDD II), 660 youth (300 men and 360 women) have been trained on self-employment.

**Connecting citizens with employers abroad**

It has connected 1,026 citizens with employers (341 men and 685 women go to work in Qatar, Oman and Community of the United Arab Emirates (U.A.E) as Drivers, Hotel attendants, Stores keeper, in oil industries, Accounting, IT, Catering, industrial works and domestic works. (2,280)
(1,001 men and 1,279 women) are employed locally in various private institutions.

Enforcing new Wages Order
In a move to safeguard the right to gain living by work, in July 2017, the Ministry of Labour, Empowerment, Elders, Youths, Women adopted and introduced new rates of minimum wages for employees of private sector in Zanzibar, rising from Tshs. 145,000 to Tshs. 300,000.\textsuperscript{690}

Challenges in realization of right to gain living by work

Unemployment
Despite the Government’s efforts to address the problem, unemployment—especially among the youth, remains a major challenge in Zanzibar, as it is the case in Tanzania Mainland. The problem is partly compounded by lack of employability skills among most college and university graduates, thus difficulty in securing employment. In other cases, ZLSC has learned that some of the university graduates become choosy when it comes to type of work offered.

Shortage of staff in key sectors
In 2018, ZLSC observed that there is still significant shortage of staff in key sectors, such as health, justice and education. Shortage of workers in these sectors creates a burden for existing employees, who are forced to do more than they are required in order to meet performance expectations, without receiving any additional payment.

4.3.1 Right to Just and Favourable Working Conditions
Right to just and favourable working conditions is guaranteed under the International Covenant on Economic, Social and Cultural Rights (ICESCR). This human rights convention requires States to ensure just and favourable conditions of work, including: fair wages and equal remuneration for work of equal value without and not discriminatory, especially to women; remuneration that will provide a decent living for an individual and their families; safe and healthy working conditions; equal opportunity for

\textsuperscript{690} Issued under Government Gazette as the Legal Notice No.68 that enforces the order to be effective on the 1\textsuperscript{st} July, 2017.
promotion; and enjoyment of holidays.\textsuperscript{691} This right is especial for all types of workers, regardless of their gender, colour, age; nature of formal and informal sectors, foreign and native workers, workers from ethnic and other minorities, self-employed workers, agricultural workers, refugee workers and unpaid workers.\textsuperscript{692} Occupational health and safety is a key component of this right, and is provided for under the Occupational Safety and Health Act No. 5 of 2003.

\textbf{Steps taken by the Government and Judiciary to enhance favourable and just working conditions}

**Inspection of different institutions on payment of the indicated minimum wage**

It was reported that the Government has spearheaded an audit of 297 institutions (261 in Unguja and 36 in Pemba) to check on implementation of labour laws. Special audits were conducted at 470 Institutions (369 in Unguja and 101 in Pemba) to check on implementation of the Wage Order since July 2017, whereby it was found that 289 Institutions (265 in Unguja and 24 in Pemba) have already begun to implement the Order.

**Resolution of labour disputes**

The judiciary sought to safeguard the right to just and favourable working conditions through resolution of disputes, whereby a total of 76 were reportedly entertained. Out of these labour disputes, 52 were at the state go arbitration 15 were at judgement stage, 5 were sent to the Labour Court and 4 were dismissed. Some of the disputes involved non-payment of salary, which contributes to unjust and unfavourable working conditions.

**Training of employees and employers on labour laws**

In 2018, the Government of Zanzibar ensured provision of training for employees and employers in Unguja and Pemba. 24 institutions (14 in Unguja and 10 in Pemba) received training on labour laws. 4 radio programmes and 6 television programmes were also prepared and aired, with the aim of enhance knowledge of labour laws amongst the general public.

\textsuperscript{691} Article 7 of ICESCR.

\textsuperscript{692} https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work
**Challenges in realization of the right to just and favourable working conditions**

Despite the efforts made in enhancing realization of the right to just and favourable working conditions, several challenges continued to exist and affect this right in 2018. These include: shortage of working equipment and facilities; poor condition of buildings and other facilities; shortage of budget; poor remuneration/Inadequate wages; and low awareness about labour laws, rights and duties. For instance, in Pemba, the Judiciary was reportedly faced with several challenges, including court buildings being in poor/dilapidated condition and shortage of vehicles. At Mkokotoni District Court buildings are also in poor conditions and there is shortage of facilities such chairs and tables. Several complaints were also made by teachers regarding their working environment, which has worsened following introduction and implementation of fee-free education policy – characterized by congestion of pupils in class, shortage of classrooms, shortage of learning and teaching materials and shortage of desks.

**Conclusion and Recommendations**

The Government took a number of initiatives in 2018 to safeguard right to work for Zanzibaris. These include enforcing the new Wage Order, inspection of institutions and workplaces and training of employees on labour laws and rights. However, several challenges continue to hinder effective realisation of the right to work, including: shortage of working equipment and facilities; poor condition of buildings and other facilities; shortage of budget; poor remuneration/Inadequate wages; and low awareness about labour laws, rights and duties.

To improve the situation of right to work, the Government must continue to address the challenges indicated above. The Government should ensure favourable working conditions and guarantee the rights to collective bargaining and freedom of association for workers. The ministry responsible for education should ensure improved working conditions for teachers in order to improve quality of education.
CHAPTER FIVE

SOCIAL AND CULTURAL RIGHTS

Introduction

The Universal Declaration of Human Rights (UDHR) recognizes a number of social and cultural rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary international legal source of social and cultural rights. The Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women recognizes and protects the social and cultural rights recognized in the ICESCR in relation to the children and women.

The Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination on the basis of racial or ethnic origin in relation to a number of social and cultural rights. The Convention of the Rights of Persons with Disabilities also prohibits all discrimination on the basis of the disability including refusal of the reasonable accommodation relating to full enjoyment of social and cultural rights.

Social and cultural rights include the right to education, right to adequate standard of living, right to health, the right to education, right to water and the right to culture. The situation of these rights in Zanzibar in 2018 is highlighted under this chapter.

5.1 Right to Education

Introduction

ICESCR recognizes the right to education for everyone and calls education to be directed to the full development of the human personality and the

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693 Article 22 of UDHR
694 Article 3 and 6 of ICESCR
695 Article 4 of the Convention on the Rights of the Child
696 See Convention on the Elimination of All Forms of Discrimination Against Women
697 Article 1 of the Convention on the Elimination of All Forms of Racial Discrimination, 1965
698 Article 4(2) of the Convention of the Rights of Persons with Disabilities
sense of dignity. It recognises that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and groups.\textsuperscript{699} In achieving the full realisation of this right, states are required to ensure: primary education is compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, is made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; and higher education is made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.\textsuperscript{700}

Despite being internationally recognized under the international instruments, the Constitution of Zanzibar of 1984 has not indicated the right to education as part of bill of rights, Instead, it is mentioned under section 10(f) of the Zanzibar Constitution as a political objective of the Revolutionary Government of Zanzibar. The right to education is provided for under the Education Act of 1982\textsuperscript{701} which provides for free and compulsory education.\textsuperscript{702} The Education Act provides for obligation on the part of parents or guardians to ensure that the child regularly attends school until he or she completes the basic education. Basic education is defined to mean basic primary and junior secondary which every child in Zanzibar is entitled to be provided with.\textsuperscript{703}

This chapter focuses on highlighting the situation of the right to education in Zanzibar in 2018, in terms of access to education and quality of education provided.

\textbf{5.1.1 Right to Access Education}

In enhancing the right to access education for all, the Government of Zanzibar took several measures in 2018, including:

- Commencement of construction of nine secondary schools in Unguja and Pemba;

\textsuperscript{699} Article 13(1) of ICESCR
\textsuperscript{700} Ibid, Articl 14(2) (a) – (c)
\textsuperscript{701} Act No. 6 of 1982.
\textsuperscript{702} Section 19 of Act No. 6 of 1982.
\textsuperscript{703} Ibid, Section 20 (1-2).
• Purchase of desks for schools in Unguja and Pemba, including through donations; and
• Continuing implementing the fee-free education policy.\textsuperscript{704}

The key measure is implementation of the fee-free education, which has seen access to basic education in Zanzibar significantly increasing, as is the case in Tanzania Mainland. For instance, at primary education level, enrolment rate rose from 106.9% in 2017 to 116.5% in 2018.

\subsection*{5.1.2 Right to Quality Education}

The international bill of rights requires member states to provide not only accessible education but the education provided has to be of sufficient quality, according to UNICEF quality education includes.\textsuperscript{705}

- Learners who are healthy, well-nourished and ready to participate and learn, and supported in learning by their families and communities;
- Environments that are healthy, safe, protective and gender-sensitive, and provides adequate resources and facilities;
- Content that is reflected in relevant curricula and materials for the acquisition of basic skills, especially in the areas of literacy, numeracy and skills for life, and knowledge in such areas as gender, health, nutrition, HIV/AIDS prevention and peace;
- Processes through which trained teachers use child-centred teaching approaches in well-managed classrooms and schools and skillful assessment to facilitate learning and reduce disparities; and
- Outcomes that encompass knowledge, skills and attitudes, and are linked to national goals for education and positive participation in society.

It is stipulated that everyone has the right to receive education which is of good quality. Zanzibar has to ensure that the standards of education are of sufficient quality and that the conditions relating to the quality of the

\textsuperscript{704} The speech of President of Zanzibar on the 54\textsuperscript{th} anniversaries of Zanzibar Revolution on 12\textsuperscript{th} January, 2018
education provided are also equivalent.\textsuperscript{706} Also, member states to UNESCO Convention against Discrimination in Education are obligated to adopt minimum educational standards to ensure that all schools, public and private, offer the same quality education.\textsuperscript{707} Quality education has to be the same for boys and girls.\textsuperscript{708}

As indicated above, efforts by the Government of Zanzibar have seen increased enrolment in basic education, due to implementation of the fee-free policy. However, the quality of education continued to suffer due several factors, highlighted below:

**Dilapidated buildings and shortage of classrooms and desks**

One of the major challenges affecting quality of education in Zanzibar is school is poor learning environment, mainly characterized by classrooms which are in poor conditions. Among schools which were found to have classrooms which are not in good conditions are Madungu Secondary School and Mgelema Primary School, both of Chake Chake in Pemba. Shortage of classrooms and desks also continued to be among major challenges negatively affecting the right to quality education. In some schools there are up to four shifts in order to accommodate all pupils; and some classrooms classroom have 70 to 100 pupils.\textsuperscript{709}

\begin{thebibliography}{9}
\bibitem{706} Article 4(b), \textit{UNESCO Convention against Discrimination in Education, 1960}.
\bibitem{707} Article 13, ICESCR, 1966;\bibitem{708} Article 2, UNESCO Convention against Discrimination in Education, 1960.
\end{thebibliography}
Shortage of teachers
Fee-free education policy has contributed to increased enrolment in basic education in Zanzibar. However, shortage of teachers continues to be a major problem and teachers are increasingly forced to carry the burden of increased number of pupils and students. According to the Education Officer of Pemba, Mr. Kitwana Sururu, increased enrolment has contributed to the problem of shortage of teachers.\(^{710}\) He added that another factor contributing to shortage of teachers is the slow pace of replacing teachers who retire.\(^{711}\) In February 2018, the General Secretary of the Zanzibar Teachers Union (ZATU), Mussa Omar Tafurwa, mentioned that the study conducted by ZATU indicated shortage of about 800 teachers in Pemba alone.\(^{712}\)

\(^{710}\) ZLSC Media Survey 2018.

\(^{711}\) Ibid.

In January 2019, it was revealed that shortages of teachers and classrooms in secondary schools in Zanzibar were among the reasons for poor performance in form six national examinations of 2018 by most schools in the islands.713 48% of schools which performed poorly in the national examinations were from Zanzibar. Shortage of teachers was said to be more of a problem in regions such as Mjini Magharibi, Pemba North and Pemba South, where some of the teachers teach a class of up to 150 students, which is three times the standard.714 According to the ministry responsible for education, there is shortage of 952 teachers in Zanzibar.715

**Insufficient Budget**
International standard requires 20% of national budget to be allocated for education sector. However, Tanzania, including Zanzibar, is yet to meet this standard. Insufficient budget affects hinders the ability of the ministry responsible for education to ensure full realization of the right to education. For instance, for the financial year 2017/2018, budget set for pre-primary and primary education in Zanzibar was Tshs. 70,724,571,000, but the funds received were Tshs. 50,518,855,184 - which is 71.4% of the budget allocated. For secondary education, the budget allocated was Tshs. 63,496,813,000, while the funds received were Tshs. 27,414,994,282 - which is on 43.2% of the budget. Therefore, apart from being insufficient, the funds are usually delayed and not disbursed in full. ZLSC recommends that sufficient budget should be allocated for the education sector, given its importance in realization of all other human rights.

**Conclusion and Recommendations**
Education is key for realisation of human rights. As such the Government of Zanzibar needs to focus on quality of education, now that implementation of fee-free education policy has resulted into increased enrolment at primary and secondary education levels. Key measures that need to be

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714 Ibid.
715 Ibid.
taken include increasing budget for the education, which help to address challenges such as shortages of learning materials, desks and classrooms. Teachers are also essential for quality education, hence the Government, through the Ministry of Education, should move to ensure more teachers are employed to ease the burden of teaching for existing teachers and improve their overall working environment. Improving quality of education provided will help to address the problem of poor performance in secondary school national examinations, as was the case in 2018.

5.2 Right to Health

Introduction

Right to health is guaranteed under key human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12(1) of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. States have a primary duty to ensure that necessary measures are taken to protect the health of their people and to ensure that they receive medical attention when they are sick. This right also guaranteed under regional treaties that Tanzania is bound to, such as the African Charter on Human and Peoples’ Rights (ACHRPR), African Charter on the Rights and Welfare of the Child (ACRWC) and Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol).

Domestically, the Constitution makes reference to right to health and directs the Government to ensure that every person has access to adequate health care.

This subchapter looks at the situation of the right to access health services and right to quality health services as key components of the right to health, focusing on the year 2018.

5.2.1. Right to Access Health Services

Over the past decade, access to health services in Zanzibar has improved, especially in urban areas where private-sector involvement in provision of
health services has developed. In rural areas, however, inadequate medicine supplies and too few skilled health providers continue to affect the health sector. Improvement in health requires the greater support of the Government and since it a cross-cutting issue, there is a need of cooperation and coordination, especially between the Ministries of Education and Culture; Agriculture and Food Security; Water; and Community Development, Women, and Children, as well as nongovernmental organizations.719

In 2018, the Government of Zanzibar continued to take various steps to ensure progressive realisation of the right to health in Zanzibar, including disbursing relevant funds for procurement of medicines and medical supplies, as well as addressing shortages of resources in the sector. However, several challenges continue to exist and affect realization of the right to health in Zanzibar. These challenges are highlighted below.

**Inadequate numbers and poor distribution of health workers**

Shortage of health workers of different cadres continued to be among key challenges affecting the health sector in Zanzibar in 2018. For the financial year 2017/2018 it was revealed that the sector is facing shortages of health workers such as medical doctors, nurses, laboratory technicians, radiologists and anaesthetists.

**Lack of health insurance coverage**

The issue of lack of health insurance coverage re-emerged as a key issue affecting right to health in Zanzibar in 2018. During his budget speech for the financial year 2017/2018 before the House of Representatives, the Minister of Health insisted that his ministry was in the final process of establishing health insurance in Zanzibar.720 Lack of coverage of health insurance is a major problem for Tanzania as a whole, as more than 60% of the population is not covered. These posses a great risk to health and effective realization of the right to health.

**Shortage of equipment and medical supplies**

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719 Melissa Thaxton, Integrating Population, Health, And Environment In Tanzania, p.4

720 Budget Speech for the Ministry of Health, 2017/2018, p.70
Like health facilities in Tanzania Mainland, health facilities in Zanzibar are faced with shortages of relevant medical equipment and supplies. These equipment and supplies include gas plants, CT-scan, laboratory equipment, anesthetic machines, biochemistry and hematological analyser. This problem is mainly attributed to insufficient budget allocated for the health sector. Hence, the only way to cure this problem is to increase budget for procurement of essential medicines, equipment and medical supplies. Lack of occupational safety and health laboratory was also identified as a challenge affecting right to health in Zanzibar in 2018. In August 2018, the Deputy Minister of Health, Harusi Said, acknowledged that the Mnazi Mmoja Hospital was faced with shortage of beds, especially in maternity wards, due to increased number of patients each day.

5.2.2. Right to Quality Health Services

The Zanzibar Vision 2020 puts emphasis on provision of basic health services for all the people without discrimination. Priority is given to preventive services, combating epidemics, special maternal and child care services and the dissemination of health education for all. Through Vision 2020, the Government of Zanzibar seeks to attain quality health services to its people through, among others, providing standard basic health services, promoting safe delivery, planned motherhood and child survival, and prioritizing child immunization.

However, while implementation of various health-related measures continued in Zanzibar in 2018, several challenges continued to face the health sector and affecting the quality of health services provided at health facilities, chief among them being inadequate funds allocated for the sector and lack of an ICU department within children’s ward.

Insufficient budget is the main factor negatively affecting progressive realisation of right to health. Budget allocated for the financial year 2017/2018 was not sufficient and below the 20% of the national budget

721 Ibid, p.29
723 Zanzibar Vision 2020
724 Ibid
standard. Moreover, not all funds budget for the sector were disbursed, as is usually the case.\textsuperscript{725}

In 2018, it was also reported that there is no Intensive Care Unit (ICU) in children’s ward. In Wete District in Pemba, some children had ate food containing poison, but when they were rushed to the district hospital, their lives were at stake due to lack of ICU at the hospital.\textsuperscript{726}

**Conclusion and Recommendations**

Despite the efforts taken by the government of Zanzibar, the health sector faces many challenges, including the shortage of human resources for health which sternly hampers the implementation of health activities at all levels, which vehemently affect the providing of the quality of health services in Zanzibar. Budgetary allocation for the health sector still falls below the international standard. In order to improve realisation of right to health, the Government must increase budget for this important sector. Ministry of health also needs to enhance efforts to address challenges faced in the health sector, including shortage of relevant medical supplies.

**5.3. Right to Water**

**Introduction**

Right to water is defined as the right of everyone to **sufficient**, **safe**, **acceptable** and **physically accessible** and **affordable** water for personal and domestic uses.\textsuperscript{727} It is also known as right to water and sanitation and is essential and indispensable in ensuring life with dignity.\textsuperscript{728} This right is not provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, it is guaranteed in human rights conventions such as the UN Convention on the Rights of the Child (CRC).

\textsuperscript{725} Budget allocated was TZS 72,936,229,000, but funds disbursed were TZS 56,085,137,747

\textsuperscript{726} Refer Mmoja afariki wengine wapaokea matibabu kwa kula chakula kinachodiwa kua na sumu available at www.pembatoday.com accessed on 31\textsuperscript{st} March 2019


\textsuperscript{728} Article 1.1 of the General Comment No. 15. The right to water, UN Committee on Economic, Social and Cultural Rights, November 2002,
and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).\textsuperscript{729}

Right to water includes right to access water and right to quality water. This subchapter looks at the situation of these two sub-rights in Zanzibar in 2018.

\textbf{5.3.1. Right to Access Water}

\textit{Efforts to improve access to water}

Everyone is entitled to sufficient and reliable sources of water for personal and domestic uses. In 2018, the Revolutionary Government of Zanzibar continued taking various measures to ensure citizens have access to water for different uses. This was done through implementation of different water programmes and projects.

In January 2018, the Government revealed that a big water project worth USD 23.673 million loaned from the African Development Bank (ADB) was being implemented in the Urban West Region, with installation of 68 kilometres water pipelines and water tanks.\textsuperscript{730} The project is implemented by STECOL Company from China is estimated to be completed by April 2019, and upon its completion it is estimated to increase the availability of water in the Urban West Region from 67 million litres to 81 litres per day, an increase of 20.9\%.\textsuperscript{731} It was also reported that there is another big project worth USD 92 million, a loan issued by the Exim Bank of India, will be undertaken to improve water supply in West A and West B Districts in Unguja with the CRUCS Company from India overseeing the implementation of the project.\textsuperscript{732} DROP4DROP, an international organization that is dedicated to developing clean water solutions in different parts of the world, is also planning to implement a number of clean water projects in Zanzibar.

\textsuperscript{729} Article 24(2) of CRC & Article 14(2) of CEDAW.
\textsuperscript{731} Ibid.
\textsuperscript{732} Ibid.
In 2018, it was also revealed that water desalination\textsuperscript{733} should be considered as among solutions to water problems in Zanzibar in order to ease the water problem.\textsuperscript{734} According to the organization, the projects, which include providing sustainable community wells, will benefit a total of 4,900 people and 806 households; and will reduce the 2-7 hours spent a day in fetching water, as well as enhance educational opportunities and time to engage in work for children and adults respectively.\textsuperscript{735}

**Challenges in accessing water**

However, despite efforts to increase access to water services in Zanzibar, some areas – especially rural areas – continued to experience water problem in 2018. One such area is Mjini Magharibi Region, which has been experience limited access to clean and safe water. However, in 2018 the Zanzibar Water Authority (ZAWA) revealed that it constructing tanks that would carry about eight million litres of water, in order to address water problem in the region.\textsuperscript{736} Another problem affecting access to water for Zanzibaris is water loss caused by water leakages.

**5.3.2. Right to Quality Water**

Quality water means water that is clean and safe, water that is free from pollution and other harmful substances. Quality is important because safe drinking water should be within acceptable standards with regards to taste, odour and appearance.\textsuperscript{737} Acceptable water is water that is of an acceptable colour, odour and taste for each personal or domestic use, as well as culturally appropriate and sensitive to gender, lifecycle and privacy requirements.\textsuperscript{738}

As indicated above, several efforts were made in 2018 to address the problem of limited access to quality water in Zanzibar, including

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\textsuperscript{733} A process to remove salt from seawater making it suitable for human consumption.


\textsuperscript{735} Ibid.

\textsuperscript{736} Laylat Khalfan “Tatizo la maji Mjini Magharibi kutoweka” Zanzibar Leo, 31 August 2018, at \url{http://zanzibarleo.co.tz/2018/08/31/tatizo-la-maji-mjini-magharib-kutoweka/}

\textsuperscript{737} World Health Organisation, Rights to Water, Fact Sheet No.5, p.12.

\textsuperscript{738} See UNDESA, Human right to water and sanitation, at \url{https://www.un.org/waterforlifedecade/human_right_to_water.shtml}, accessed 22\textsuperscript{nd} January 2019.
implementation of various water programmes and projects and introduction of new water projects in different areas. However, as these measures continue to be taken access to quality water remains a challenge in different parts of Zanzibar. According to DROP4DROP, an international organization dedicated to developing clean water solutions in different parts of the world, clean water is less accessible in Zanzibar due to factors such as leaking pipes and annual droughts in springtime.\(^{739}\) This limited access to clean water, especially in rural areas, sometimes forces people (especially women) to travel up to 7 hours a day to fetch water, which is still often contaminated and unsafe.\(^{740}\) According to the Zanzibar Water Authority (ZAWA), only has 50% of required fresh water is shared among Zanzibaris.\(^{741}\) Other factors affecting access to quality water in Zanzibar include: damage to water infrastructure and destruction of water sources; insufficient budget allocated for water sector; water loss caused by leakages; delays in completing water projects; and inability to effectively monitor water projects.

**Conclusion and Recommendations**

While the Government continued to take steps to improve access to clean and safe water in 2018, several challenges continued to hinder full realisation of the right to quality water. These challenges include: budgetary constraints, water leakages and poor monitoring of water projects. In order to address these problems, the Government should first increase budgetary allocation for the water sector; and ensure water projects are properly and effectively monitored. Members of the public should refrain from tampering with water sources and causing damage to water infrastructure, which leads to water loss. Members of the public, as well as government institutions and agencies, should also pay their water bills to enable the Zanzibar Water Authority to operate effectively.

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\(^{740}\) Ibid.

\(^{741}\) Ibid.
5.4. Right to Adequate Standard of living

Introduction

An adequate standard of living is a human right recognized under various international human rights instruments and is understood to establish a minimum entitlement to food, clothing and housing at an adequate level. According to the Universal Declaration of Human Rights (UDHR), “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” This right is also provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

5.4.1. Right to Food

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger. States which have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), including Tanzania, have a duty to ensure that their citizens have ability to access food or means of its procurement physically and economically, at all times. They are required to take all the appropriate measures to improve methods of production, conservation and production of food, and if possible, reform the agrarian system for the purpose of achieving the most efficient development and utilization of natural resources.

In 2018, the Government of Zanzibar continued to take several measures to ensure progressive realization of the right to food in Zanzibar. This includes continued investment in agriculture, which employs 40% of the...
population, in order to boost food production. There was thus no serious food insecurity problem in the year 2018. However, according to the Director of Food Security Department in the Ministry of Agriculture, Natural Resources, Livestock and Fisheries of Zanzibar, Mansura Mosi Kassim, one of the major causes of food insecurity in Zanzibar is high food prices, making it difficult for some members of the society to afford. This problem affects access to nutritionally adequate food and contributes to the problem of malnutrition.\footnote{FAO in Tanzania, Stakeholders meet in Zanzibar for Integrated Food Security Phase Classification roll-out, at http://www.fao.org/tanzania/news/detail-events/en/c/1095433/, accessed 22\textsuperscript{nd} January 2019.}

A 2017 report on food security and nutrition in Zanzibar\footnote{ZANZIBAR FOOD SECURITY AND NUTRITION MONITORING – IPC TECHNICAL WORKING GROUP (TWG), Zanzibar Food Security and Nutrition Analysis Report, August 2017 at https://reliefweb.int/sites/reliefweb.int/files/resources/1_IPC_Tanzania_Zanzibar_AcuteFI_Report_2017JulySept.pdf, accessed 20\textsuperscript{th} January 2019.} shows that common causes of food insecurity Zanzibar include poor crop harvests and low food stock at household level caused by poor Vuli rainfall; high food prices coupled with low household incomes, which reduces household purchasing power and thus affects access to adequate and nutritious food; and floods, which results in internal displacement, destruction of infrastructure, housing which impacted on acute food security (availability, access and utilization), especially for poor households.\footnote{Ibid.} According to this report, food accessibility is a major limiting factor to household food security in Zanzibar, due to low household income that leads to low purchasing power.\footnote{Ibid.} Access to adequate food is undermined by higher dependency on food purchases, especially rice and wheat.\footnote{Ibid.} The report also highlights that food utilisation is a minor limiting factor to achieving food security in Zanzibar. Intake of cereals (carbohydrates), and fat is high, while there is limited use of protein source food, which partly driven by limited knowledge on nutrition.\footnote{Ibid.}
5.4.2. Right to Shelter

The right to shelter is recognized under the Universal Declaration of Human Rights (UDHR) “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States parties are required to take appropriate steps to ensure realization of right to housing and continuous improvement of living conditions. Elements of right to shelter include security of tenure, affordability, habitability, accessibility, location and cultural adequacy.\textsuperscript{751}

The Zanzibar Development Vision 2020 recognises better shelter/housing as key in achieving poverty eradication.\textsuperscript{752} One of the goals is development of a social environment conducive for peace, harmony, protection and development for all, including through provision of adequate and sustainable habitat. According to the Vision document, adequate shelter means adequate privacy, adequate space, physical accessibility, adequate security and security of tenure, adequate lighting, heating and ventilation, adequate basic infrastructure, including water supply, sanitation and waste management facilities, suitable environmental quality and health related factors.\textsuperscript{753} The Vision’s policy objective on provision of adequate and sustainable habitat include to: enable people to obtain shelter, and to protect and improve dwellings and neighbourhoods so that every Zanzibari will have adequate shelter that is healthy, safe, secure, accessible and


\textsuperscript{753} Ibid.
affordable; increase access to adequate and affordable habitat, with particular focus on rural areas through supporting rural and urban housing development schemes; and enhance the provision of housing services in the rural and urban areas.\textsuperscript{754}

In 2018, access to decent housing continued to be a key concern in Zanzibar, caused in part by increasing population. Low household income also contributes to the problem of shelter in Zanzibar, as people who cannot afford planned land tend to construct houses in areas which are not decent, leaving themselves vulnerable to diseases. High housing prices means people cannot afford to build or rent decent houses.\textsuperscript{755} Limited access to land, couple with bureaucracy in obtaining building permit, is a major problem for Zanzibaris who have a low income.

**Conclusion and Recommendations**

For years, the Revolutionary Government of Zanzibar for years has been ensuring its people to have food for eating and adequate housing. However, challenges such as unreliable rainfall and budgetary deficits for the agricultural sector threaten realisation of right to adequate standard of living. High food and housing prices pose a challenge for most Zanzibaris to realise their right to adequate standard of living. Low awareness about importance of nutritionally-rich food also contributes to the food insecurity for a section of Zanzibar society. The Government should make efforts to ensure that there is sufficient budget allocated for the agriculture sector. There is also need to raise public awareness about the importance of nutritionally-rich food, decent shelter and right to adequate standard of living overall. NGOs could help the Government to raise public awareness in this regard.

**5.5. Right to Culture**

**Introduction**

Cultural rights are those rights relating to art and culture,\textsuperscript{756} which are intended to guarantee people and their communities an access to their

\textsuperscript{754} Ibid.


\textsuperscript{756} F Jaffeson (2000), Human Rights in Africa, p.34
culture and participation in the culture of their choice. They are rights related to different cultural themes, including the language; rights of the people to participate in cultural life, cultural and artistic production; cultural heritage; intellectual property rights (IPR); author’s rights and rights of minorities and access to culture.

Cultural rights at international level have been recognized under the Declaration on the Principles of International Culture Cooperation; the Declaration on the Rights Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Rights to Development; the International Convention on the Protection of the Rights of Migrant Workers; and the ILO Convention No. 169 on the Rights of Indigenous and Tribal People. This right is also recognized under the Universal Declaration of Human Rights (UDHR); the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the UNESCO Principles on International Cultural Co-operation.

Domestically, the cultural rights are recognized under the Zanzibar Constitution of 1984 that requires the Revolutionary Government of Zanzibar to promote unity and development of the people and social welfare in the country by directing its policy in ensuring the Zanzibar culture is protected, enhanced and promoted. The Government under the Ministry of Information, Culture, Tourism and Sports, has been vested with powers of ensuring that the culture of Zanzibar is duly protected, enhanced and promoted in and outside Zanzibar.

5.5.1. Right to Participate in Cultural Life
Right to participate in cultural life raises three State obligations, namely to respect, protect and fulfil; and may only be limited in accordance with the law and to the extent that it does not interfere with the rights of other people. States are required ensure this right is respected, protected and

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757 Article 27 of UDHR.
758 Article 15 (1) of ICESCR.
759 Article 1 of the Declaration of Principles of International Cultural Co-operation.
760 Section 10(f) of the Constitution of Zanzibar, 1984.
fulfilled, unless where cultural practices against the law and violate human rights.

In 2018, right to participate in cultural life continued to be among the human rights that are freely and fully enjoyed in Zanzibar. There were no reports of interference with enjoyment of this right.

![Picture 21: one of the traditional dance in cultural festival in Zanzibar 2018](image)

**Conclusion and Recommendations**
Culture is dynamic not static. It changes as the change of time and people happen. It takes differences as par time goes. The culture of 1960s is not the same as we have today in 2017. Zanzibar Culture is influenced to change and it is more affected by the integration and interaction with different people in the country. Right to culture enables everyone to participate in cultural life and enjoy the benefits of culture. The Government has a big role to play in ensuring preservation and promotion of Zanzibari culture.
CHAPTER SIX

COLLECTIVE RIGHTS

Introduction

Collective rights which are also called group rights or solidarity rights are the third generation of human rights which are entitled to individuals as part of the group or certain community. These rights include environmental rights, right to development, the right to peace and security, right to separate identity and the right to self-determination.

Despite being important, collective rights were not at first included in the list of human rights of the world, but subject to the long fight in particular by the third world countries, because of socio economic and political marginalization in such countries, Collective rights have at last being recognised as other fundamental rights. On the African continent, these rights are well reflected in the African Charter on Human and Peoples Rights 1981. The Charter made significant contributions to the development of these rights by making provisions for them\textsuperscript{761}. The rights which have been given priority in Africa falling in this category include children’s rights, women’s rights,\textsuperscript{762} refugee rights, minority rights and the rights of indigenous peoples among others.

6.1. Right to Development

The United Nations (UN) has defined development as “...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”\textsuperscript{763}

\textsuperscript{761} Robinson, M, “Protecting Human Rights: the Role and Responsibilities of the Independent Bar,” being a keynote address delivered at the inaugural World Conference of Barristers and Advocates, Edinburgh 28\textsuperscript{th} June, 2012.

\textsuperscript{762} Article 18(3) of African Charter on Human and Peoples Rights

Governments are obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals ensure meaningful participation in development and fair distribution of benefits resulting from such development.\textsuperscript{764} The Declaration further provides for states’ duty to co-operate with each other in ensuring development and eliminating obstacles to development.\textsuperscript{765}

Right to development cannot be achieved without considering other related rights including the right to self-determination and the right to natural wealth or resources. By considering its importance, the two conventions have considered the right to self-determination as vital point to the right of development as follows:

\textit{“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”}\textsuperscript{766}

Realization of all other human rights, as enshrined in Zanzibar Constitution and regional and international human rights instruments, is essential for realisation of the right to development. In 2018, right to development in Zanzibar was affected both positively and negatively by different factors. This sub-chapter looks at the situation of four aspects of the right to development in Zanzibar in 2018, namely: political development, social development, cultural development and economic development.

A 2011 report by the United Nations Conference on Trade and Development (UNCTAD) indicates that poor infrastructure is key obstacle to development in Africa.\textsuperscript{767} One of the factors that continued to hinder effective realization of the right to development in Zanzibar in 2018, is poor and inadequate road infrastructure.

\textsuperscript{764} Article 2(3) of the UN Declaration on the Right to Development, A/RES/41/128 of 4\textsuperscript{th} December 1986
\textsuperscript{765} Ibid Article 3(3)
\textsuperscript{766} Article 1 of ICCPR and ICESCR
Several incidents attesting to this factor were reported in different parts of Zanzibar in 2018. Once such incident occurred in Wete District in Pemba North, whereby in May 2018 citizens of the districts were stranded due to potholes and cracks on the Wete Gando Road, damage caused by rainfall.\textsuperscript{768} People travelling out of the district had to cut their journeys and trips short, including to hospital. Smaller cars managed to pass through the emergency road in the area.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Cracks_and_potholes_due_to_rainfall_damage_at_Wete_Gando_Road_Pemba_North.jpg}
\caption{Cracks and potholes due to rainfall damage at Wete Gando Road, Pemba North}
\end{figure}

In May 2018, there was another incident involving Mkoani-Chake Chake road, which was also damaged due to heavy rainfall at Changaweni area. A similar incident occurred in May 2017, whereby the road was repaired. Recurrence of this problem, not only at Changaweni area, but other areas of Zanzibar points to inadequate road maintenance.

On a positive note, it was reported in February 2018, that a 35-kilometre-long Ole-Kengeja road is expected to be fully tarmacked by the year 2020.\textsuperscript{769} This was revealed during a one-day visit by the presidential advisor in Pemba, Dr. Mauwa Abedi Daftari, to check on progress made in road construction. In February 2018, it was also reported that a road was being built for 177 residents of Ngomeni Village in Chakechake District, following order by the President of the Revolutionary Government of Zanzibar, Hon.

\textsuperscript{768} ZLSC Media Survey 2018.
\textsuperscript{769} Ibid.
Dr. Ali Mohamed Shein. In April 2018, Tanzania Social Action Fund (TASAF) facilitated construction of a road and a bridge for 2000 citizens of Mlindo Ward – Micheweni District in Pemba.\(^{770}\)

![Picture 23: A road under construction in Ngomeni Village in Chakechake District](image)

Apart from infrastructural problems, economic development is Zanzibar is affected by tax evasion and avoidance, like in Tanzania Mainland. This is partly contributed by importation of counterfeit and substandard products. According to a 2017 report on the situation of counterfeit products in Tanzania by the Confederation of Tanzania Industries (CTI), Zanzibar is one of the major entry points for such products in Tanzania.\(^{771}\) Tax evasion by companies and other businesses continued to be a key challenge affecting the right to development in Zanzibar in 2018. Revenue collection is essential for realization of socio-economic rights such as right to education, right to water and right health. According to the Office of the United Nations High Commissioner for Human Rights collection of taxes and allocation of resources is essential to the realization of the right to development and requires efficient and equitable State action. Therefore, the Government of Zanzibar needs to ensure that it addresses loopholes

\(^{770}\) ZLSC Media Survey 2018.

that lead to loss of revenue, such as tax evasion and importation of counterfeit and substandard goods.

In terms of social development, as discussed in Chapter Five above, several challenges continued to hinder effective realisation of rights to education, health, water and adequate standard of living. In education, while implementation of fee-free education policy has significantly increased enrolment in primary education, it has led to increased problem of shortage of classrooms, which in turn affects the quality of education provided. Shortage of teachers is also a problem for both secondary and primary education in Zanzibar, which seriously affects quality of education.

The situation of political development in 2018 was affected by arbitrary restrictions on rights such as freedom of expression, freedom of assembly and freedom of association, imposed by restrictive laws enacted since 2015, such as the Media Services Act of 2016, Cyber Crimes Act of 2015 and the Statistics Act of 2015, as amended in 2018. This has also affected civic space in Zanzibar. Introduction of the Electronic and Postal Communications (Online Content) Regulations further affected political development.

6.2. **Right to Enjoy and Benefit from Natural Resources**

The right to benefit from natural resources is another kind of human right that every human being has to enjoy. In Zanzibar the right to natural resources includes land, sea and forests. These resources form the backbone of the economy by contributing through economic activities like tourism and farming. Natural resources are materials extracted or purified from their natural state as opposed to materials produced through human effort; and they are used by manufacturing industries, mining industries, and the tourism industry.\(^{772}\)

The right to natural resources is recognized under various international and regional human rights instruments, as the same is recognised under the municipal laws in Zanzibar. This right is covered under the United Nations General Assembly Resolution 1803 of 1962 called “Permanent Sovereignty

over Natural Resources”, which provides four guiding principles for the exploitation of natural resources, which are: individual and state sovereignty over natural resources; exploitation of natural resources for the benefit of the people; necessity to reach consensual agreements to exploit natural resources; and utilization of natural resources for the purposes of human development. This right is connected to the right to development and right to self-determination; and is also recognized and protected under Article 21 of the African Charter on Human and Peoples’ Rights.

In 2018, the Government continued implementing various measures and projects, which contribute to realization of the right to enjoy and benefit from natural resources of the Zanzibaris, particularly through generation of revenue which is used to bring about development. However, the right to enjoy and benefit from natural resources in Zanzibar continued to be affected by several factors. These factors include corruption, tax evasion and limited access to water. Like in Tanzania Mainland, corruption is a key issue affecting development and enjoyment of human rights in general in Zanzibar. Corrupt transactions contribute to loss of revenue, as does tax evasion – which is also a key concern in Zanzibar. Limited access to adequate land for Zanzibaris, attributed by factors such as high prices and low purchasing power, also affects realization of their right to enjoy and benefit from natural resources.

The rights to be benefit from natural resources is considered to be a serious challenge for 88 people from Dundua Village in Bumbwini, Unguja, who complain on the decision of the Revolutionary Government of Zanzibar to force all villagers to move from their village to another area where the government has built a new village. Furthermore, 55 villagers from the same area (Dundua) were only compensated for trees rather than the area (land) taken by the government on the ground that area is public land. The Dundua Village is planned to be a buffer zone for oil and Gas in Zanzibar.

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773 Ibid
**Conclusion and Recommendations**

The Government continued to promote and protect the collective rights in 2018, in particular the right to development and right to enjoy and benefit from natural resources. These rights are important and should be equally enjoyed everyone. In order to ensure effective realisation of this right, the Government, through its anti-corruption and tax authorities, should address corruption and loopholes for tax evasion, in order to improve revenue collection and hence safeguard the right to development and right to enjoy and benefit from natural resources. The Government should also ensure effective implementation of natural resources laws. Business owners and companies should also pay their taxes in order to ensure right to development, as there is not development without taxes. Members of the public are also reminded and encouraged to demand receipts when they purchase different items, as a way of ensuring compliance with tax laws among businesses. Furthermore, the government should pay the proper compensation when it comes to take any land for public used as it is required by law. This means that the consideration of market value of the land must be considered.
CHAPTER SEVEN

RIGHT TO VULNERABLE GROUPS

Introduction

Vulnerable groups refer to those groups which are more likely to suffer violations of human rights. For purposes of this report, these groups are: women; children; persons with disabilities; the elderly; and persons living with HIV/AIDS. These groups require special protection in order to safeguard their human rights. This is why there are several regional and international human rights conventions that specifically provide for their rights. These include: the UN Convention on the Rights of the Child (CRC) of 1989; Convention on the Elimination of all Form of Discrimination Against Women (CEDAW) of 1979; Convention on the Rights of Persons with Disabilities (CRPD) of 2006; African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) of 2003.

At the national level, the Constitution of Zanzibar protects the rights of vulnerable groups despite the nonexistence of the specific provision on the matter. Under section 12 of the Constitution of Zanzibar, the rights of these groups can be expressed in relation to the equality before the law, thus requires equal treatment of all people without any discrimination.774

The chapter reveals on the situation of vulnerable groups for the year 2018.

7.1 Women’s Rights

Introduction


774 See Section 12(1) to (5), respectively, of the Constitution of Zanzibar 1984.
Women’s rights are also protected under the Constitution of Zanzibar, which prohibits discrimination of any for and provides for equal enjoyment of rights for all regardless their nationality, tribe, gender, place of origin, political opinion, colour, religion or station in life. Women’s right are also protected under several legislations, including: the Penal Act No 6 of 2004; Criminal Procedure Act No 7 of 2004; Spinster and Single Parents Children Protection No 4 of 2005; and Employment Act No 11 of 2005.

This chapter looks at violence against women and gender inequality and discrimination as key issues affecting women’s rights in Zanzibar in 2018.

7.1.1. Violence against Women

Violence against Women (VAW) refers to any action that results in or is likely to result in physical, sexual or psychological harm or suffering occasioned to women including acts of threats of such harm or suffering, coercion, or arbitrary deprivation of liberty whether occurring in public or private life. Violence against Women constitutes one of the most serious human rights abuses and public health problems in the contemporary world. It may occur in various locations such as in families, school, religious institutions, work places and others.

The Revolutionary Government of Zanzibar recognizes the empowerment of women is one way of curbing violence against them. However to transform the concept from VAW to empowerment is a critical to economic and social achievement of national development goals.

In 2018, ZLSC managed to document incidents of various forms of violence against women. These were sexual, psychological and physical violence, including: denial of child support, rape, sodomy, and beatings.

Psychological violence: the case of denial of child support

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775 Section 12(5) of the Zanzibar Constitution 1984,
778 See Cluster III of MKUZA II, Goal No. 2, the core cluster strategies associated to goal two of cluster three, No.vii, p.100
Denial of child support continues to be a key challenge for women who are left alone with children by their spouses or former husbands in Zanzibar. This causes women - most of whom struggle to gain a living - to be left with a burden of taking care of children alone, which affects them psychologically. For instance in Tumbe – Pemba, it was reported in 2018 that a husband deserted his wife, leaving her with four female children, simply because she ‘failed’ to conceive a male child. ZLSC receives many clients who complain about being deserted by spouses and not provided with child support. The Zanzibar Female Lawyers Association (ZAFELA) also receives many cases of this nature.

Sexual violence in the form of rape and sodomy

In 2018, several incidents of sexual violence against women, particularly in the form of rape and sodomy, were reported in Zanzibar. This includes incident of rape of a woman with disability (mentally disabled), Salma Said Ali (22), who was reportedly raped and killed by unknown people in Fundo Island. Her body found covered bruises and indicated that she raped, killed and then thrown into the ocean to remove evidence. In another incident which occurred in Wete District, Ali Shangiti Juma, a resident of Micheweni was accused of raping a mentally-ill woman contrary to Zanzibar criminal legislation.

Incidents of sexual violence against women partly thrive due to the tendency of resolving cases ‘at family level’ in order to ‘conceal family shame.’ In one incident for example, which occurred in Kiungoni in Wete District – Pemba, a 30-year-old woman was reportedly raped and sodomized. However, when the victim reported the matter to the police (Mchangamdogo Police Post), she was blamed by her family for reporting and forced to apologize for taking exposing the matter.

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779 ZLSC Human Rights Survey 2018
780 Ibid.
781 Ibid.
782 Ibid.
Physical violence in the form of beatings
In Semewani – Chake Chake, it was reported that a man was wanted by the police for physically abusing a woman, resident of Pemba South Region. He reportedly tried to strangle the girl, bruising and sexually assaulted her in the process. In another incident, a woman – resident of Jondeni – Pemba South, was assaulted by unknown man, causing her bodily harm. The man is wanted by police and is still at large.  

Prevalence of physical in some parts of Zanzibar is partly attributed by belief that physical violence against women is normal. A recent study shows that a third of men and women in Zanzibar believe a husband beating a wife is justified in certain circumstances. This attests to attitude problem and lack of or poor knowledge about gender-based violence and its impact on a society.

7.1.2. Gender Equality and Discrimination
The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) that among others requires governments to ensure that women are not discriminated against in any sphere of life. Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental for protection and promotion of human rights and United Nations values. Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, and realizing women’s human rights has not always been a priority. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate such discrimination.

Women’s right to gender equality and non-discrimination in Zanzibar continued to be affected by several factors in 2018. These include limited

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783 ZLSC 2018 Human Rights Survey
785 Article 1, 2,4,7,8,10,11,12,13,14,16 and 17 of CEDAW
786 Ibid, p.1
access to land; income poverty; limited access to decision making opportunities; and different forms of violence.

The Government of Zanzibar needs to intensify effort to protect and promote women’s rights, which is key for achieving gender equality and empowering all women and girls - Goal 5 of the Sustainable Development Goals (SDGs). To achieve this goal, the Government needs to end all forms of discrimination against women and girls; eliminate all forms of violence against women and girls; ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life. The Government also needs to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.

**Conclusion and Recommendations**

Women’s rights continue to be affected by different forms of violence, including physical violence; and psychological violence; and sexual violence. Among the major factors for these forms of violence to continue is belief that they are normal, especially in the case of physical violence. Violence against women constitutes violation of women’s rights and hinders their development as well as affecting development of families, communities and the nation at large. In order to safeguard women’s rights, the Government should continue to take various measures to combat violence and discrimination against them. Economic empowerment programmes are also important in combating violence against women, thus such programmes should be established in different parts of Zanzibar, including rural areas, and expanded where they are already established. Enactment of a specific and comprehensive law on gender-based violence could also help in combating violence against women as well as implementing the National Plan of Action to End Violence against Women and Children. The

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787 Goal 5.1 of the SDGs.
788 Goal 5.2 of the SDGs.
789 Goal 5.5 of the SDGs.
790 Goal 5.a of the SDGs.
Government should also ensure that all discriminatory laws and practices deprive women of their rights are reviewed and prohibited.

7.2 Children Rights
Introduction
Internationally, right of children are guaranteed and protected under the UN Convention on the Rights of the Child (CRC) of 1989. In 1990, a year after the CRC was adopted by the United Nations, the African Charter on the Rights and Welfare of the Child (ACRWC) by OUA (currently AU – African Union). Under this Charter, African States – including Tanzania (Mainland and Zanzibar) – are required to take all appropriate measures to protect children within its territory from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation; and to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.

In Zanzibar children are protected under various domestic instruments, including the Constitution of Zanzibar 1984 and the Children’s Act (No 6) of 2011. This subchapter looks at violence against children as a key issue hindering effective realisation of children’s rights in Zanzibar in 2018.

In 2018, the Government of Zanzibar, under the ministry responsible children, continued to take various measures to ensure protection of children and realisation of their rights. Measures taken include provision of care to children who at children care centres; strengthening the system of documentation of information about children living under difficult circumstances (children in especially difficult circumstance); and supervision of orphanages in Unguja (6) and Pemba (1).

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Despite government efforts to protect children, violence against children continued to be a major challenge in 2018. Many incidents of violence against children, especially sexual violence, were reported in this reporting year, as highlighted below:

### 7.2.1. Sexual Violence

Sexual violence was the most common form of violence against children in Zanzibar in 2018. ZLSC was able to document several incidents of rape and sodomy of children reported from different parts of Zanzibar, both Unguja and Pemba. Most of the incidents, however, were reported from Pemba. While ZSLC could not obtain the exact numbers of reported cases from the police, it was able to document several incidents of sexual violence against children in 2018, as summarized in the table below:

#### Table 18: Reported incidents of sexual violence against children in 2018 as recorded by ZLSC

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pemba</strong>: A 50-year old man reported sexually abused a 5-year-old child.</td>
<td>29 Jul 2018</td>
</tr>
<tr>
<td><strong>Pemba South</strong>: A man was sentenced to 5 years in prison for raping and impregnating a 14-year-old child.</td>
<td>15 Aug 2018</td>
</tr>
<tr>
<td><strong>Kigongoni, Pemba North</strong>: More than 8 children were reportedly sexually-abused by a 75-year-old man.</td>
<td>26 Sept 2018</td>
</tr>
<tr>
<td><strong>Pemba North</strong>: Bakari Omari Bakari (28) was sentenced to four years in prison for raping a 17-year-old girl in 2016</td>
<td>13 Mar 2018</td>
</tr>
<tr>
<td><strong>Chakechake, Pemba</strong>: Abeid Salum Hamis (20) was sentenced to 9 years in prison for raping a child aged 14 years.</td>
<td>26 Jul 2018</td>
</tr>
<tr>
<td><strong>Chakechake, Pemba</strong>: Yassir Mohamed (19) was sentenced to 11 years in prison for raping and impregnating a 13-year-old child.</td>
<td>18 Apr 2018</td>
</tr>
<tr>
<td><strong>Wete, Pemba</strong>: A resident of Wete area in Pemba North was accused of defiling a 3-year-old child. His whereabouts were unknown as he reportedly left the district after committing the heinous crime.</td>
<td>5 Jul 2018</td>
</tr>
<tr>
<td><strong>Wete, Pemba</strong>: A resident of Kangangani in Wete District, Pemba Region was accused of raping a 9-year-old girl in his house.</td>
<td>2 Aug 2018</td>
</tr>
<tr>
<td><strong>Chakechake, Pemba</strong>: A resident of Mgelen Village, Kassim Massoud Abedi (29) was sentenced to 4 years in prison for raping a 7-year-old girl.</td>
<td>June 2018</td>
</tr>
</tbody>
</table>
### Wete, Pemba:
A resident of Kangagani, Muhamed Bakari Mshindo (56) was reported to have raped a 9-year-old girl at his house in Kangagani. Despite the case being reported at Mchangamdogo Police Station, no action had been taken against the accused.

**Machomane, Chakechake:** 3 men were convicted of sodomizing a 6-year-old boy and sentenced to 6 years in prison each.

**Chakechake, Pemba:** 30-year-old man, resident of Kipangani Chake Chake, was sentenced for 5 years in prison for undressing a young boy aged 17 and leaving him naked in the public.

**Northern Pemba:** The Resident Magistrate Court of Pemba sentenced to 25 years in prison a man aged 45 years, resident of Kifundi, for sodomizing two children of the same family aged 5 and 8.

**Southern Pemba:** A 16-year-old boy, resident of Gombani ya Ale, was accused of sodomizing a boy aged 10 years.

**Wete, Chakechake:** Bakari Hamisi (25), a resident of Mitondooni, Chakechake, reportedly sodomized a 4-year-old boy.

**Pemba:** A 25-year-old resident of Tondooni was sentenced to 7 years in prison by the Resident Court of Chakechake after being convicted of raping a 12 year old girl.

Source: ZLSC Survey 2018

### High prevalence of sexual abuse against children
It was reported in 2018 that from the year 2015 to June 2018 a total of 999 incidents of child abuse were reported in Zanzibar. These include child pregnancy (86) and sodomy (63). Most of these incidents were reported in Chakechake (256), Micheweni (234) and Pemba (163). Factors contributing to his form of violence include moral decay and marriage breakdown.

### Sexual violence against children with disability
Several incidents of sexual violence against children were reported in 2018, whereby perpetrators took advantage of their vulnerability, especially mentally-ill children. For instance, in July 2018, sentenced a 19-year-old man, resident of Semewani, Chakechake – Pemba, to 6 years in prison after finding him guilty of raping a 17-year-old girl who is mentally-ill.
Compromising children’s rights to protect family ties
In 2018 it was revealed that there is a tendency of not reporting or discouraging reporting incidents of violence against children to authorities by family members, especially where perpetrators of such violence are close relatives or neighbours. This settlement out of court is illegal and denies a victim justice and access legal services; and is against the principle of best interests of the child. In Pemba, it was reported that Bakari Hamisi (25), resident of Mtondooni in Wete District – Pemba South, was accused of sodomizing a 4-year-old boy. However, when the victim’s family were about to report the matter, they were confronted by parents of the accused person, who wanted the two families to sit together and resolve the matter without involving the police.

Sexual violence against children perpetrated by fellow children
Reports of child-on-child sexual abuse have not been common or widely reported in Zanzibar. However, in 2018, there was one incident of such abuse that was reported in Pemba. ZLSC document the incident, which occurred in Gombani ya Kale, whereby a 16-year-old boy was accused of sodomizing a 10-year-old boy, causing him severe pain.

Sexual violence against children affecting realisation of their right to education
Child victims of sexual violence are more likely to suffer psychologically and constantly living in fear of something bad happening to them again. This has a profound effect in their lives, including accessing education. The psychological trauma affects them in class and contributes to underperformance. It may also lead to poor school attendance to avoid school mates who call these children names and stigmatize them.

7.2.2. Physical and Psychological Violence
Physical and psychological violence against children are also common in Zanzibar. These include beatings, burning of body parts and verbal abuse. Corporal punishments are also common in Zanzibar and taken to be necessary in child upbringing, usually causing severe pain and injuries when inflicted on children. In Kiungoni, Wete District, there was a report of a child who was severely beaten with a stick by his madrasat teacher and then got his fingers burned.
Sometimes, physical violence is perpetrated by a fellow child and could lead to death. A good example is the incident which occurred in Chakechake in Pemba, whereby a 16-year-old boy was found dead after he had been attacked with a brick by another child aged 17 years following a misunderstanding.

Incidents of abandonment of infants
Incidents of abandonment of infants continued to be reported in Zanzibar in 2018. In Chambani, Pemba South, it was reported that a baby aged about 3-month old was abandoned by her parent, whose whereabouts could not be established. In another incident, police in Pemba arrested one woman for abandoning her baby at Chambani Hospital.

7.2.3. Child Labour
Child labour in Zanzibar continued to be a challenge threatening children’s welfare in 2018. In June 2018, it was reported that despite various government efforts to combat child labour, the practice is still common in several areas of Zanzibar. These areas include Micheweni in Pemba North and Mwambe in Pemba South. In May 2018, there was a media report on

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child labour in the form of stone quarrying, reported by Zanzibar Leo Newspaper, in Mwambe Village in Pemba South.\textsuperscript{795} In Micheweni, Pemba North there was a report of a child (16) who died after stone fell on his head while at working place.\textsuperscript{796}

![Picture 25: Children engaged in stone quarrying in Zanzibar](source: ZanzibarLeo Newspaper)

**Conclusion and Recommendations**

Incidents of violence against children, especially sexual violence, are on the rise in Zanzibar. These have a profound effect on the rights and welfare of the children. The Government should intensify efforts to protect children from all forms of violence. Parents should also play their part by being close to their children and ensure they tell them their problems. The Police Force and Judiciary should ensure perpetrators of violence against children are and brought to justice.

**7.3. Rights of Persons with Disabilities**

**Introduction**

Rights of persons with disabilities (PWDs) are provided for under the Convention of the Rights of Persons with Disabilities (CRPD). These rights include right to equality and non-discrimination, right to life, right to equality before the law, right to liberty and security of person, freedom

\textsuperscript{795} Ibid.

\textsuperscript{796} ZLSC Human Rights Survey 2018.
from torture, freedom from violence, right to education, right to health and right to work and employment. Tanzania, including Zanzibar, is party to this treaty and has an obligation to take measures to safeguard rights of PWDs.

Zanzibar has enacted the Persons with Disabilities (Rights and Privileges) Act, No.9 of 2006 which provides for the rights and privileges of people with disabilities, and obliges anyone to take efforts to the maximum realisation of the rights of disabilities in Zanzibar. Under the Act, any disabled person in Zanzibar has the right to education, right to employment, right to medical care, accessibility and mobility. There are several organizations established for the purpose of promoting and protecting interests and welfare of PWDs. These include the Zanzibar Association of the Blind (ZANAB), Zanzibar Association for People with Developmental Disabilities (ZAPDD), the Organization of People with Disabilities in Zanzibar (UWZ), Zanzibar Centre for Disability and Inclusive Development (ZACEDID) and others.

7.3.1. Equality and Discrimination
CRPD requires States to guarantee the right of PWDs to work on equal basis with others and ensure their acceptance in the labour market and work environment that is open, inclusive and accessible to them. Discrimination against PWDs is when they are treated differently and unequally; and this includes using words, gestures or caricatures that demean, scandalize or embarrass persons with disabilities and include limiting, segregating or classifying in a way that adversely affects the opportunities or status of a person with disability. Owners of the public buildings and facilities for public use, roads and other social amenities,"

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797 See CRPD.
798 Section 5 of Act No.9, 2006
799 Ibid, section 9
800 Ibid, section 7
801 Ibid, section 11
802 Ibid, section 12
803 Article 27(1) of CRPD.
804 Section 2 of Act No. 9, 2006 of the Laws of Zanzibar.
805 Section 12(1) and (2) of Act No.6 of 2006
are required to create environment for PWDs to access social services without any challenges.

Despite existence of various laws relating rights and welfare of PWDs, this group continues to suffer incidences of discrimination. This includes in terms of accessing public buildings, school buildings and even realizing their right to education, especially for children PWDs. In the education sector, challenges experienced by PWDs include shortage of qualified teachers, shortage of learning materials; inaccessibility of school buildings due to lack of ramps; toilets which are not PWD friendly; and negative attitude and perception from other members of community and school mates.

7.3.2. Sexual Violence against Persons with Disabilities

Sexual violence is also a key issue affecting PWDs, as indicated in subchapters above, especially women and children. They are usually targeted due to their increased vulnerability, victimized sexually and physically. In Shengejuu area, Wete District in Pemba, it was reported that a mentally-ill woman was raped and impregnated by unknown man. In another incident, in January 2018, police in Pemba reported to have arrested a 24-year-old man, resident of Semewani, accused of raping a 17-year-old girl who is mentally-ill. Incidents of sexual violence against PWDs are becoming a problem and somewhat common in Zanzibar, with perpetrators thinking that since they are mentally-challenged, the victims would not be able to testify against them.

Conclusion and Recommendations

PWDs require special protection which is equal and effective for enjoyment of human rights. The protection of vulnerable group in Zanzibar is not satisfactory, despite all the efforts that are taken to ensure their welfare is being guaranteed. In order to protect and promote rights of PWDs, the Government should set aside adequate budget for them. Laws and policies on PWDs should also be effectively implemented. Moreover, the Government should ensure PWDs can easily access social services, including education, by making sure that there is relevant infrastructure to facilitate this. Buildings under construction should be friendly to PWDs,
including by ensuring they have lifts (for storey buildings) and ramps. Perpetrators of violence against PWDs should also be apprehended and brought to justice. Access to employment for PWDs should also be increased, as well as empowering them economically to prepare them for self-employment.

7.4 Rights of the Elderly

Introduction

Human rights are universal. They apply to all human beings everywhere, regardless of sex, age, religious affiliation, disability, sexual orientation and other distinctions. Thus, the human rights of all people, including older persons, are tacitly protected in the Bill of Rights. There is no specific regional or international convention providing for rights of the elderly. However, as other people, older persons enjoy human rights enshrined in conventions such as the African Charter on Human and Peoples’ Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for elderly PWDs). At the national level, the rights of elderly are implied under the Zanzibar Constitution, which requires the Government to ensure it assists and enables to be assisted any disadvantaged groups such as the elderly, the sick, children and disabled persons.

In 2018, the Government of Zanzibar continued to take several measures to care for the elderly. These include:

- Establishing homes for the elderly in Unguja and Pemba;
- Supporting older persons above the age of 70 years in Sebleni and Welezo in Unguja; Limbani and Makundeni in Pemba. These older persons, who are 73 in total, are provided with a monthly allowance of Tshs. 30,000. They are also provided with three meals a day; and
- Purchasing a 2-storey building for the elderly and renovating old houses in Limbani, Pemba.

807 Section 10(g) of the Constitution of Zanzibar, 1984
7.4.1. Violence against the elderly
Despite the efforts made by the Revolutionary Government of Zanzibar to protect the rights of elderly it is still reported that elderly are also vulnerable to attacks and being violated with their human rights. The elders have become victims of torture, attacks and killings due to their vulnerability. Challenges faced by older persons in Zanzibar include lack of proper social protection, including health care and food security. The situation forces them to totally rely on assistance from their children, family members, relatives, or strangers on the streets. Some of them are abandoned or neglected by their children or families.

In Wete, Pemba, it was reported that an older man aged 72 years was found dead. Medical report indicated that the deceased older man was hit with a heavy object, which is more likely to be a cause of death.

7.4.3. Discrimination
The elderly have the right to non-discrimination. They ought to be treated equally, regardless of health status or disability, as other age groups. This is in terms of all aspects of life, including, but not limited to, employment, and access to education, accommodation, and other facilities.

In 2018, older persons in Zanzibar continued to generally experience several forms of discrimination. These include when they access health services and violent acts from relatives and families.

Conclusion and Recommendations
Access to social services is a key concern for elders. The Government should ensure that older persons are not subjected to any form of discrimination when accessing these services. They should also be enabled to access such services, including health services; and health insurance is key in this regard. Adequate budget should be allocated to cater to the needs of the elderly. Community members have a duty and should respect and care for the elderly, instead of discriminating them, subjecting them to violence and letting them beg for food.
7.5. Rights of Persons Living with HIV/AIDS

Introduction

Like other human beings, the rights of persons living with HIV/AIDS are provided for and protected under various regional, continental, and international human rights instruments, including the Universal Declaration on Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). They are also enshrined in the African regional and sub-regional human rights instruments including the African Charter on Human and Peoples’ Rights.

In 2015, there were about 36.9 million PLHIV in the world and in 2014 it was estimated that about 1.2 million people have died of AIDS worldwide. It was estimated that the HIV prevalence for the Sub-Saharan African (SSA) region in 2015 was 4.7% but varies greatly between countries within SSA. Southern Africa is claimed to be the worst affected region.

In realisation of the problem and on considering the right to health to its people, the Zanzibar Government passed the Zanzibar HIV and AIDS Prevention and Management Act No.18 of 2013, to provide for, among others, the prevention and management of HIV and AIDS in Zanzibar and for the protection and promotion of the human rights of persons living with or affected by HIV and AIDS. The Act prohibits any kind of discrimination directly or indirectly against people living with HIV. The Act has reinforced the established Zanzibar AIDS Commission which was established under the Zanzibar Aids Commission Act, No.3 of 2002 as a

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808 Article 25 of UDHR
809 Article 12 of ICESCR
810 Article 14 of CEDAW
811 Article 14 of CRC
812 Article 12 of African Charter on Human and Peoples’ Rights
813 The Third Zanzibar National HIV and AIDS Strategic Plan 2016-2020/21
814 ibid
815 See the long Title of the HIV and AIDS Prevention and Management Act No.18 of 2013
816 Ibid, section 23
separate administrative organ to deal with this pandemic. The Zanzibar AIDS Commission is one of the major players for HIV/AIDS in Zanzibar. This Commission which was working under the First Vice President of Zanzibar since the establishment of the Government of National Unity in 2010 is currently working under the Office of the Second Vice President of Zanzibar whose main responsibility is to coordinate the national multi-sectoral response to this pandemic.

Among the functions of the Commission is to organize the national awareness of HIV/AIDS and enhance public awareness by ensuring the accessing of all necessary facilities to all people without humiliation to achieve 90-90-90 HIV infection reduction target. The aim of this 90% goal is to ensure those infected with HIV/AIDS are aware of their conditions, and are using ARVs to minimize the infection of HIV/AIDS.

Apart from the Government efforts on fighting against HIV/AIDS in Zanzibar, there are other non-governmental organizations dealing with HIV/AIDS in an attempt to contain the disease from further spreading in the society. Zanzibar Association of People with HIV/AIDS (ZAPHA+) and the Zanzibar NGO Cluster for HIV and AIDS Prevention and Control (ZANGOC) are umbrella organizations comprising of forty five HIV and AIDS related NGOs, Community Based Organizations (CBOs) and Faith Based Organizations (FBOs) in Zanzibar (41 in Unguja and 4 in Pemba).

In 2018, HIV infection continued to be a threat in Zanzibar, partly due to increase sexual violence against women and children. Adolescent girls and young women, as well as boys who are subjected to sodomy, are at greater risk of being infected with HIV through acts of violence. According to

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817 Ibid, section 3
818 Budget Speech of the Second Vice President, 2017/2018
819 See Part III of Act No. 18, 2013
7.5.1. Discrimination

Although international, regional and domestic laws prohibit discrimination against PLHIVs, they continued to be subjected to various forms of discrimination and stigmatization by fellow society members. Discrimination against them is said to be mainly attributed to poor knowledge of members of the public about HIV/AIDS and rights of PLHIVs.

In practice, HIV-related stigma and discrimination in Zanzibar is high and acts as a barrier to voluntary counselling and testing as well as to the effectiveness of HIV prevention and care services. Stigma can have a major impact on people living with HIV and those at risk of infection and has been shown to be associated with stress, depression, and lower perceived quality of life among those people living with HIV/AIDS in Zanzibar.

- Stigma can manifest itself in a number of ways from loss of employment and denial of health care to social isolation and lack of family support. People living with HIV can also be blamed by their families for becoming infected because of the burden that the disease places on the family.

- Lack of awareness and stereotype about HIV & AIDS and people live with it.

7.5.2. Access to Health Services

PLHIVs are supposed to be prioritized in accessing health services. However, the matter is different in Zanzibar. They tend to face social stigma as well as stigma from the health workers. Some of them are sometimes even denied health services and mistreated by the health providers. As result, some of the PLHIVs decide to avoid the health facilities and those who can afford travel to Tanzania Mainland to find those services,

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UNICEF, at current trends in the world, around 80 adolescents will die of AIDS every day by 2030.821


822 ZAPHA+ (2010), People Living with HIV Stigma Index Assessment, Zanzibar, p.8

823 Ibid, p.9
for fear of being stigmatised or discriminated due to their status in Zanzibar.824

Conclusion and Recommendations
People living with HIV/AIDS continue to be subjected to various forms of discrimination. To address this problem there is need for the Government to collaborate with NGOs to raise public awareness on the rights of PLHIVs and HIV and AIDS in general. Access to health services for PLHIVs should also be enhanced.

824 Ibid, p.57
CHAPTER EIGHT
CORRUPTION, GOOD GOVERNANCE AND HUMAN RIGHTS

Introduction
Under the Zanzibar legal system, the term corruption is defined broadly and includes all the crimes covered in Part V of the Zanzibar Anti-Corruption and Economic Crimes Act, 2012. These offences include bribing agent of the ZAECA; secret inducement for advice; deceiving principal; fail to disclose conflict of interests; improper benefits to trustees for appointment; bid rigging; misappropriation of property and revenue; misappropriation of assets; tax evasion; smuggling; hoarding; ant-trust and syndication; wrongful use of official information; money laundering; drug trafficking; counterfeit goods and currency; scheme intended to unlawfully manipulate exchange rate; abuse of office; transfer of proceeds of corruption; corruption in election; bribery of foreign official; sexual favours and abetment.825

As part of the United Republic of Tanzania, Zanzibar has come up with this broad definition of ‘corruption’ which encompasses a broad range of practices and behaviour in its efforts to implement the United Nations Convention Against Corruption of 2003; the African Union Convention on Preventing and Combating Corruption of 2003; SADC Protocol Against Corruption of 2001, and so many other similar treaties which Tanzania is a signatory. It is from this background that issues of corruption in Zanzibar have been examined in this report.

8.1. State of Corruption in Zanzibar
According to Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017 – 2022)826 acts of corruption in Zanzibar include: nepotism, favouritism, abuse of power, peddling influence, and bribery in service delivery all take place in political and bureaucratic processes. Corruption in the justice system continues to be a problem affecting access to justice in

825 Sections 36 to 59 of the Zanzibar Anti-Corruption and Economic Crimes Act (No. 1), 2012.
Zanzibar. Other sectors prone to corruption include: administration of state public finance and property; human resources; and public and social services.

8.1. Good Governance and Anti-Corruption
The Constitution of Zanzibar, 1984 (as amended) provides the framework of governance within which political governance and associated principles of transparency and accountability are given prominence. To give weight to these principles, Section 10 of the Constitution spells out the political objectives of the country, including total eradication of corruption and abuse of power.

Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA) is the anti-corruption body operating in Zanzibar, established under Act No. 1 of 2012. ZAECA’s functions in relation to addressing corruption in Zanzibar are providing anti-corruption education (prevention), investigating acts of corruption and capacity building.

Despite efforts to provide anti-corruption education, citizen awareness is still limited, particularly for people in rural areas, and levels of tolerance of petty corruption, especially in provision of social services, is still a major challenge.

Overall, despite a combination of efforts to prevent, educate, and combat corruption, challenges remain in implementation of anti-corruption activities in Zanzibar, including: (i) limited public education work; (ii) inadequate framework for prevention; (iii) institutional constraints of ZAECA in its combating work; (iv) weak management of anti-corruption work; and (v) lack of clear linkages with other reforms.

In 2018, several reports of corruption were reported in Zanzibar. In January 2018, police in Pemba South arrested Shawal Zahor (32) and charged him with corruption for attempting to bribe the Chake Chake Regional Crimes Officer (RCO) with Tshs. 50,000 to effect release of Sabri Omar Seif, who was charged possession of marijuana. In July 2018, Regional Court of Chake Chake in Pemba ordered remand of an official from the Environment

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827 ZLSC Media Survey 2018.
Department in Pemba South for soliciting and receiving a bribe of Tshs. 3,000,000. 828 No grand corruption cases were reported in Zanzibar in 2018.

According to the United Nations Human Rights Council, corruption has serious negative impact on all categories of human rights – civil, political, economic, social and cultural. 829 It also hinders realization of the right to development. It affects the ability of the Government to achieve progressive realization of these rights to the maximum of its available resources in line with the International Covenant on Economic, Social and Cultural Rights (ICESCR). 830 Embezzlement and mismanagement of public resources may hinder the Government from effectively safeguarding key social rights such as the right to education, right to health and right to water by delivering quality education, health and water services. Due to corruption, people may also suffer discrimination in accessing public services in favour of those who can bribe officials, given the fact that majority of people in Tanzania are poor.

Conclusion

ZLSC is pleased with efforts made by the Government to combat corruption in 2018. However, corruption is still prevalent in most sectors and collaborative efforts with other stakeholders, including the media and CSOs, are needed in order to effectively combat this vice. Education about the negative impact of corruption for community members is also important and should thus continue to be provided. Members of the public are also encouraged to refrain from corrupt practices and report corruption to relevant authorities when the witness or hear about it. More importantly, political will is very important in the fight against corruption.

828 Ibid.
CHAPTER NINE

HUMAN RIGHTS MECHANISMS

Introduction
Human rights mechanisms comprise of laws and institutions that protect and promote human rights. There are special mechanisms provided for under the Constitution of the United republic of Tanzania 1977, the Constitution of Zanzibar 1984, and some other laws that are earmarked for the protection of these rights. This chapter highlights the human rights mechanisms that existing in and for Zanzibar as of the year 2018.

National human rights mechanisms include the Judiciary; the Commission for Human Rights and Good Governance (CHRAGG); Law Review Commission of Zanzibar (LRCZ); Office of the Director of Public Prosecutions (DPP); and the Police Force. Regional and international human rights mechanisms accessible to Zanzibar include: Universal Periodic Review Mechanism (UPR); Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination Against Women; the Committee on the Elimination of Racial Discrimination; the Committee on the Rights of Persons with Disabilities; the African Court on Human and Peoples’ Rights; the African Commission on Human and Peoples’ Rights; African Committee of Experts on the Rights and Welfare of the Child; and the East African Court of Justice.

9.1. National Human Rights Mechanisms
9.1.1. Judicial Mechanism
The basic principle regarding implementation of the constitutional human rights norms in Zanzibar legal system is provided for under Section 24(3) of the Zanzibar Constitution, 1984. The provision reads as follows:

Any person claiming that any provision in this Part of this Chapter or in any law concerning his right or duty owed to him has been, in being or is likely to be violated by any person anywhere in Zanzibar, may institute proceedings for redress in the High Court.
The Constitution, however, stipulates a caution in terms of the limitations in the enjoyment of human rights in Zanzibar. It says that enjoyment of such rights shall not be exercised in such a way that it results in the violation of rights of any other persons. This provision could be said to posit a priori in the enjoyment of collective rights as against the individualistic ones.\textsuperscript{831} The Provision provides further that limitation may also be provided by laws enacted by the House of Representatives for various purposes.\textsuperscript{832}

The enforcement mechanism per se is provided for under Section 25A of the Constitution of Zanzibar 1984. The provision states that such enforcement shall be through institution of a case before the High Court of Zanzibar. When a case is institututed, it will be heard by one judge of the High Court. The appeal from decision of such kind of cases shall be preferred before the same High Court but now sitting with three judges. The decision of the High Court in the appeal is final. That is, there shall be no appeal that will lie in this regard from the decision of the Zanzibar High Court to the Court of Appeal of Tanzania in any matter relating to interpretation of the Constitution of Zanzibar 1984.\textsuperscript{833} This means that the Court of Appeal of Tanzania has got no jurisdiction to entertain cases relating to the enforcement of the Bill of Rights under the Constitution of Zanzibar, 1984.

Enforcement of the Bill of Rights in Zanzibar is subject to a number of criticisms. The most obvious one is that there is no specific legislation enacted to regulate enforcement of the Bill of Rights under the Constitution of Zanzibar 1984. It is uncertain what procedure or format human rights cases should take in Zanzibar. This lacuna has resulted into some procedural constraints on the enforcement of the Bill. One direct effect of this procedural vacuum is that until the end of the year 2017, there was not a single case instituted before the High Court of Zanzibar seeking enforcement of the constitutional Bill of Rights in Zanzibar.

\textsuperscript{831} Section 24(1) of the Constitution of Zanzibar 1984.
\textsuperscript{832} Ibid.
\textsuperscript{833} Section 24 (3), Constitution of Zanzibar, 1984.
Despite the existence of an ineffective court for protection of individual rights and freedoms in Zanzibar, there is also no specific institution established in Zanzibar to deal with human rights protection. The Revolutionary Government of Zanzibar after the March 2016 election formed a Ministry called Ministry of State, President Office, Constitution, Legal Affairs, Public Service and Good Governance. Although this Ministry has various departments, unfortunately it has no department which deals with specifically with human rights protection.

Enforcement of human rights may also be effected under the right provisions of the Constitution of the United Republic of Tanzania 1977. This Constitution falls under the union matters and as such is applicable in Zanzibar. It provides for the Bill of Rights in its Chapter three, as well. The rights which are provided in this chapter are basically the similar to those found under the Constitution of Zanzibar 1984. The United Republic of Tanzania Constitution 1977 provides two ways which are relevant to protecting individual's human rights and freedoms in Tanzania. First is by enforcement of the Bill through court of law, and secondly, by using a commission for human rights.

The High Courts of both Tanzania and Zanzibar have jurisdiction to deal with enforcement of the Bill of Rights under of the United Republic of Tanzania 1977. The enforcement process is required to be instituted in the form of petition. Three High Court judges are required to sit to hear the petition. But, in all two jurisdictions, petitions shall have to take place after the court has granted leave for instituting a particular petition.

When enforcement takes place through the High Court of Tanzania, appeal may lie with the Court of Appeal of the United Republic of Tanzania. In the year 2017, there was no any human rights case originating from Zanzibar that is known to have been instituted before the High Court of the United Republic of Tanzania for enforcement of the Bill of Rights under the provisions of the Constitution of the United Republic of Tanzania 1977.
9.1.2. CHRAGG and Implementation of Human Rights

The Commission for Human Rights and Good Governance (CHRAGG) has been established under Article 129 (1) of the said Constitution as amended by Act No. 3 of 2000. The Commission is charged with the role of overseeing implementation in the protection of human rights and good governance in the country. This commission which has been established as an independent government institution is the national focal point institution for the promotion and protection of human rights and duties, as well as good governance issues, in Tanzania.

The Commission started its operations on the 1st July 2001 following the coming into force of the Commission for Human Rights and Good Governance Act No7 of 2001 as amended by Act No 16 of 2001. The Commission was officially inaugurated in March 2002 following the appointment of first Commissioners by the President of the United Republic of Tanzania.

CHRAGG plays the dual role of an ombudsman and a human rights commission. Although, being a union matter, this institution had to operate in both the Mainland and Zanzibar Tanzania from its inception. However, Zanzibar authorities initially prevented it from functioning in Zanzibar. The main argument was that human rights is not within the list of the union matters and that, under the prevailing circumstances at the time, its application in Zanzibar would offend the provisions of Section 132(1) of the Constitution of Zanzibar, 1984. However, after some consultations and undertakings, in May 2006, the authorities in the Union and Zanzibar Governments agreed that the quasi-governmental CHRAGG be permitted to operate in the same way on both the sides of the United Republic of Tanzania. As a result, CHRAGG extended its function and opened its office in Zanzibar since 2007, and recently it has opened its office in Pemba as well.

In its operation, the Commission has been highly criticized on grounds that its independence is not apparently realistic. For example, the

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commissioners of the Commission are presidential appointees\textsuperscript{835}. They may be removed from office because of a number of reasons listed in its Act of establishment. They may also be removed from office for any reason. No person could figure out what constitutes “any other reason” that would lead to the removal of a commissioner at a point of time. This means that commissioners of the Commission always operate at the risk, if not the danger, of being removed from their offices at any time and for any reason.

The major challenge faced by CHRAGG and affecting its operations in Zanzibar is its budgetary constraints, which makes it difficult to protect and promote human rights in Zanzibar. Because of these constraints, it is sometimes difficult for CHRAGG to conduct investigations into alleged human rights violations and making follow ups. In recent years, the Commission has been accused of being very passive in response to human rights violations in Zanzibar, particularly in the aftermath of the 2015 general elections.

9.1.3. The of Law Review Commission of Zanzibar (LRCZ)
Another National Human Right Mechanism in the country is Law Review Commission Zanzibar (LRCZ). This commission was established in 1986. It was a result of recommendations of Law Review Commission commonly known as the “Msekwa Commission”, as led by Hon. Pius Msekwa. It was the idea of the Mskewa Commission that there are various laws which are outdated in Zanzibar and do not reflect the existing situation in the society. Hence, there is a need to establish a permanent organ to deal with law review. LRCZ was established under Zanzibar Law Review Commission Act No. 16 of 1986. The main function of the Commission is to review the laws of Zanzibar and to propose necessary amendments so as to make sure that they respond to timely changes as taking place in Zanzibar.

9.1.4. Role Played by the DPP Office
The Office of the Director of Public Prosecution as the National Human Rights Mechanisms in Zanzibar was established in 2002, following the 8\textsuperscript{th} amendment of the Constitution of Zanzibar 1984.\textsuperscript{836} The fundamental role of

\textsuperscript{835} Article 130 of the Constitution of the United Republic of Tanzania of 1977.

\textsuperscript{836} 1984 Section 56A
the DPP office is the administering of criminal cases by charging and prosecuting persons charged with criminal cases. The DPP has constitutional powers to institute, prosecute, discontinue and take over any criminal case in all courts in Zanzibar other than martial courts.

This office performs its functions in accordance with the Constitution of Zanzibar 1984, the office of Director of Public Prosecutions Act (No. 2) 2010, the Prosecution Manual of 2005 as revised in 2015. The four constitutionally founded core values of the DPP Office are independence, impartiality, integrity and truthfulness.

The DPP office administers criminal cases by prosecuting all criminal cases in all courts of Zanzibar from District Courts, Regional Magistrates courts, High Court and the Court of Appeal of Tanzania cases that are filed in Zanzibar. It also coordinates all prosecution services in primary courts. The office is also responsible in educating members of society on matters relating to criminal justice. The office was established under the idea of civilianization of prosecution where prosecution services are to be delivered by civilians and not police force.

As far as human rights and good governance are concerned, the DPP office performs its responsibilities under two main slogans. The first is that investigation should precede prosecution and the second is that no conviction without evidence. From these two slogans, the DPP office always requires police to admit suspects to bail until such time where an investigation of a given case is completed and where prosecution can then be formally initiated.

9.1.5. The Role of Police Force
Police force, as well, has very important role to play in the exercise of rule of law generally. By dealing with evidential issues that are important for prosecution, the Police Force helps to prevent prosecution from being changed to persecution. There is no room thus to arrest and charge a person without evidence as doing so is to violate constitutional rights by having a person unreasonably charged with a criminal offence.
Tanzania Police Force which falls in the list of Union matter is involved in the National Human Rights Mechanisms in Tanzania. Police officers are employed by the Government of United Republic of Tanzania. They work either in Mainland Tanzania or Zanzibar according to the internal arrangements of the Force. The current Police system in Tanzania has its origin from colonial heritage from England. The basic function of the Police Force is the protection of peace and security of citizens and their property. They officials are part of the armed force machinery and one of the state apparatus. The police in Tanzania, in the performance of its responsibilities are governed by laws and also special police guidelines covered in 'the Police General Orders (PGO)". The very nature of the functions of the police force necessitates that, in the performance of their roles, police officers should work in a friendly matter with the people - knowing that they are key protectors of the individual's human rights.

9.2. International Human Rights Mechanisms

The International Bill of Human Rights refers to a collection of three international documents: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights (with its Optional Protocol837); and the International Covenant on Civil and Political Rights (with its two Optional Protocols838).

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), establishing the vision and principles which recognize the interdependence and indivisibility of all human rights: a vision that guarantees people civil and political freedom as well as economic and social well-being. Together with establishment of international law standards covering civil, political, economic, social and cultural rights, these international treaties have set up specific mechanisms for implementing the standards so set. The following is a brief discussion of the said human rights implantation mechanisms.

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837 Optional Protocol to the Covenant on Economic, Social and Cultural Rights
838 (a): Optional Protocol to the International Covenant on Civil and Political Rights
(b): Second Optional Procotol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
9.2.1. **The United Nations Office of the High Commissioner for Human Rights**

The role of the OHCHR is to protect and promote human rights. It is the main office in the United Nations that deals with human rights and it works to ensure that human rights standards are applied in all of the UN's activities. It collaborates with governments to strengthen their human rights capabilities, encourages states to develop policies and institutions that are conducive to human rights, and provides advice and technical assistance to achieve these goals.  

9.2.2. **The United Nations Human Rights Committee**

Article 28 of the International Covenant on Civil and political Rights 1966 provides for the setting up of the Human Rights Committee, which thus becomes the principal organ of implementation of the Covenant on Civil and Political Rights. This contrasts with the Covenant on Economic, Social and Cultural Rights, where no new body was created and implementation was assigned to the existing Economic and Social Council. Reporting procedure is the principal measure of implementing the ICCPR, while the inter-State procedure is optional. Potentially, therefore, the submission of reports by States and their examination by the Human Rights Committee is of cardinal importance in the implementation of the Covenant, and so the practical and theoretical merits of such a system deserve careful study.

The obligation of States to report relates to – (i) the measures they have adopted to give effect to the rights set out in the Covenant; (ii) the progress made in the enjoyment of those rights; and (iii) the factors and difficulties, if any, affecting the implementation of the Covenant. The report is to be presented within one year of the entry into force of the

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839 http:www.ohchr.org/English/bodies/hrcommission/ (accessed on 22\textsuperscript{nd} November, 2017)
841 Ibid, pp. 41-2.
842 Article 40(2) of the ICCPR.
Covenant for the States parties concerned, and thereafter when the Committee so requests.\textsuperscript{843}

However, some governments are extraordinarily sensitive about anything in the nature of international examination of their human rights records, invoking arguments about national sovereignty and Article 2(7) of the UN Charter, and it was therefore a distinct achievement to get them to accept to get them to accept even modest measures just described. In practice, therefore, when a State submits either an initial report or a subsequent periodic report, examination of it usually extends over several meetings and may produce dozens, if not hundreds, of questions from the members of the Committee to the States’ representatives.\textsuperscript{844}

\subsection*{9.2.3. United Nations Human Rights Council}

The Human Rights Council replaces the Commission on Human Rights as the main UN body charged with monitoring and evaluating conditions of human rights in countries around the world and identifying major areas of concern. This includes a system of special procedures, expert advice, and a complaint procedure.

Composed of 47 Member States elected by the UN General Assembly, the Council serves as a round-table for governments and civil society groups to raise concerns about human rights abuses in particular countries, as well as thematic areas of concern. The Council meets at least three times a year and also functions through a series of working groups and special procedures. These include the Open-ended working group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would include an individual complaint mechanism.\textsuperscript{845}

Special procedures with thematic mandates include Special Rapporteurs on Adequate Housing, the Right to Education, the Question of Human Rights and Extreme Poverty, the Right to Food and the Right to Health, who are able to receive information on specific allegations of human rights violation

\textsuperscript{843} Article 40(1) of the ICCPR.
\textsuperscript{844} A.H. Robertson ad J.G. Merrills, Op Cit, p. 44.
\textsuperscript{845} http://www.ohchr.org/English/bodies/hrcouncil/ (accessed on 22\textsuperscript{nd} November, 2017)
and send urgent appeals or letters of allegation to governments asking for clarification, as well as reporting on visits and investigations which uphold the basic principles and core values of economic, social and cultural rights.

The following are the seven Human Rights Treaty Bodies that monitor the implementation of the core international human rights treaties:846

(a) Human Rights Committee (HRC);
(b) Committee on Economic, Social and Cultural Rights (CESCR);
(c) Committee on the Elimination of Racial Discrimination (CERD);
(d) Committee on the Elimination of Discrimination Against Women (CEDAW);
(e) Committee Against Torture (CAT);
(f) Committee on the Rights of the Child (CRC); and
(g) Committee on Migrant Workers (CMW).

9.3. Regional Human Rights Implementation Mechanisms

Regional human rights systems, consisting of regional instruments and mechanisms, play an increasingly important role in the promotion and protection of human rights. Regional human rights instruments (e.g. treaties, conventions, declarations) help to localise international human rights norms and standards, reflecting the particular human rights concerns of the region. Regional human rights mechanisms (e.g. commissions, special rapporteurs, courts) then help to implement these instruments on the ground. Currently, the three most well-established regional human rights systems exist in Europe, America and Africa.

The African regional human rights system has been established within the intergovernmental organisation known as the African Union.847 The main regional human rights instrument in Africa is the African Charter on Human and Peoples’ Rights, 1981 and the main mechanisms are the African Commission on Human and Peoples’ Rights and the recently-established

846 http://www.escr-net.org/.../human-rights-enforcement-mechanism... (accessed on 22nd December, 2017)
African Court on Human and Peoples’ Rights. The African Charter (which entered into force in 1986) incorporates universal human rights standards and principles, but also reflects the virtues and values of African traditions. Thus, the African Charter is characterised by the concept of a reciprocal relationship between the individual and the community, linking individual and collective rights.

The African Charter established an African Commission for Human Rights, located in Banjul, Gambia. It is a quasi-judicial body made up of eleven independent experts and tasked with promoting and protecting human rights and collective (peoples’) rights throughout the African continent (by receiving periodic reports from States Parties on the implementation of the Charter’s provisions) as well as interpreting the African Charter and considering individual complaints of violations of the Charter.

The African Commission has also established several Special Mechanisms including six Special Rapporteurs who monitor, investigate and report on allegations of violations in member states of the African Union, and eleven working groups, committees or study groups that monitor and investigate human rights issues under the purview of the Commission. The Special Rapporteur mandates cover: Extra-judicial, Summary or Arbitrary Execution; Freedom of Expression and Access to Information; Human Rights Defenders; Prisons and Conditions of Detention; Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; and Rights of Women.

The Working Groups cover specific issues related to the work of the African Commission; Indigenous Populations/Communities in Africa; Economic, Social and Cultural Rights; Rights of Older Persons and People with Disabilities; the Death Penalty; Extractive Industries, Environment and Human Rights Violations; Fair Trial; and Communications. And finally, there is a Committee for the Prevention of Torture in Africa; a Committee on the Protection of the Rights of People Living with HIV; and a Study Group on Freedom of Association.

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849 Ibid.
The African Court on Human and Peoples’ Rights was established in 2004 following the entry into force of a Protocol to the African Charter on the Establishment of an African Court on Human and Peoples’ Rights. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol, and any other relevant human rights instrument ratified by the States concerned.850

850 Ibid.
Tab 10
Being LGBT in Tanzania still perilous

by Heather Cassell (mailto:heather@heathercassell.com)

Wednesday Apr 22, 2020
Tanzania's crackdown on LGBT citizens hasn't stopped, despite the country's leaders appearing to bow to the World Bank and other global pressures, queer activists said.

James Wandera Ouma, executive director of LGBT Voice, an organization in Tanzania, told Daily Xtra that he knows of more than 30 people on the mainland and 20 people in Zanzibar, an island off of the Tanzanian coast, who have been arrested within the past year and a half.

The arrests happened after the East African country reportedly acquiesced to international pressure from the World Bank, and others, following a previous crackdown on the country's queer community by Paul Makonda, the regional commissioner of Tanzania's capital Dar Es Salaam, in November 2018.

Homosexuality is punishable up to 30 years in prison in the country.

Anti-gay sentiment has been on the rise since President John Magufuli came to power in 2015 on the strength of his "morality campaign."

The government has targeted LGBT groups; banned lubricants; suspended HIV/AIDS services, accusing them of promoting homosexuality; and threatened to deport and prosecute LGBT rights activists.

Makonda has been one of the most ardent foot soldiers for Tanzania's anti-gay campaign, activists said.

LGBT Tanzanians have been susceptible to routine abuse, blackmail, and assault or rape by vigilante mobs and police, the paper reported. Many are forced into sex work for survival, connecting with clients online and through social media because they can't get jobs.

"There's no joy," Ouma told the newspaper. "There's no happiness in life. You may have happiness in your own house, but when you go outside, you are afraid."

Adotei Akwei, deputy director for advocacy and government relations for Amnesty International USA, relates the growing intolerance toward LGBT Tanzanians to part of a "larger crackdown on fundamental human rights," spearheaded by Magufuli's administration, reported Daily Xtra.

Magufuli's administration has also attacked media organizations, arresting journalists critical of his administration and closing newspapers and TV and radio stations.

Awkei pointed out that Tanzanians don't seem to realize what's at stake by not standing up for human rights, including LGBT rights.

"Everyday citizens who don't speak up for LGBTQ communities don't seem to realize that that's the danger," he told the newspaper. "Today it might be the LGBTQ community, and tomorrow it might be human rights defenders. If you don't protect one community, you protect none of them."

Gay refugee apparently dies by suicide outside UN refugee agency

A gay refugee apparently killed himself outside of the United Nations' refugee agency in Kenya last week.

The body of Aneste Mwiru, a 25-year-old refugee from Uganda, was found outside the United Nations High Commissioner for Refugees' Nairobi office April 13, according to media reports.

Pink News reported that Mwiru was the father of a young son.

Police spokesman Charles Owino told the Thomson Reuters Foundation that "early indications [are that] it looks like suicide."

Mbaziros Moses from Refugee Flag Kenya, a LGBT+ refugee rights group, and queer refugees who knew Mwiru told media outlets that he was depressed and financially struggling prior to the novel coronavirus pandemic.

Face 2 Face Africa reported that Mwiru was allegedly violently attacked by unknown assailants before he took his own life.

Mwiru had moved from Kenya's largest refugee camp, Kakuma, to a safe house in Nairobi due to being attacked by other refugees, LGBT refugee community leader Pio Pat told Face 2 Face Africa.
LGBT refugees’ plight in the conservative East African country is perilous, advocates noted. There are an estimated 800 queer refugees living in the Kakuma refugee camp or in LGBT safe houses in Nairobi, according to experts.

Refugees have to apply for asylum in Kenya before they can register with the refugee agency. Until that time, they aren’t legally allowed to work. Many queer refugees complain that their asylum applications are delayed in the system. Those who are lucky enough to have their asylum applications approved are allowed to work in the country and apply for refugee status with the U.N. Many wait a minimum of five years to be resettled in a new home country.

A Kenyan court upheld its British colonial-era anti-sodomy law in 2019. Homosexuality is punishable by 14 years in prison. However, the law is rarely enforced.

Fathiaa Abdalla, a UNHCR representative in Kenya, said the agency was "profoundly shocked and saddened by the tragic death and apparent suicide," in a statement to Reuters. The agency was cooperating with authorities.

Abdalla added that the agency was regularly in contact with refugees and officers in the country to "ensure that any required support is provided."

In a statement to Reuters, the secretariat of the Refugee Coalition of East Africa, a network of Ugandan asylum seekers in Kenya, urged officials to help LGBT refugees.

Got international LGBT news tips? Call or send them to Heather Cassell at WhatsApp: 415-517-7239, or Skype: heather.cassell, or oitwnews@gmail.com

Editor's note: If you liked this article, help out our freelancers and staff, and keep the B.A.R. going in these tough times. For info, visit our IndieGoGo campaign (https://bit.ly/2V8ucLY).
Tab 11
We feel abandoned': HIV positive Tanzanians brace for COVID-19

High-risk and vulnerable members of Tanzania's population call for greater assistance amidst the coronavirus pandemic.

Mwanyika Thomas: 'We're not seen and our struggle is not being acknowledged' [Jaclynn Ashly/Al Jazeera]

By Jaclynn Ashly

13 Apr 2020

Arusha, Tanzania – If Mwanyika Thomas had a choice, she would lock herself inside her small home and not venture outside at all.

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“I have to leave my house to get money for food. But if I didn’t have to, I would never leave,” the 48-year-old said. “I’m very scared of this virus,” she added, referring to the coronavirus disease (COVID-19) pandemic that has swept across the globe.

“I have been thinking about it a lot. I know that if I get it, I will die.”

Thomas, who makes a living by finding sporadic farming and cultivation jobs around the northern city of Arusha, is among the 1.6 million Tanzanians who are living with HIV.

Michel Yao, programme manager for the COVID-19 emergency response at the World Health Organization (WHO)’s Africa regional office, told Al Jazeera that even though not enough studies have been conducted to determine how exactly coronavirus affects those living with immune deficiency disorders such as HIV-AIDS, people suffering from them would likely be more vulnerable to developing serious illness from COVID-19.

HIV also makes individuals more prone to developing tuberculosis (TB), a respiratory illness that Yao said could make the COVID-19 cases in affected populations more severe.
‘Next wave could be Africa’

As of Monday, there were more than 1.8 million known coronavirus cases and almost 115,000 deaths worldwide. The virus was slow to arrive on the African continent, but within a few weeks the confirmed number of COVID-19 infections has climbed to more than 14,500, with at least 788 coronavirus-related fatalities.

In Tanzania, there are 46 confirmed cases, including three deaths, although some fear the actual number of infections is higher than reported.

While COVID-19 can affect people of all ages, older adults, whose immune systems have declined with age, appear to be more vulnerable to becoming severely ill after contracting the pathogen. Africa has the youngest population in the world, with 211 million people aged between 15 and 24. This has led some to predict that the continent’s seemingly favourable demographics may protect it from experiencing the catastrophic death tolls seen in Europe and the United States.

Yao said, however, that this is a shaky theory and does not account for the millions living with HIV-AIDS and other pre-existing conditions. Eastern and southern Africa are home to 54 percent of the world’s people living with HIV, according to the UN.

“The disease started in Asia and then Europe; the next wave could be Africa,” Yao said. “So we’re advising countries that we should learn from what has happened [in the rest of the world] and adjust it into our context.”

‘We need help’

In Tanzania, antiretroviral medications are free for those suffering from HIV-AIDS. Davota Faustini, 41, was diagnosed with HIV more than two decades ago.
medication. It’s a big challenge for me,” she told Al Jazeera. “When I take the medication I get sick and feel very dizzy because I don’t have enough money to eat a lot of the time.”

For Devota Faustini, who suffers from HIV, the lack of clear information from the government is worrying [Jaclynn Ashly/Al Jazeera]

“I heard about coronavirus on the TV and radio,” she added. “I know that I should wash my hands and keep my distance from people. Other than this, we haven’t gotten any more information from the government.”

Faustini said that even the extra $0.09 it takes to buy soap is unaffordable for her, never mind the $2 it costs to purchase a 100ml bottle of hand sanitiser. “No one sits us down and tells us what HIV people are supposed to do in this situation. We are getting no direction from the government. But we are scared and we need someone to help us,” she said.

‘This isn’t a joke’

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Tanzania, however, split with its neighbours during what has been described as a “mild” response to the pandemic, avoiding some of the most sweeping measures imposed elsewhere.

The government has cancelled schools, including university, and suspended all international passenger flights to the country but does not plan to introduce a lockdown.

“When you look at the dynamics, most Tanzanians live from hand to mouth – they have to leave their households in order to survive. So when you go for a total lockdown it means some will instead die of hunger,” Faustine Ndugulile, Tanzania’s deputy health minister, told The Citizen earlier this month.

Meanwhile, a ban on public gatherings announced soon after the first COVID-19 case was reported does not seem to be rigorously enforced; people continue to crowd into bars and clubs undisturbed. In fact, besides the presence of more hand-washing stations outside businesses and hotels, not much appears to have changed in Tanzania’s daily life.

“No one here is taking this virus seriously,” Thomas said. “People need to open their eyes in Tanzania and see how other countries are suffering,” she added.

“No. People here are still making jokes about coronavirus. If we [HIV positive people] get this disease, we are going to die. This isn’t a joke.”

**Mixed messaging**

But Tanzanian authorities have delivered mixed messages to the public.

While the health ministry has promoted social distancing, Tanzanian President John Magufuli has encouraged the public to continue gathering in places of worship to “pray” the virus away, referring to the highly contagious disease as “the devil”.

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Jeremia Msweta, 50, has no choice but to spend most of his days at a crowded market in Arusha selling fish. “I can’t avoid crowds or avoid the market. If I stay inside and don’t work, hunger will kill me before coronavirus does,” he told Al Jazeera.

Msweta said he tries to take precautions owing to his HIV status, like washing his hands whenever he has the opportunity. But it is difficult to find places to wash properly at the market, he noted, and there is no running water at his home.

“[The virus] makes me feel sad that there is yet another disease we have to worry about,” Msweta said. “Of course, I’m afraid. But there’s nothing I can do. Whatever happens, will happen. I don’t have control over anything.”

“I believe in God and I pray that God will save us,” he added.
Thomas said the government should be putting more effort into providing special attention to at-risk segments of the population, like those suffering from HIV-AIDS, to stay home and self-quarantine while other citizens can continue living as usual.

“They could provide food for us, and other necessary items like soap, so that we can stay at home without starving,” she added.

Faustini, meanwhile says she fears Tanzanians living with HIV-AIDS may also face more difficulty seeking treatment for their pre-existing condition while the government’s resources are allocated to fighting the spread of coronavirus.

According to Yao, this is a major concern for African countries. “Having thousands of people accessing treatment for COVID-19 could reduce access for those suffering from other conditions,” he said.

He noted that governments must develop additional “dedicated services” to people living with HIV-AIDS, or other vulnerable groups, by providing protective equipment and soap or hydroalcoholic solutions to assist them in maintaining precautionary hygiene, and making sure they become more “alert on the seriousness of a potential infection”.

This all needs to be done while also ensuring that the official COVID-19 response does not reduce the ability of those living with HIV-AIDS to access necessary treatment.

Al Jazeera reached out for comment to various individuals in the health ministry, including Ndugulile, the prime minister’s office, and the Tanzanian government’s chief spokesperson Hassan Abbas, who is in charge of communicating details of the state’s COVID-19 response.

However, despite numerous attempts over several days, no one replied to Al Jazeera’s requests for information on the government’s plans to protect its at-risk citizens.
Some people living with HIV-AIDS fear that they may face more difficulty seeking treatment for their preexisting condition while the government’s resources are allocated to fighting the spread of coronavirus [Jaclynn Ashly/Al Jazeera]

Mariam, the director of a small NGO in Arusha that assists Tanzanians living with HIV-AIDS and who requested to use a pseudonym in fear of government reprisal, believes the government needs to do more to communicate its COVID-19 response to the general public.

“Many HIV positive people are feeling so hopeless in this situation. They are concerned about their lives. If the government is more open with us, I think people will start to feel safer,” Mariam told Al Jazeera, noting that she has not been made aware of any plans that will assist Tanzania’s most vulnerable.

Last year, the WHO issued a rare public rebuke against the Tanzanian government for refusing to cooperate and withholding information about suspected Ebola cases in the country.
Over the last few years, Magufuli’s administration has been the target of widespread criticism over his authoritarian style of governance. Press watchdogs and rights groups say increasingly restrictive laws have undermined freedom of expression and sowed fear into civil society.

The government has also faced accusations of maintaining control on who can gather and disseminate statistical information, denying citizens alternative sources of independently verified data, while routinely harassing, intimidating and arresting journalists and others.

“If you question their statistics or their official narrative, you will have to pay the price,” Jacob said, underscoring the case of Mwele Malecela, the former director-general of Tanzania’s National Institute for Medical Research.

In 2016, Malecela, who now heads the department of control of neglected tropical diseases at the WHO, was fired by Magufuli after she went public with research findings that indicated the presence of the Zika virus in Tanzania. Magufuli later admitted to firing Malecela because she was working for “imperialists” and had tried to tarnish the country’s image.

Tanzanians living with HIV-AIDS, meanwhile, feel left in the dark by their government. “We feel abandoned,” Thomas said. “We’re not seen and our struggle is not being acknowledged.

“They tell us to keep washing our hands. But that’s not enough. We are going to die. They need to do more to protect us.”

SOURCE: AL JAZEERA
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Tab 12
Tanzania: Stigma, Discrimination Hamper Campaign Against HIV

Tanzania Daily News (Dar es Salaam)
(http://dailynews.co.tz/)

By Staff Reporter

ASHA (not her real name), a 16-year-old teen living with HIV, says when she was in Form-III in one of the schools in Mjini District, she decided to expose her health status to her teacher who demanded to know why she was frequently asking for permission to go to hospital.

Probably it was a big mistake to tell the teacher that she was HIV positive as he passed the message to other teachers resulting to stigmatisation. Four-year-old boy at a kindergarten in Wete District, North Pemba Islands was also stopped to attend school after teachers realised that he was living with HIV.

Another Kindergarten pupil of the same age in the same district was discriminated by his colleagues during class and break time after learning he was HIV positive.

"It was said to be isolated by my colleagues and my teachers because I am living with HIV. I was physically fine and loved to play with friends, but they discriminated me in all activities including sitting in classroom," Asha narrated, the life many people like her are still experiencing despite ongoing efforts to fight stigma and discrimination.

Similar stories are still being heard from people of all ages, living with HIV, almost everywhere. According to the Tanzania HIV Impact Survey (THIS) 2016-2017, prevalence among adults aged 15-49 years was 4.7 per cent for the entire country [4.8 per cent in Tanzania mainland and 0.4 per cent in Zanzibar.]

HIV prevalence among females aged 20-24 years, 25-29 years, 30-34 years, and 35-39 years was higher than in males in corresponding age groups, and the survey indicated that the burden of HIV infection varies across the country- the prevalence ranged from less than 1.0 per cent in Zanzibar and Lindi to 11.4 per cent in Njombe.

The Awareness Manager of the Zanzibar AIDS Commission (ZAC), Mr Saadat Haji, says that although in overall, HIV prevalence has declined with increased education level for both males and females, stigma and discrimination are still challenges that hamper campaign to control the spread of HIV.

"We have been struggling hard to maintain and reduce further prevalence in the country so that we can beat the 90-90-90: ambitious global HIV programme targets proposed by UNAIDS and adopted by each country, but stigma is a problem," says Haji.

The target was that at least by this year (2020), 90 per cent of all people living with HIV (PLHIV) will know their HIV status; 90 per cent of all people with diagnosed HIV infection will receive sustained antiretroviral therapy (ART); and 90 per cent of all people receiving ART will have viral load (VL) suppression (VLS).

It is behind this background that Amref Health Africa Tanzania is supporting programmes that aim to increase awareness among the population so that stigma is minimized. ZAC is one of the implementing partners in Zanzibar.

Among the government efforts to reduce HIV/AIDS stigma is providing care and free HIV treatment services, while Amref and ZAC are encouraging journalists and the media to help address the problems of stigma and discrimination by running programmes or publish articles that will result into behaviour change.

The role that stigma plays in increasing the spread of HIV has been identified in the Tanzanian Policy on HIV/AIDS, and the Health Sector HIV/AIDS Strategic Plan IV (HSHSP 2017-2022). Stigma reduction is recognised as a key guiding principle that must be addressed by all sectors at all levels.

‘THIS’ revealed that stigma and discriminatory attitudes towards People Living HIV (PLHIV) are higher in Zanzibar (23.4 per cent) compared to Tanzania Mainland (19.7 per cent), and that the problem is bigger in Pemba Islands (38 per cent) compared with Unguja (18.6 per cent).

Discriminatory attitudes were also higher among those who lived in rural areas, had lower level of educational attainment, and were in lower wealth quintiles, Haji from ZAC said as he urged journalists to work closely with his office to reduce stigma burden.

Drivers of stigma have been previously identified as lack of recognition of stigma; fear of acquiring HIV through casual contact; and values linking people with HIV to assumed immoral behaviour.

Ms Hasina Hamad from ZAC information department says survey indicates stigma embedded in work place, which include condition to test for HIV before employment, reply of no job or being denied job promotion after testing positive.

"We also have cases of stigma and discrimination hospitals by some unethical medical practitioners such as revealing patient's HIV status and compulsory testing or forced HIV check-up; and also in religious institutions where people with HIV are sidelined and blamed," Ms Hamad said.

She said stigma has multiple negative effects on health outcomes, including non-optimal medication adherence, lower visit adherence, higher depression, and overall lower quality of life, cause of deaths, fear to test and reveal status, and abandoning treatment.

HIV-related stigma refer to negative beliefs, feelings and attitudes towards people living with HIV, their families, people who work with them (HIV service providers), while HIV discrimination refers to the unfair and unjust treatment of someone based on their real or perceived HIV status.

HIV discrimination is often fuelled by myths of casual transmission of HIV and pre-existing biases against certain groups, certain sexual behaviours, drug use, and fear of illness and death. Discrimination can be institutionalised through laws, policies, and practices.

Ms Saada Mussa- Lawyer says ‘the prevention and management of HIV and AIDS in Zanzibar Act No 18 of 2013’ protects and promotes Human Rights of Person living with or affected by HIV and AIDS, but the implementation and enforcement of the law remain low.

On Zero Discrimination Day, which is commemorated every year on March 01, UNAIDS calls for an end to discrimination against women and girls and for equal rights, opportunities and treatment.

It is observed that despite progress in some areas, in 2020 coercive practices, discriminatory legislation and gender-based violence are just some of the human rights violations that are continuing to have a disproportionate impact on the lives of women and girls around the world.
UNAIDS highlights areas where change is urgently needed: equal participation in political life; human rights and laws that empower; economic justice- equal pay for equal work; ending gender-based violence; provide health care without stigma or barriers; equal and free access to primary and secondary education; and climate justice.

Read the original article (https://dailynews.co.tz/news/2020-03-245e7a0e70a91a5.aspx) on Daily News (http://dailynews.co.tz/).
Tanzania: Stigma Still Remains Major Anti-HIV/Aids Hurdle

By Abela Msikula

STIGMA and discrimination hamper effective HIV programming and is a violation of human rights which must not go unchallenged, according to the Strategic Intervention Adviser for United Nations programme on AIDS/ HIV (UNAIDS) in Tanzania, Ms Kate Spring.

Speaking during the Zero Discrimination Day Commemorations in Dar es Salaam this week, Ms Spring said everyone can be part of the transformation and stand up for fair, equal and just societies.

She says every week more than 300 adolescent girls and young women between 15 and 24 years are infected with HIV. "On Zero Discrimination Day we celebrate the right of everyone to live a full and productive life and live it with dignity."

Zero Discrimination Day is about creating a global movement of solidarity in order to end all forms of discrimination, whether relating to HIV or not," she said.

This year, UNAIDS together with the Tanzania Commission for AIDS (TACAIDS), National Council of People Living with HIV (NACOPHA), among other partners, are putting a spotlight on discrimination against women and girls.

Discrimination and gender inequality remains a huge barrier for women and girls in all aspects of their lives and have a significant impact on the AIDS response. Women and girls across the world experience violence and discrimination based on their gender - both of which can be causes of and at the same time make them more vulnerable to HIV.

According to Ms Spring, this year is an important year for women and girls, with several global events being planned, including the Beijing+25 Conference, the Commission on the Status of Women and the UN General Assembly high-level session.

UNAIDS and partners are contributing to mobilise around this agenda starting on Zero Discrimination Day and continuing throughout the year. The struggle to beat AIDS is inseparable from the struggle for women's rights and from the struggle against all forms of discrimination.

AIDS can be beaten, but it will only be beaten if stakeholders address the social and economic injustices that fuels it and respond to the real needs of women and girls and people living with and vulnerable to HIV.

"In Tanzania, we are still facing gender inequality when it comes to HIV and AIDS, hence, UNAIDS is inviting all our partners and stakeholders to join us in this and in achieving the three zeros: Zero new HIV infections, Zero AIDS-related deaths and Zero discrimination," Ms Spring said.

Gracing the event, Deputy Minister of State in the Office of the Prime Minister, responsible for the disabled, Ms Stella Ikupa urged people living with HIV/AIDS to avoid self-discrimination, one of the steps to fight stigmatization in the whole society.

She also urged them to adhere to proper ARVs uses so as to suppress the disease viruses, and at the same time embracing behavior change spirit in the name of avoiding new HIV transmissions.

"The government and other stakeholders have been coming with various approaches, including regular public campaigns to fight against discrimination and stigma. It also makes sure that ARVs are freely available everywhere and at any time. Previous presenters here have told us that stigmatization is at high level especially in rural areas, hence, I do propose for non-stop regular outreach programmes so that every HIV infected person can be easily reached" she said.

She further said that people with various special needs, mostly the blind and deaf, do need to have proper HIV information, and the right time, urging for stakeholders to consider availability of Braille-written documents as well as interpreters when visiting such groups of people.
TAC AIDS Director of Advocacy and Information, Mr Jumanne Isango, said that one of the commission's findings in 2016/17 showed that 31 percent of 100 respondents showed stigmatization perception in rural areas, and 17 percent (of 100 respondents) in urban areas.

He stressed that the situation was especially worse in rural areas as researchers observed that some people were reluctant even to have services offered by people living with HIV, in fear of getting infected, said Mr Isango.

It was further noted that some people in rural areas feared even to buy the daily basic needs like vegetables, believing that touching whatever has been touched by a person living with HIV/AIDS might lead to transmissions.

"The big deal here is to intensify regular public education, given the fact that women and children are among the majority of seriously affected group. The government in collaboration with various stakeholders has been doing whatever possible to achieve such a goal, hence, scoring zero discrimination by 2030 as per the global determination," he said.

NACOPHA Chairperson, Ms Leticia Maurice, said that in order to achieve such a goal (zero discrimination) in the targeted time-frame, there is a need of strong political will.

There is also a need for the government to collaborate with religious leaders on educating the mass over the importance of fighting against stigmatisation in the society, as they (leaders) are on best chance to meet with the mass on regular basis during their services of worshiping or any other related activities.

She added that if uncontrolled, stigmatisation can affect individuals and nation's economy when people living with HIV/AIDS are refraining from intermingling with others in production activities.

"Stigma is a more serious threat than HIV itself. It is because stigma kills the soul while ARV kills HIV virus. We, people living with HIV have been nicknamed several names, but nothing pains me a lot like when a person calls me an 'HIV victim',' lamented the NACOPHA boss while calling for intensification of the war against stigma.

Read the original article on Daily News.
Tanzania: ‘Dangerous’ plans for homophobic task force must be abandoned immediately

1 November 2018, 18:12 UTC

Following the announcement of plans to form a government taskforce which will begin hunting down and arresting people who are, or are perceived to be lesbian, gay, bi-sexual, transgender and inter-sex (LGBTI) next week, Joan Nyanyuki, Amnesty International’s Regional Director for East Africa, the Horn and the Great Lakes said:

“The idea of this taskforce must be immediately abandoned as it only serves to incite hatred among members of the public.”

Joan Nyanyuki, Amnesty International Director for East Africa, the Horn and the Great Lakes

“It is extremely regrettable that Tanzania has chosen to take such a dangerous path in its handling of an already marginalized group of people. The idea of this taskforce must be immediately abandoned as it only serves to incite hatred among members of the public. LGBTI people in Tanzania already face discrimination, threats and attacks without hateful statements of this kind.
“The Tanzanian government must also ensure that no one, especially those in positions of power like Paul Makonda, makes statements or takes actions to sow hatred that endangers the lives of people just because of their sexual orientation or gender identity.

“The government has a duty to protect everyone in Tanzania and uphold their human rights without discrimination.”

Joan Nyanyuki, Amnesty International Director for East Africa, the Horn and the Great Lakes

“The government has a duty to protect everyone in Tanzania and uphold their human rights without discrimination. They must take this obligation seriously and not initiate programmes or use government agencies to rob LGBTI people of their rights.”

Background

On 29 October, the Regional Commissioner for Dar es Salaam, Paul Makonda, announced plans to form an inter-agency task force comprising members of the Tanzania Communications Regulatory Authority, the police and the media to identify and arrest LGBTI people in the country.

The taskforce is envisioned to start its work next week identifying and arresting LGBTI people. Members of the public have already been asked to ‘report’ LGBTI individuals. The country’s colonial constitution and laws prohibit consensual same-sex relations.

Tanzania has a poor record of respecting and protecting the rights of LGBTI people. The government has in the past raided organizations working on health issues for men who have sex with men, threatening to close them down. In October 2017, 13 health and human rights activists, including two South Africans and one Ugandan, were arrested and detained by Tanzanian authorities for ‘promoting homosexuality’ in Tanzania.

In October 2016, a Ministry of Health directive suspended provision of HIV/AIDS services and ordered the closure of some clinics for providing services to LGBTI people. In that clamp-down, the authorities arrested and prosecuted people for same-sex relations, subjecting them to forced anal examinations, a form of cruel, inhuman, and degrading treatment that can amount to torture.

Topics

TANZANIA LGBTI RIGHTS
Mariam is a 67-year-old grandmother living in rural Tanzania. She lives with her brother and sister-in-law in Miono, a small rural town. She makes money through small subsistence farming.

She has been married but since her husband died she hasn’t been keen to marry again. The reason: she is HIV positive.

For Mariam, living with HIV in rural Tanzania is difficult. She was stigmatised because of a lack of understanding about the disease. Treatment sometimes makes her feel sick. Yet she still has to work, continuing the daily grind of ploughing the land.

The only ray of hope for Mariam came when she started to educate her community about HIV and how treatment allowed her to live a healthy life. Things finally started to change.

Mariam’s story is not unique. Her life is the reality for many HIV positive women in rural Tanzania. Many of their partners have died of AIDS. Some men left when they discovered their partners’ HIV status. As a result they have stories of single parenthood, hard labour in the fields, and the stigma and everyday risk HIV brought to their lives.

These stories are often unheard outside the communities in which these women live. And my previous research as an academic working in global health politics would suggest they are quite common in rural East Africa.

I decided to make the story of Mariam and 85 other women into the feature film PILI.

**A grim reality**

UNAIDS data shows that in 2015 there were 780,000 Tanzanian women living with HIV/AIDS. The disease affects just under 5% of the population compared to 2% of Kenyans, 12% of Zambians and 3% of Rwandans. In Tanzania two thirds are women.

These women face a range of challenges: stigma from the community, self stigma, access and adherence to treatment, disclosure to partners, and prevention of mother to child transmission.

They also face the additional burden of having to care for children, family and friends in the community affected by the disease.

Living in rural Tanzania compounds these issues. Women work in the informal agrarian economy which is dependent on both the weather and labour supply. When the harvest is good they have enough to get by. But they often struggle to pay for living costs such as medical bills, school uniforms or a new roof.

The town’s health centre serves people in the immediate local community as well as patients from up to 50km away. It only has two clinic days a week for people living with HIV. As a result people who are HIV positive have to travel more than 80km to access treatment.

This means they often lose a day of work so that they can access care and treatment centres. And when they arrive at these centres, they have long waiting times to see the over-stretched healthcare practitioners.

For women living with HIV when testing and counselling services and the provision of antiretrovirals in the local health centre arrived in 2009, it was a game changer.

**Real life stories**

PILI is the story of one woman determined to change her life. She works the fields for less than US$ 2 a day to feed her two children. She struggles to manage her HIV positive status in secret.

When she is offered the chance to rent a sought-after market stall, PILI is desperate to have it. But with no time to get the deposit together, PILI is forced to make increasingly difficult decisions with ever deepening consequences. How much will she risk to change her life?
The film is based on the stories of women from the Pwani region of Tanzania based on the common themes to their stories. Even though the story of PILI is not based on one individual woman, each of the women could identify with the challenges and risks she encounters.

Most of the women were left by their partners to raise their children after disclosing their HIV status. Many suggested they had experienced some form of stigma or self-stigma and shame.

Those living in the more rural towns of Mbwewe and Miono worked in the fields. They accessed loans from small micro-lending groups to get by. All of them shared an aspiration to own a small business and get out of the fields. And a handful of them volunteered as peer educators at the local care and treatment centre. All of them spoke about the impact that access to treatment had on their lives.

We had set out to make a film that was compelling but not sensational, and one in which the cast and crew were not detached from the story they told, in our case that of women living with HIV. The result of PILI is that it features untrained actors – many of whom were HIV positive.

Untrained as they were no-one in the cast seemed awkward about seeing themselves on screen. They had all introduced themselves and their characters at the beginning of the film.

**Sharing stories around the world**

The stories of the women in Miono need to be heard at a time when future funding for HIV/AIDS care and treatment is threatened. The world needs to see the difference treatment can have but also the everyday struggles managing your HIV status in a resource poor setting can bring.

Our plan for PILI is that it premieres at an international film festival in 2017 to get worldwide distribution to make the women and communities in the film some money.

PILI not only highlights the issues HIV positive people fact. It also looks at the wider fragility of living with HIV when working in the informal economy and bringing up children on your own.

Women living with HIV and AIDS in rural Tanzania are often talked about but their everyday realities and experiences are unseen in wider HIV/AIDS and development policy and practice. This film helps them to be seen on the biggest screen available.
Tab 16
Tanzania suspends U.S.-funded AIDS programs in a new crackdown on gays

By Kevin Sieff
November 23, 2016

DAR ES SALAAM, Tanzania — East African nations have launched some of the world’s most vicious campaigns against gay men and women, outlawing same-sex liaisons and threatening punishments of years in jail.

But in a move that has alarmed health workers, Tanzania is turning its anti-homosexual fury in a new direction — targeting HIV/AIDS programs that have helped tame a disease that once ravaged the region.

Last month, the minister of health announced that Tanzania will ban HIV/AIDS outreach projects aimed at gay men, pending a review. That forced the closure, at least temporarily, of U.S.-funded programs that provide testing, condoms and medical care to gays. About 30 percent of gay men in Tanzania are HIV-positive; now health workers say that figure could rise.

Tanzania’s actions appear to mark the first time that a country has suspended parts of the United States’ hugely successful foreign HIV/AIDS initiative in an attempt to crack down on the gay community. The U.S. PEPFAR campaign, backed by $65 billion since it was founded in 2003, has been credited with saving millions of lives.

The ban comes after months of bitter speeches and threats from Tanzanian officials aimed at the gay community and at organizations treating its HIV/AIDS patients. This year, police raided two U.S.-funded HIV/AIDS organizations and seized confidential patient information and supplies, officials said. In September, the deputy minister of health, Hamisi Kigwangalla, accused HIV treatment organizations of “promoting homosexuality.”

“Any attempt to commit unnatural offenses is illegal and severely punished by law,” Kigwangalla said in the statement. People convicted of same-sex liaisons in Tanzania can be jailed for up to 30 years.

The health minister, Ummy Mwalimu, explained in a statement last month that officials had suspended HIV/AIDS outreach programs for gay patients to review whether they promoted same-sex relationships.

The move has sent a shock wave through a community still grappling with the virus, even as modern medicine and treatment have dramatically improved victims’ chances of survival.
the U.N. program on HIV/AIDS in Tanzania, referring to the drugs that suppress the virus.

U.S. aid program

PEPFAR, or the President’s Emergency Plan for AIDS Relief, launched by George W. Bush with bipartisan support, has become one of the most important U.S. assistance programs ever in Africa. Tanzania is an example of its success. Since 2002, the overall HIV/AIDS rate in the country has declined from 12 percent to 5 percent. The number of people receiving treatment has grown in the past five years from 289,000 to over 700,000.

Other organizations, such as the Global Fund to Fight AIDS, Tuberculosis and Malaria, also have spent billions of dollars on HIV treatment on the continent.

But even as assistance programs have sharply reduced the death toll from AIDS, some countries in eastern Africa have been escalating their campaigns against homosexuality.

In 2014, Uganda’s parliament passed a law, later annulled, that imposed the death penalty on those found guilty of “aggravated homosexuality.” This year, a Kenyan high court ruled that “anal tests” aimed at determining people’s sexual orientation were legal.

Even though Tanzania’s penal code refers to homosexuality as a “gross indecency,” the government had long permitted organizations to help gay men who had AIDS or who were at risk of contracting it.

But since John Magufuli was elected president last year, the government’s tolerance on the issue has disintegrated. Although Magufuli has not said anything publicly about homosexuality, a number of his appointees have made harsh remarks. Critics of gay rights say this nation — which has large numbers of Muslims and Christians — must protect traditional values.

In an August speech, Paul Makonda, the regional commissioner of Dar es Salaam, the capital, threatened to arrest people who were linked to gay men on social-networking sites.

“If there’s a homosexual who has a Facebook account, or with an Instagram account, all those who ‘follow’ him — it is very clear that they are just as guilty as the homosexual,” said Makonda, who is the equivalent of a governor.

The government also banned the distribution of lubricants that help ensure that condoms do not tear. Condoms are considered highly effective in preventing HIV transmission.

Fears of ‘viral rebound’

The U.S. government has hired health organizations such as Jhpiego, which is affiliated with Johns Hopkins University, to provide HIV tests, condoms and doctor referrals for gay men, sex workers and other
vulnerable Tanzanians who are afraid to visit a public hospital. Those visits often take place in homes and informal community centers. The Jhpiego project was awarded $73 million over five years beginning in 2015. But such groups have had to cease their outreach efforts in gay communities.

“PEPFAR recognizes the importance of these key populations,” said a U.S. official who spoke on the condition of anonymity because of the sensitive situation in Tanzania. “And in order to reach many of them, you have to go where they are.”

Without access to those vulnerable communities, “it prolongs the epidemic in the end,” the official said.

U.S. officials said they are hopeful that the outreach programs will soon be restored, noting that the health minister has said the government is considering which HIV services would be appropriate for the gay community. But members of that community are pessimistic.

“It’s clear that the government doesn’t care whether we live or die,” said one 22-year-old gay man who spoke on the condition of anonymity because of fear of punishment.

A 29-year-old gay man in Dar es Salaam who is HIV-positive said that he was diagnosed four years ago. Since then, antiretroviral drugs have helped him stay relatively healthy and health workers have provided him with condoms, lubricants and information about safe sex so he does not infect his partners.

But now he had gone two weeks without medication. To get it, he would have to go to a public hospital, and he said he fears retribution.

“In this environment, it’s not safe to be a known gay man in the open,” he said.

Each week a patient is off his antiretroviral drugs, the virus grows more crippling — what doctors call a “viral rebound.”

“These interruptions in treatment are very dangerous,” said Naamara of the U.N. program, known as UNAIDS.

Boris Dittrich, the advocacy director of Human Rights Watch’s LGBT division, said that “homophobic rhetoric from government officials will only drive already vulnerable populations underground. The government should reassure all Tanzanians they are protected from harm.”

Homosexuality is criminalized in at least 76 countries, and at least 33 of them are in Africa, according to the U.N. Free & Equal campaign for lesbian, gay, bisexual and transgender rights. In many African countries, homosexuality is seen as a Western phenomenon, imported by aid groups. The U.S. government has dissuaded political leaders from interfering with HIV/AIDS treatment, but American condemnation of anti-gay practices often has fallen on deaf ears.

In Tanzania, the 29-year-old man recalled his first thought when he received his AIDS diagnosis: “This is the
end of me.” But medical treatment subsequently restored his health.

In recent weeks, however, he has returned to a sense of doom, he said. “Under this pressure, what can we do now?”

Kevin Sieff
Kevin Sieff has been The Washington Post’s Latin America correspondent since 2018. He served previously as the paper's Africa bureau chief and Afghanistan bureau chief. Follow 🐦
Facing Prosecution for Challenging HIV Policies in Tanzania

Posted October 20th, 2017 for Human Rights Watch (/user/human-rights-watch)

Lawyers Arrested Under Pretext of ‘Promoting Homosexuality’

Researchers, Lesbian, Gay, Bisexual, and Transgender Rights Program

When Sibongile Ndashe, a South African feminist lawyer, got on a plane to travel to Tanzania to convene a meeting of human rights lawyers and activists, she knew she might come under the scrutiny of Tanzanian authorities. But what she did not expect was for Tanzanian police to raid the October 17 workshop at the Peacock Hotel and arrest her and 12 of her colleagues for "promoting homosexuality."

A woman walks by Tanzania Sisi Kwa Sisi Foundation, a non-governmental LGBT youth organization based in Dar Es Salaam. On October 17, 2017, police raided a workshop at a hotel in Dar Es Salaam, where lawyers and activists were meeting to discuss HIV prevention.

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The 13 were hauled to a police station, where an officer granted them bail without laying formal charges. A day later, Lazaro Mambosasa, Dar es Salaam head of police, confirmed the arrests to the press (http://www.nation.co.ke/news/africa/Tanzania-arrest-homosexuality/1066-4145864-g9g72dz/index.html), claiming the "criminals" had violated Tanzanian law. While it is true that "carnal knowledge against the order of nature" is criminalized in Tanzania under a colonial-era law, by no measure of the imagination is it a crime to hold a meeting. In fact, the meeting, which had been organized by the Initiative for Strategic Litigation in Africa (ISLA), a Pan African organization whose mandate is to advance women’s and sexual rights, was not even about homosexuality. Its aim was to explore the possibility of mounting legal challenges to the government’s ban on drop-in centers serving key populations at risk of HIV, as well as the ban on importation of water-based lubricants, an essential HIV prevention tool.

Inexplicably, the bail was revoked on Friday, October 20. Ndashe and her colleagues are now back in custody on unknown charges but potentially facing criminal prosecution.

The arbitrary arrest of the 13 lawyers and activists is a sign of the Tanzanian government’s increasing lack of tolerance for freedom of assembly and freedom of expression. The recent arrests follow a disturbing pattern, in which several dozen (https://apnews.com/9fb09123d5fc4e50ab7bacb308a64dc2) people have been arrested since December 2016 for "homosexuality" or "promoting homosexuality". In most of these cases police have not presented any evidence whatsoever suggesting that those detained have engaged in same-sex conduct.

The truth is that the lawyers and activists are not being held for promoting homosexuality, but for challenging absurd, reactionary policies that could cost many HIV positive people their lives. Tanzanian police should immediately release Sibongile and her colleagues and drop any politically motivated charges.

Related Content

- Press Statement From Initiative for Strategic Litigation in Africa (http://www.hrw.org/sites/default/files/supporting_resources/lgbt10_tanzania_isla_chesa_pressstatement20171020.pdf)

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Tab 18
EDITORIAL

Falling Short of the First 90: HIV Stigma and HIV Testing Research in the 90–90–90 Era

Matthew C. Sullivan1 · Aviana O. Rosen1 · Aerielle Allen1 · Diane Benbella1 · Gabriel Camacho1 · Andrew C. Cortopassi1 · Redd Driver1 · Jude Ssenyonjo1 · Lisa A. Eaton1 · Seth C. Kalichman1

Published online: 6 January 2020
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Despite great strides forward, several countries are far from achieving the goals of the UNAIDS 90–90–90 initiative, aimed toward identifying and diagnosing 90% of people living with HIV, distributing antiretroviral therapy (ART) to 90% of people diagnosed, and achieving viral suppression in 90% of people receiving treatment. HIV stigma is likely a contributing factor in failing to achieve these goals, particularly the first 90—identifying and diagnosing 90% of those infected. Since the 2014 launch of the 90–90–90 initiative, major advances in global access to ART have culminated in half of the world’s people living with HIV now receiving treatment [1]. There has also been marked progress in the infrastructure needed to distribute HIV treatments worldwide [1, 2]. However, treating HIV starts with diagnosing HIV, making the first 90 the critical cornerstone in efforts to end HIV epidemics. Shortfalls in achieving 90% HIV diagnoses are apparent throughout sub-Saharan Africa, where the vast majority of the world’s HIV infections are concentrated [3]. In some countries with the most devastating HIV epidemics, progress has been slowest in achieving the first 90 [3]. In 2017 an estimated 76% of people with HIV in this region had been diagnosed, 79% of whom were receiving ART, and 83% of those receiving ART had achieved HIV suppression. These averages, however, mask the disparities that exist among countries. HIV stigma is most certainly one of numerous factors at play in failing to achieve the first 90.

HIV stigma is a ubiquitous and pervasive barrier to every point along the HIV continuum of care [4–7]. Societal devaluation of people with HIV and intersecting characteristics, such as gender, sexual orientation and substance use, adds to the burden of receiving an HIV diagnosis [8]. Prejudice, stereotypes, and discrimination against people living with HIV create a social context in which personal concerns for safety, a sense of shame, social exclusion and other adverse social conditions accompany the prospect of receiving a positive HIV test [9]. Harsh structural expressions of HIV stigma, particularly criminalization of HIV, can also undermine efforts to scale-up HIV testing [10]. People who endorse prejudicial attitudes towards people living with HIV are themselves less likely to accept HIV testing [6]. Having witnessed discriminatory acts and other forms of enacted stigma leads to expectations or anticipation of stigma following an HIV diagnosis. Anticipating future stigma is linked to lower rates of testing uptake in multiple populations [8, 11–13].

Having not achieved the 90–90–90 targets in any country with a substantial HIV epidemic, we asked to what degree may stigma be impeding HIV testing? We therefore took a cursory look at the state of research on the role of stigma in HIV testing in sub-Saharan Africa. We examined published studies between 2014 and 2019 that reported on the relationship between HIV stigma and HIV testing. We purposefully selected the African countries with the highest HIV prevalence by total population: South Africa, Nigeria, Mozambique, Kenya, Tanzania, Uganda, Zimbabwe, Zambia, and Malawi [14]. Together, these nine countries are home to an estimated 20.1 million people living with HIV. We did not set out to conduct a comprehensive review. Rather, this Editorial is intended to provide a thumbnail sketch of research on the relationship between HIV stigma and HIV testing in high-HIV prevalence countries to inform the next steps toward achieving the 90–90–90 targets.
The State of the Literature on HIV Stigma and HIV Testing in Sub-Saharan Africa

Relevant publications were searched in PubMed in March of 2019, with independent searches for each of the nine countries. We used combined free-text search terms “HIV” AND “test” AND “stigma” AND [name of country]. We only reviewed studies published between 2014 and 2019, the 90–90–90 era, that measured HIV stigma in relation to HIV testing uptake. We only included studies that directly assessed stigma and uptake of HIV testing, omitting policy analyses, studies of HIV testing experiences, studies of stigma experiences in people living with HIV as well as other studies that fall outside of stigma in relation to testing. Studies that sampled participants across countries were included if they reported results individually for each country. We collected qualitative, quantitative, and mixed-method studies. A detailed summary of the studies we examined, country by country, is reported as electronic supplementary material. Below we briefly summarize the state of research for each country.

South Africa

Our search yielded 18 studies conducted in South Africa, encompassing both quantitative and qualitative studies of varying size, scope, and designs. Stigma was consistently identified as a barrier to HIV testing across a diverse range of participants. Of five studies that included quantitative measures of stigma [6, 15–18], three used stigma scales that had previously been used in South Africa. Perceived stigma and discrimination were found to vary across study populations, with higher rates of stigma and overt discrimination occurring in socioeconomically disadvantaged urban and rural communities relative to better-resourced settings [19–22]. With respect to HIV testing, women tended to report more frequent testing than men, with men often indicating hesitation to attend primary health clinics due to concern that they may be perceived as less masculine [23, 24]. Two large quantitative surveys, however, reported conflicted findings with regard to gender, stigma and HIV testing. One study of young adults showed a strong negative relationship between perceived HIV stigma and testing in women but not in men, while another study in urban commuters showed a negative relationship between perceived stigma and testing in men but not in women [21, 23]. In contrast to most findings, one study showed that women who held more stigmatizing attitudes regarding people living with HIV were more likely to report having been HIV tested [21]. Concerns regarding breaches of confidentiality about test results by health care providers were a common source of hesitancy to get tested, particularly among men. Other themes regarding the impact of stigma on testing included perceived risks for social ostracism, loss of primary romantic relationships, and employment discrimination [22, 25]. As such, a number of studies indicated greater acceptability of home-testing or self-testing than facility-based testing, especially among men [22, 25–27].

Tanzania

Next to South Africa, the greatest amount of HIV stigma— HIV testing research was the greatest from Tanzania, with 13 studies published since 2014. Results consistently suggest that HIV testing uptake has increased in Tanzania among both men and women. Nevertheless, stigma remains a key barrier to achieving optimal testing rates. Among women, stigma is experienced across multiple contexts, including community members, family, and healthcare professionals [28–30]. Studies find that integrating HIV testing services with antenatal care may shield potential stigma by disguising the type of services being sought. However, women receiving antenatal services still reported fear of testing positive as a barrier [28, 30]. Among men, research in Tanzania has focused primarily on stigma in social networks as potential barriers to HIV testing. One study found that making HIV testing appear more normative may reduce stigma and increase men’s HIV testing [31]. Another study found that peer support that encouraged testing reduced anticipated stigma among male peers and community members and resulted in higher testing uptake [32].

Nigeria

Published research regarding stigma and HIV testing remains scant in Nigeria, as our search found only four studies, all of which implicated stigma as a barrier to HIV testing [33–36]. Two quantitative studies with men who have sex with men (MSM) found that sexual orientation stigma served as a barrier to HIV testing and healthcare utilization [33, 34]. One cohort of men found that stigma derived from the passage of laws prohibiting same-sex marriage and fear of judgements for engaging in same-sex relations were linked to poor engagement in HIV testing among Nigerian MSM [33]. Another study of men involved in exchange sex found that fear, public harassment, and the experience of sexual violence were associated with low testing uptake [34]. A qualitative study among pregnant women and their male partners indicated that fear and shame of being diagnosed with HIV and its subsequent impact on family functioning...
inhibited HIV testing [35]. Furthermore, testing hesitation resulted from anticipating HIV stigma from family and the community, triggering concerns about losing social support and being abandoned [34].

**Mozambique**

Only four studies examined barriers to HIV testing in Mozambique, and all found an association between low-testing rates and stigma [36–39]. Two studies were conducted exclusively in Mozambique, and the other two examined testing throughout several African countries, including Mozambique. A multi-country study by Fleming et al. was specifically conducted to provide insight into the barriers to reaching 90–90–90 goals [36–38]. Fleming et al. found that approximately 35% of men aged 15–49 endorsed stigmatizing views of people with HIV, and these men were significantly more likely to report never testing for HIV. The other three studies found stigma to be the among the most pervasive barriers to testing [36–39]. However, in Mozambique stigma was a robust barrier to HIV testing for women but not men, suggesting that other factors may impede testing for men over and above stigma, such as access to health services and masculinity [36, 38].

**Kenya**

Eight studies conducted research on the impact of stigma as an impediment to HIV testing in Kenya [39–44]. Results showed that women tested more frequently than men, despite holding more stigmatizing attitudes towards people living with HIV [40]. In a multi-country study discussed above, Fleming et al. found that Kenyan men who endorsed more stigmatizing attitudes towards people living with HIV were less likely to have tested for HIV [39]. In addition, Nyblade et al. [41] reported that female sex workers who anticipated stigma from their healthcare provider were more likely to avoid HIV testing. Similar concerns were expressed among university students, adolescents, and young adults [44–46]. Romo et al. found a similar effect among long distance truck drivers, where anticipated stigma was associated with low-rates of HIV testing [42].

**Uganda**

In Uganda, only four studies evaluated stigma as an impediment to HIV testing [36, 40, 47, 48]. The limited amount of research on stigma and testing in Uganda was surprising given the decades of focused attention this country has received in research. All of the studies we found confirmed stigma as a barrier to HIV testing. Like other countries in the region, the relationship was stronger among women than men, suggesting that men may encounter additional barriers contributing to their low HIV testing rates. In rural communities, both men and women greatly underestimated the number of persons tested, and that those who perceived testing as less normative were less likely to have been tested [47].

**Zimbabwe**

Four studies examined the associations between HIV-related stigma and HIV testing in Zimbabwe [39, 49–51]. Each study found that HIV stigma was associated with lower likelihood of HIV testing. Studies in both men and recent mothers found that those who held prejudicial views of people with HIV were less likely to have ever been tested for HIV [39, 49]. A longitudinal qualitative study interviewed participants embedded within the multi-national Project Accept community-level randomized trial intended to reduce HIV-related stigma, increase HIV testing, and reduce HIV infections [50, 51]. While participants identified stigma as a cause of low HIV testing for women in antenatal care, results also suggested decreases overtime in stigmatizing attitudes. In particular, decreases were observed in blaming people with HIV as well as fearing casual contact with those who have HIV infection.

**Zambia**

Three qualitative and one quantitative study assessed the impact of stigma on HIV testing in Zambia [39, 52–54]. A large survey using population-based data found a negative relationship between endorsing HIV-related prejudice and HIV testing in men [39]. A qualitative study identified anticipated stigma from healthcare workers and peers as a barrier to testing in female sex workers [52]. One study of midwives examined their perspectives of why male partners of pregnant women do not participate in the prevention of mother-to-child transmission of HIV or HIV testing [53]. Midwives cited stigma from healthcare services, society, and other individuals as barriers to men’s testing. However, another study found that men themselves denied that anticipated stigma was a barrier to testing in Lusaka, but instead reported that self-stigma did impede testing [54]. Similarly, healthcare workers and lay counsellors reported that shame and self-stigma were experienced by people with HIV. These data suggest that stigma remains a primary barrier to testing in Zambia, although it remains unclear which types of stigma inhibit testing.
Malawi

Results from three studies in Malawi suggest that structural support may play an important role in the relationship between stigma and HIV testing [39, 49, 55]. For instance, one study found that prejudicial attitudes towards people living with HIV predicted lower odds of lifetime HIV testing in young mothers. However, this association was no longer significant after controlling for whether mothers were offered antenatal HIV testing [49]. In another study utilizing a national dataset, HIV prejudice was associated with higher odds of never having been tested for HIV among men. Although structural factors were not considered in further models, the association between stigma and testing remained significant when other factors were considered, including HIV-related knowledge and acceptance of gender-based violence [39, 55]. Findings in Malawi suggest that it is the experience of going to testing sites that deters testing among men, who prefer home testing [55].

Conclusions

Our admittedly cursory review found 62 studies examining the relationship between HIV stigma and HIV testing in nine African countries representing among the highest HIV prevalence in the world. A majority of the research was conducted in two countries, South Africa and Tanzania. This startling dearth of research is perhaps the major finding from our review. We did not observe any change in the number of annually published studies over the years representing the first phase of the 90–90–90 initiative. The studies varied in methodological quality and used a wide range of self-report instruments to measure HIV-related stigma. Quantitative studies ranged from large multinational surveys including tens of thousands of participants, to smaller survey studies and studies using single-item or idiosyncratic stigma measures [19, 26, 39]. The qualitative research also varied, with studies examining stigma across heterogeneous populations, using a variety of methods that included focus groups, participant observation, and in-depth individual interviews [25, 42, 56]. Only two studies reported data from research designed to evaluate interventions to reduce the impact of stigma as a barrier to HIV testing [51, 57].

Stigma manifests differently across populations, with differing forms of stigma conferring uneven HIV testing uptake. Sex workers, both female and male, experience exceptionally high-rates of overt discrimination, with sex workers in several countries reporting experiences of stigma from healthcare workers, breaches of confidentiality, and delay or denial of HIV testing services [28, 34, 41, 43, 48]. Men who have sex with men also report high-rates of verbal harassment and anticipated discrimination, leading to avoidance of health care as well as concealment of sexual history during health visits [33, 34, 58]. Healthcare workers themselves endorse HIV-related stigma as a barrier to testing, although this stigma appears to be subtle. For example, although few healthcare workers in one study anticipated overt workplace discrimination on the basis of having tested HIV positive, over a third nevertheless believed that very few of their coworkers would want to be aware of their HIV status [19].

The limited amount of research we reviewed did elucidate avenues to address HIV stigma among men and women. First, men were more likely to endorse prejudicial attitudes towards people living with HIV than women across countries, and prejudicial attitudes were shown to be associated with a lower likelihood of engaging in HIV testing in both men and women [39, 40]. HIV testing norms also appeared to be an especially influential correlate of men’s testing behavior, with low perceived social support for testing posing a major obstacle [31, 32]. Qualitative research suggests that for men, the prospect of receiving an HIV diagnosis is associated with fears of discrimination and loss of material resources through lost employment, rejection from family and community, and threats to masculinity [24, 59]. Women also anticipated stigma reactions from their partners in response to an HIV diagnosis; with some women reluctant to test or ask partners to test due to concerns that their partners may force them to leave their home based on the test results [37].

The studies we examined show a need for a research agenda on adverse social conditions driven by stigma that impede HIV testing. This research agenda should go beyond descriptive studies, which represent the majority of those conducted thus far in the 90–90–90 era. One conclusion that is so obvious it can go without saying is that there is far more data on HIV stigma than there is HIV stigma theory. And while theory alone will carry little public heath meaning, a stronger conceptual grounding will go a long way toward promoting higher quality research to inform interventions. Longitudinal studies are needed to identify mechanisms and points of intervention. Studies that examine stigma in social relationships using dyadic, community, and multi-level models are needed. Methods are needed to harmonize data from multiple stigma measures. A stigma research agenda should also advance our measurement and knowledgebase of intersectional stigma, specifically the unique experience of stigma faced by individuals with multiple stigmatized characteristics. Research on stigma and testing should also be extended to stigma as an impediment to HIV prevention, including.
pre-exposure prophylaxis (PrEP). This Editorial should not be mistaken as a comprehensive review. Indeed, systematic reviews and meta-analyses will be critical to advancing a research agenda on HIV stigma and testing. Publishing quality original research on HIV stigma and testing will remain a high priority at AIDS and Behavior.

Funding Preparation of this Editorial was supported by a training grant from the National Institute of Mental Health T32-MH074387.

References


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Tab 19
Understanding factors influencing linkage to HIV care in a rural setting, Mbeya, Tanzania: qualitative findings of a mixed methods study

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Abstract

Background: In remote rural Tanzania, the rate of linkage into HIV care was estimated at 28% in 2014. This study explored facilitators and barriers to linkage to HIV care at individual/patient, health care provider, health system, and contextual levels to inform eventual design of interventions to improve linkage to HIV care.

Methods: We conducted a descriptive qualitative study nested in a cohort study of 1012 newly diagnosed HIV-positive individuals in Mbeya region between August 2014 and July 2015. We conducted 8 focus group discussions and 10 in-depth interviews with recently diagnosed HIV-positive individuals and 20 individual interviews with healthcare providers. Transcripts were analyzed inductively using thematic content analysis. The emergent themes were then deductively fitted into the four level ecological model.

Results: We identified multiple factors influencing linkage to care. HIV status disclosure, support from family/relatives and having symptoms of disease were reported to facilitate linkage at the individual level. Fear of stigma, lack of disclosure, denial and being asymptomatic, belief in witchcraft and spiritual beliefs were barriers identified at individual’s level. At providers’ level; support and good patient-staff relationship facilitated linkage, while negative attitudes and abusive language were reported barriers to successful linkage. Clear referral procedures and well-organized clinic procedures were system-level facilitators, whereas poorly organized clinic procedures and visit schedules, overcrowding, long waiting times and lack of resources were reported barriers. Distance and transport costs to HIV care centers were important contextual factors influencing linkage to care.

Conclusion: Linkage to HIV care is an important step towards proper management of HIV. We found that access and linkage to care are influenced positively and negatively at all levels, however, the individual-level and health system-level factors were most prominent in this setting. Interventions must address issues around stigma, denial and inadequate awareness of the value of early linkage to care, and improve the capacity of HIV treatment/care clinics to implement quality care, particularly in light of adopting the ‘Test and Treat’ model of HIV treatment and care recommended by the World Health Organization.

Keywords: HIV, Linkage to care, Facilitators to HIV care linkage, Barriers to HIV care linkage, Qualitative research, Tanzania, Health system, Quality of care
Background
Sub-Saharan Africa (SSA) bears the highest HIV/AIDS burden in the world having an estimated 71% (25.8 million) of all people living with HIV in 2014 [1]. HIV is one of Tanzania’s major public health problems. An estimated 1.5 million people are living with HIV, representing a prevalence rate of 5.1% [1, 2]. The rates of HIV testing are low, particularly in rural areas [3, 4].

In 2015, the Ministry of Health and Social Welfare in Tanzania, in collaboration with other stakeholders, drafted the National Comprehensive HIV Testing and Counseling (HTC) guideline, which combines all implementation approaches to HTC into one document. The aim of this guideline was to improve HIV testing, HIV prevention, linkage and enrolment into care, retention and adherence in general HIV care and treatment, and management of comorbidities in HIV/AIDS.

In Tanzania, home-based and other outreach HIV testing programs have been put in place to improve the low uptake by community members of HIV testing and to better link those individuals who test positive to HIV care and treatment centers (CTCs). By increasing the types and number of HIV/AIDS treatment and care strategies and service outlets, the Ministry expected that successful linkage to HIV treatment and care among people living with HIV in Tanzania would improve [2].

Despite increasing rates of HIV testing following the expansion of outreach HIV testing approaches [5], studies conducted in various regions of Tanzania have reported low linkage to care for individuals who test HIV positive [6]. A study conducted in Mwanza (Northern Tanzania) reported a linkage of as low as 14% in the first 4 months after diagnosis [3]. While improvements are occurring, linkage to care remains poor. According to Simmelink [4], Ifakara, Tanzania has a linkage rate of 23.1%. Similarly, findings from the Mbeya Regional AIDS control program 2014 report show a linkage rate of 28%. These rates of linkage to HIV care from various regions in Tanzania are indicative of a generalized problem faced by the Tanzanian HIV and AIDS treatment implementation programs.

Linkage to care: a crucial step in HIV control and disease outcome
Timely and effective linkage to HIV treatment, care and support are crucial for a better prognosis of HIV/AIDS. Hence, the most recent WHO “test-and-treat” guidelines for HIV treatment and care recommend that treatment should be immediately initiated once someone has tested positive for HIV, irrespective of their CD4 count [7]. Treatment initiation, nevertheless, can only be achieved if the HIV-positive individual is successfully linked to an accredited HIV treatment and care center or antiretroviral treatment scheme. As part of HIV/AIDS management implementation strategy, Tanzania’s National HIV testing and counseling guidelines (2013) stipulate that after completion of HIV testing, all HIV-positive individuals should be linked to receive appropriate care and treatment care services at designated care and treatment centers (CTCs) [8, 9].

Linkage to care is described as the process (interventions and programs) put in place to ensure that HIV-positive individuals are successfully entered into HIV medical care, psychological and social services [10–12]. The process of linkage to care includes educating patients about the benefits of being in care and providing facilitating services such as referral letters and guidance in selecting a treatment center and treatment options [13].

A range of factors may facilitate or mitigate the process of linkage in the trajectory of HIV care from the point of diagnosis to initiation of ART. These influences may occur at the level of the patient/individual, the health care provider, the health system, or may be influenced by other factors acting a structural or contextual level.

Several studies have explored the barriers and facilitating factors to linkage to care in Kenya, Uganda, Malawi and South Africa [14–19]. Fear of stigma, lack of disclosure of HIV status to relatives or significant others, being asymptomatic at the time of diagnosis and negative health care provider attitudes are some of the factors reported as barriers to timely linkage into HIV care [15, 20, 21]. Factors identified as facilitating linkage were the integration of HIV testing and HIV care services, good patient-staff relationships and short clinic waiting times [18, 20].

In Tanzania, Layer et al. [21] explored and classified the facilitating factors and barriers to linkage to HIV care and treatment services. Nevertheless, the literature specifically focusing on remote areas and hard-to-reach populations is scarce. In particular, we did not find any studies in the Mbeya region of Tanzania where population mobility and remoteness make linkage into HIV care particularly challenging [22].

To help fill this evidence gap, we conducted a longitudinal mixed methods study based on a two-armed cohort of 1012 newly HIV diagnosed individuals with a nested qualitative component in the main cohort. The first phase of the study compared rates and timelines of linkage to care between two models of HIV testing (mobile-based and facility-based) and found that at 6 months since diagnosis, 78% (793 out of 1012) of participants enrolled in the cohort had linked into care. Linkage to care was higher from facility-based than from mobile/outreach sites; 84% (CI = 81–87%, n = 512) of individuals tested at facility-based were linked to care, compared to 69% (CI = 65–74%, n = 281) of individuals tested at mobile/outreach in the same period. Similarly,
Individuals tested at facility-based sites entered HIV care sooner than the individuals tested at the mobile/outreach sites. Disclosure of HIV status was a significant factor associated with timely linkage to care and clients who reported that wanting to get treatment as one of their reason for testing HIV were 25% more likely to link to care [23].

In the second phase, reported here, we aimed to describe the factors influencing linkage to HIV care services among newly diagnosed HIV-positive individuals in the mobile services and facility-based services, focusing on patient/individual, provider, health system and contextual levels, in order to contribute to a deeper, intervention-oriented understanding of the dynamics of linkage to care in Mbeya region, Southern highlands of Tanzania. We sought to examine and to inform the implementation strategies identified by Peters et al., [24] such as:

- Enhancing the capabilities of government (public policy and management oversight);
- Improving the performance of implementing and provider organizations;
- Strengthening the capacities and performance of individual providers and front-line workers;
- Empowering communities, households and supporting multiple stakeholders engaged in improving health [24, 25]

Study setting
The study was conducted in rural communities within Mbeya region, Southern Tanzania. This remote and transient region has a higher HIV prevalence than the national average (9% vs. 5.1%) and a high proportion of the population lives more than 10 km from a health facility (double the WHO recommended 5 km). The area is characterized by high rates of population mobility for cross-border trade between Tanzania, Zambia and Malawi. Both testing and linkage to care are particularly challenging in these circumstances.

The study took place in four purposively selected districts among the eight administrative districts of Mbeya region: Mbeya Rural, Kyela, Mbozi and Chunya. The selected districts included areas of high HIV prevalence and hard-to-reach populations. Two districts (Kyela and Mbozi) are along the highways and have borders with Zambia and/or Malawi. Mbeya Rural and Chunya districts have a larger proportion of residents who live 10 km or more from a health facility.

Characteristics of health care provision in relation to HIV care in Mbeya region
In Mbeya region, about 23% of the inhabitants live within 5 km of a health facility, and 15% are more than 15 km away from a network of health facilities that include 20 hospitals, 36 health centers, and 374 dispensaries [26]. Out of these 490 health facilities, 350 facilities provide Prevention of Mother to Child Transmission (PMTCT) services, 312 provide HIV Counseling and Testing services while only 68 health facilities provide Antiretroviral therapy (ART) services [22]. The majority of health facilities in the rural areas do not offer CD4 testing or HIV treatment services although there has been a substantial increase in health facilities offering HIV testing and ART services in this region since 2010 [22].

Design
The qualitative study reported here was nested within a larger mixed method cohort study that aimed to document and compare rates, patterns and determinants of linkage to care in the 6 months following an HIV positive test result between mobile and facility-based models of HIV testing in Mbeya region, Tanzania. The overall study design and methods are reported elsewhere [23].

We adopted a descriptive qualitative study design, an approach allowing for a ‘comprehensive summarisation of specific events experienced by individuals or groups of individuals’ [27]. We drew from the Ecological Model [28] to systematically explore the multi-level factors affecting linkage to HIV care. The ecological framework has been applied to explain HIV related treatment and care health seeking behavior using its proposed levels (1) intrapersonal or individual factors, (2) interpersonal factors, (3) institutional/ organizational factors (health system factors) (4) community factors or contextual factors. We found the Ecological Model useful as it assumes that behavior affects and is affected by multiple levels of influence [29]. On the basis of our experience in HIV intervention development, we felt that while this structured model may be less sensitive to complex findings than a fully inductive analysis, it is more accessible to and hence actionable by the decision makers and practitioners we sought to inform, whilst ensuring a comprehensive approach.

Methods
Study participants were purposively selected among HIV-positive individuals who have been in the HIV care umbrella between 0 and 6 months. A total of 98 participants were included in the study. Sixty-eight HIV-positive individuals participated in eight focus group discussions (FGDs) each with six to 12 respondents. In-depth interviews were conducted (IDI’s) with another ten HIV-positive individuals. We also conducted 20 in-depth interviews with healthcare providers in the study sites, Table 1. The lead investigator (ES), assisted by four trained research assistants, conducted the interviews. We held a
two-day training session on the data collection methods with the research assistants, before testing the data collection tools. We piloted the interviews and FGD guides in two sites (health facilities), which were not among the included districts research sites, and adjusted the instruments based on these pilots.

The interview and focus group discussion guides were developed on the basis of the literature [14–19] and the responses to the questionnaire used in the earlier quantitative phase of the study. The interview guide for the patients focused on their experiences of being HIV positive, the circumstances around their registration into a treatment/care program and any challenges or enablers with regard to registration – considered the first step to linkage in care. The interview guide for the healthcare providers asked about the availability of HIV testing and linkage to care guidelines and whether these guidelines are being followed and explored the healthcare providers' perspectives about what inhibits or enables individuals to link into care immediately after testing HIV positive.

Interviews and discussions were audio recorded and transcribed verbatim in Swahili. Two accredited translators translated the transcripts verbatim into English and the first author who is also fluent in both languages reviewed all translated transcripts. In analyzing the data, a thematic content analysis approach was used [25]. We applied deductive and inductive approaches in two phases. In phase one, we inductively coded the entire data set – making interpretations from the raw data. We analyzed and interpreted the data against the different levels of the ecological model and also included emerging themes from interviews.

We then fitted the identified codes within the ecological framework thus applying the deductive approach to thematic analysis. The coding of translated transcripts and organization of codes for deductive thematic content analysis was supported by Atlas.ti version 7 [30]. Finally, we included our earlier quantitative findings of the parent cohort study in the interpretation (presented in the Discussion section) to enrich the understanding of both quantitative and qualitative findings. A more fully integrated mixed methods analysis of all study findings is in preparation and not presented here.

**Rigor and trustworthiness**

Following Lincoln and Guba [31] and Shenton [32], we employed several strategies to enhance credibility, transferability, dependability and confirmability. We adopted a qualitative method with three methods of data collection to explore and complement the findings of a quantitative study. Respondent validation by recapping the discussions with validation by the respondents was done during the focus group discussions. We applied different data collection techniques with a variety of respondents who were selected from multiple HIV testing sites.

<table>
<thead>
<tr>
<th>Districts</th>
<th>Type of Site</th>
<th>No of FGDs</th>
<th>No of IDI-Clients</th>
<th>No of IDIs- HCP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kyela</td>
<td>Kyela Hospital</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Ipinda Health Centre</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Mbozi</td>
<td>Vwawa Hospital</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Tunduma health Centre</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Mbeya Rural</td>
<td>Ifisi Hospital</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Inyala health centre</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Chunya</td>
<td>Chunya hospital</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Makongolosi Dispensary</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Mobile/outreach sites</td>
<td>ST JOHN HUS-Kyela</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>MMRC mobile- Kyela</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Mbozi</td>
<td>SHDEPHA - Mpemba</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>MMRC Mobile-Mbozi</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mbeya Rural</td>
<td>KIHUMBE- Mbalizi</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>MMRC mobile- Mbeya Rural</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Chunya</td>
<td>KIHUMBE- Chunya</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>MMRC- Mobile- Chunya</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>8</td>
<td>10</td>
<td>20</td>
</tr>
</tbody>
</table>

FGD Focus Group Discussions, IDI Individual Interviews, HCP Health Care Providers
We addressed dependability by training and supervision of a small number of field workers and by ensuring that interview and focused-group transcripts were translated from Swahili to English by two professional translators and checked by the first author who is fluent in both languages. Two authors analyzed the data and cross verified by the last author.

For confirmability, we kept an audit trail during the course of the study. Finally, we adopted the relevant guidelines of the 32-item checklist for reporting qualitative research (COREQ) as prescribed by Tong, Sainsbury, & Craig, [33] to report important aspects of the research team, study methods, context of the study, findings, analysis and interpretations.

Ethical considerations
The study received ethical clearance from the following Ethics review boards: University of Western Cape (UWC) Senate Research Committee, Mbeya Medical Research Center, Mbeya Regional Medical Research Ethics Committee (MMREC) and the National Ethical Committee/ Medical Research Coordinating Committee at the National Institute for Medical Research in Tanzania.

Willing participants were provided with an information sheet detailing the nature, aim, and significance of the study. Participation was voluntary, and participants were advised that they were free to withdraw from the study at any time without negative consequences. Willingness to participate was confirmed by signing an informed consent form. Confidentiality and anonymity were considered by using pseudonyms and numbers to represent participants.

Results

Study sites and characteristics of respondents
A total of 38 males and 60 females above 18 years participated in qualitative interviews, with two respondents participating in both IDI and FGD.

Factors identified as influencing linkage to care
Themes related to factors influencing linkage to care were categorized into four levels based on the conceptual framework used in the study: individual, health care provider, health system and contextual levels. Table 2 below illustrates the various categories into which the emerging themes and factors were

| Table 2: Facilitators and barriers to linkage in care by levels |
|-----------------|-----------------|-----------------|
| Level           | Categories      | Themes/Factors  |
| Individual      | Facilitators    | Individuals being sick at the time of diagnosis  |
|                 |                 | Individuals disclosing their status to someone |
|                 | Barriers        | Social and moral support from family members/relatives and from other PLHIV |
|                 |                 | Fear of stigma |
|                 |                 | Denial and being asymptomatic |
|                 |                 | Poor health literacy |
|                 |                 | Lack or fear of disclosure |
|                 |                 | Belief in witchcraft and traditional treatment |
|                 |                 | Spiritual beliefs |
| Health Care Provider | Facilitators    | Support or encouragement from health care providers |
|                    |                 | Good patient-healthcare provider relationship |
|                    | Barriers        | Negative attitude from healthcare provider |
| Health System     | Facilitators    | Availability of referral procedures i.e. referral letter/Referral form |
|                    |                 | Good service organization |
|                    | Barriers        | Poor clinic procedures and visit schedules |
|                    |                 | Clinic over-crowding |
|                    |                 | Long waiting times at the clinic |
|                    |                 | Few care and treatment centers and inadequate resources |
|                    |                 | Shortage of staff |
|                    |                 | Inadequate CD4 testing machines (malfunctioning) |
| Contextual        | Facilitators    | Short distance |
|                    |                 | Less costs to clinic |
|                    | Barriers        | Long distance |
|                    |                 | high transport cost |
Results overview
While we identified both barriers and facilitators at all levels and reported by all respondents, we found that individual-level and health system-level factors reported by both People living with HIV (PLHIV) and healthcare providers were particularly prominent. With regard to the individual-level factors, most of the HIV positive individuals mentioned stigma as an important barrier. During the FGDs and IDIs with the PLHIV, the participants kept steering the discussions toward stigma related issues. With regard to the health system factors, both the PLHIV and the healthcare providers emphasized over-crowding and long waiting times at the centers.

We also noticed that in discussing the health system level in one of the sites, while the PLHIV mentioned that there were occasional medication stock-outs, the healthcare providers did not agree that this happens.

Individual level
The individual level includes issues related to the individual’s knowledge, attitudes, feelings, experiences and behaviors towards linkage to care or accessing health care services.

Facilitators to linkage to care
Three themes were identified as facilitators to linkage to care at the individual level: being sick or having symptoms at the time of diagnosis, disclosing one’s status to someone and social and moral support from relatives and from other PLHIV:

Individuals being sick at the time of diagnosis
The individual’s perception of their health status, and specifically being sick at or around the time of diagnosis, was reported (by PLHIV) to influence linkage to care positively. This is illustrated in the following excerpts:

“Initially, I didn’t think it was necessary to go [to the hospital] but one day I had a fever. I felt my hands and legs not working at all. I thought I am going to die. I asked my sister to take me to the hospital for medication” [IDI-Client3].

“They stay at home until they are seriously sick is when they go to the hospital for registration” [FGD7].

Individuals disclosing their status to someone
Respondents cited disclosure of seropositive status as an important factor in facilitating linkage to HIV care in HIV-positive individuals. For example, one participant reported:

“Most of my relatives know my status after since I told them. They support me. Sometimes they escort me to the clinic” [IDI-Client3].

Social and moral support from family members/relatives and from other PLHIV
Social and moral support from family and relatives were reported to enhance linkage behaviors of HIV-positive individuals in a number of the focus groups and individual interviews:

“I started suffering so I decided to ask my elder brother to escort me to do the test [HIV] and I was found HIV positive” [FGD3].

“My sister encouraged me, she said it not the end of the world, I will be okay when I start medication, and there are so many people who are in this [HIV] situation” [IDI-Client8].

“At our place Lusungo, we have formed the HIV support group which we meet every 15 of the month to discuss issues and encourage each other... we contribute little money for emergency ...like if someone does not have transport fare we give” [FGD2].

Individual level barriers to linkage to care
Six themes were salient as barriers to linkage to care from this sub-theme: fear of stigma, denial and being asymptomatic at the time of diagnosis, lack of understanding of the importance of being in care, lack of disclosure, belief in witchcraft and traditional treatment and spiritual beliefs.

Fear of stigma
Stigma related to attending HIV care clinics or CTCs was the most frequent factor described by the PLHIV and healthcare providers as a barrier to being registered (linked) into HIV care and treatment. This was captured in statements such as the following:

“They do not like going to the hospital; some fear that other people will see them at the clinic and know that they are infected” [FGD1].
“Most of them is because they fear that people will see them at CTC and start pointing fingers” [IDI-HCP₂].

**Denial and being asymptomatic**

Denial of test results was reported as a prominent barrier to linkage to care among individuals who had tested positive for HIV:

“I was pregnant and I went to the clinic for antenatal care. They [clinicians] tested my blood and told that I am infected with HIV. I did not believe it because I was not sick and had no other health problem apart from being pregnant” [IDI-Client₉].

“Some clients do not believe they are infected because they are healthy” [IDI-HCP₇].

**Poor health literacy (lack of understanding of the importance of being in care)**

Poor health literacy in the form of lack of understanding of the importance of being in care was a hindrance to linkage to care. The issue of poor health literacy was mostly reported by the health care providers. The patients did not particularly allude to issues related to poor health literacy. Two examples are shown by the following quotes:

“Maybe education is still low, they do not understand that is importance to start ART care while you are still strong than when you are very weak” [IDI-HCP₉]

“Also some people are just ignorant especially those who do not have any symptoms, they do not see the importance of being in care if they are not sick.” [IDI-HCP₃].

**Lack or fear of disclosure**

Both PLHIV and the health care providers identified the lack or fear of disclosure as an important barrier to linkage to care. Participants revealed that HIV positive individuals sometimes fail to disclose their HIV status to their significant others for fear of consequences such as intimate partner violence and divorce. This is captured in the following statements:

“Many women are facing problems when disclosing HIV status to the men and some lead to divorce” [FGD₃].

“They do not tell their partners, so it becomes difficult for them to come to the clinic and they come secretly” [IDI-HCP₁₃].

**Belief in witchcraft and traditional treatment**

The reports of some of the HIV-positive individuals suggest that belief in witchcraft is a challenge to linkage to care among some HIV-positive individuals in rural areas. These individuals believed that they are sick due to witchcraft (someone has bewitched them) so treatment at the hospital was not an option for them to get better. These experiences were mostly shared by the PLHIV

“When I started getting sick, my in-law took me to a traditional healer, he said I am bewitched. He [traditional healer] started treating me with different herbs, some for drinking and others for bathing. I wasn’t getting any better so I told him; I want to go to the hospital” [FGD₂].

“He [traditional healer] said it was one of my neighbors in the market who is jealous of me. He [the neighbor] had put something in my store that is causing us to suffer from unknown diseases” [IDI-Client₂].

**Spiritual belief**

It was also reported by some PLHIV as well as by some health care providers that certain spiritual beliefs sometimes had a negative impact on linkage to care. Respondents reported that some people believed that prayers and usage of holy water can heal HIV, thus influencing their decision to link to HIV care. This was captured in most focus group discussions with the patients, and some of the key informant interviews with the health care providers support this point of view:

“You know when there is a problem you become worried so you can come here [clinic] or try other places. They say they pray for you and you will be healed” [FGD₄].

“Some patients go to the new churches. The pastors in those churches they pray for them and give them holy water to take and they tell them you will be healed” [IDI-HCP₃].

**Health care provider level**

These are factors related to the relationship between the care providers and the PLHIV as well as to the behaviors of the health care providers. The facilitators and barriers under this level were reported by the PLHIV in the focus group discussion and individual interviews. Health care providers placed less emphasis on this level, particularly in relation to barriers.
Health care provider facilitators to linkage to care
Two themes were identified as facilitators for linkage to care under this theme: Support or encouragement from health care providers and good patient/staff relationship.

Support or encouragement from health care providers
There were similar testimonies from both PLHIV and health care providers espousing that support and encouragement from care providers facilitated the registration (linkage) of HIV-positive individuals in the CTC. The role of support and encouragement is captured in these excerpts:

“Frankly speaking, the health providers here treat us nicely. They explained to me step-by-step on how to use drugs. I thank them. It is two weeks now since I started the drugs. They are providing good services” [FGD3].

“They [the nurses] even gave me the drugs for preventing chest infection and another disease.” [IDI-Client6].

Good patient-health care provider relationship
A patient who took part in the focus group discussions indicates that a good relationship and service delivery from the health care providers could encourage patients to link to care. A good relationship between the health care provider and the patient was reported to enhance linkage and continuity in HIV care as reported in some focus group discussions:

“The nurses are very polite and helping us a lot” [FGD1].

“Generally the service providers are treating us well; we do not have any complaint” [FGD4].

Health care provider barriers to linkage to care
Negative healthcare provider attitude and use of abusive language were reported by the HIV positive individuals, particularly in one FGD and one IDI. On a follow up visit, a healthcare provider in the site in question claimed that this is related to a shortage of staff at the site: sometimes staff are overwhelmed by responsibilities and work overload, so the patients feel neglected.

Poor health care provider attitude and use of abusive language
Some participants reported that negative healthcare provider attitudes and the use of disrespectful language and shouting by some of the health care providers was an important barrier to linkage to care. It was also reported that patients dropped out of care when mistreated at the clinic. Participants in two of the focus group discussions expressed this in the following statements:

“When we reach here [clinic], they look at us like we are not normal human beings, they discriminate against us. They tell us to come very early but you see they start attending to us at 01:00 in the afternoon and sometimes you end up not getting the drugs” [FGD2].

“Truly, shouting can contribute so much, it hurts. You think I am sick then doctor barks or shouts at me, so they decide to stop coming” [FGD6].

Health system level
Factors related to the health systems and to HIV care program implementation in the facility may include the organization of the health care services, leadership, resource availability (including human resources) and access to health promoting services like home based care or HIV support groups at clinics.

Health system facilitators for linkage to care
Two themes were identified as facilitators to linkage to care under this theme: availability of referral procedures i.e. provision of a referral letter/referral form, and the existence of a well-organized clinic system with HIV testing service and HIV care services (a “one stop shop”), as well as possibilities of same day registration.

Availability of referral procedures
Most of the reports attesting to the availability of referral process were provided by the healthcare providers. Some of the PLHIV narratives support the reports of the healthcare providers. Providing a referral letter/form to enable the registration process of individuals at the CTCs was reported to facilitate linkage to HIV care and treatment. The referral letter is an important document given to the HIV positive individuals to confirm their seropositive status and facilitate registration into a CTC. The role of the referral letter in the care linkage process is captured in these statements below:

“If the client is positive, I refer him/her to CTC with this form (referral form) we have to make sure they are registered in the book” [IDI-HCP1].

“We refer the client we give him/her a referral letter with CD4 results print out and we also do HIV staging so that the CTC clinician can decide on how to continue” [IDI-HCP2].
It was also revealed that in some of the sites the peer health educator escorted the newly diagnosed individual to the clinic.

“I sometimes take the letter from here (Testing site) and I accompany the person to the clinic at the [District] hospital, I take them through all steps” [FGD 1].

Service design or clinic services organization
Both the healthcare providers and the PLHIV agreed that the availability of HIV testing, CD4 counts and HIV care and treatment services within the same facility, organized to provide a complementary service, enabled linkage to care. This provides the possibility for individuals who test positive to be registered, thus linked to care at the CTC on the same day.

“Normally when I find a positive client, I go to the next room where we keep the documents for registration and the CTC cards, so I register him/her in the CTC register and give them a CTC clinic number with the treatment card” [IDI-HCP1].

“He [the care provider] gave me the letter and asked me to go to room number 10, show this [registration card] to the nurse. They gave me a card then I went into another room to give blood for CD4” [FGD 2].

Health system barriers to linkage to care
Five themes were identified as barriers to linkage to care within the health system umbrella. These include poorly organized clinic procedures and visits schedules, clinic overcrowding, long waiting times at the clinic, inadequate resources including CTCs, and shortage of staff.

Disorganized clinic procedures and visit schedules
While it was reported by the PLHIV that healthcare facilities that can provide integrated services of testing and treatment/care facilitated linkage to care, narratives from both PLHIV and healthcare providers indicate that the services might not be available on the same day. Some of the healthcare facilities had a schedule of when testing takes place and when registration for treatment and care occurred. This required patients to make multiple visits to the facility. For example, an individual testing on Friday morning will be given a referral letter to come the next Tuesday for registration, and then they will be told to come on Wednesday or Friday for CD4 testing and then given another appointment to get their CD4 results.

“We do CD4 testing on Wednesdays and Fridays, the other days is for in-patients’ tests. So if it is Wednesday and the client comes early, they go directly to the CD4 testing section and they are given a date to come for results normally. This could be in about three or four days’ time” [IDI-HCP10].

“He gave me some papers (referral form) to go with and show the nurse at the CTC. I went and the nurse said I should come on Tuesday for registration” [IDI-Client2].

Clinic overcrowding
Reports from both patients and healthcare providers indicated that clinic overcrowding could constitute a barrier to linkage to care. When patients found a huge crowd of people when they arrived at the clinic, they were tempted to return home as explained by a healthcare provider. This could lead to the patient failing to link to care timeously. The discussions among the PLHIV in a focus group supported this perspective.

“So even when you tell a client to go and join the queue for registration, he says ‘there are too many people, I will come tomorrow’ and that is it. They disappear. We don’t know whether they go to other clinics or what happens to them” [IDI-HCP9].

“For the matter of staying a long time it is because we are so many, therefore, we take a lot of time” [FGD1].

Long waiting times at the clinic
This was among the frequently mentioned barriers by both PLHIV and healthcare providers. Overcrowding in the CTCs and low numbers of healthcare providers were seen as leading to long waiting times for patients and hence a potential barrier to linkage to care.

“Patients wait for services for a very long time because the same staff has to go in the wards to assist, and then come here again for HIV client. For example, on Wednesday when they come for adherence treatment classes we can only start with them after 12 noon, and they always complain” [IDI-HCP6].

“We wait for services for a very long time and the waiting place is open when it is raining, we suffer a lot” [IDI-Client1].
Inadequate resources and equipment
Shortage of resources such as HIV care centres, staff and CD4 testing machines were identified as possible barriers to linkage in care. Statements from both healthcare providers and HIV-positive individuals suggest how this resource shortage could interfere with linkage of HIV-positive individuals into HIV care.

“There is a severe shortage of staff here; clients wait for CTC services for hours before they are attended to. We are only two nurses and one doctor per shift if one of them is sick or on leave, patients wait up to 4 o’clock in the evening” [IDI-HCP6].

“The problem is, we depend on only this hospital for all people in Chunya, people from Lupa tingatinga and all other villages…and Chunya is big” [FGD4].

In one district, the recurrent breakdown of the CD4 machine was mention as a serious concern:

“Also, the recurrent problem is with the CD4 machine [breakdown]. Maybe the government can help us by buying a new machine, even two we are so many here who need the service” [IDI-Client1].

“Most of the patients there are delayed due to CD4. This is the only site with a working CD4 machine. We receive patients from Sumbawanga even Nakonde from Zambia because this service is not available in their areas” [IDI-HCP14].

Contextual level
Contextual factors refer to matters associated with access to, and affordability of, ART treatment and care services, and may also include social and cultural factors beyond individual beliefs concerning HIV infection. Depending on how far the individual lives from the clinic, the themes identified under this category could be either a facilitating factor or a barrier. Those who live close to the clinic did not identify access to the clinic facility as a possible barrier to linkage to care. Conversely, those who live further from care facility saw distance and transport cost to the facility as a potential challenge to linkage to care.

Contextual facilitators of linkage to care
Proximity and low travel cost to the clinic
Proximity and hence lower transport costs to the clinic was reported by the PLHIV to facilitate linkage to care.

“I do not live very far from here, I just get a boda-boda [hired motorbike] and I pay only one thousand [less than half a dollar] and I can even walk if I want to” [IDI-Client6].

“For me, distance is not a problem, I walk for about ten minutes and am here, sometimes I send my daughter to bring the card for me and put it in the box while am still at home, when I come here I just wait for my turn to take medication” [FGD7].

Contextual barriers to linkage to care
Long distance and high transport cost to CTCs (transport challenges)
Long distance to the clinic and the high cost of transport was reported by the participants (especially in two districts, Chunya and Mbozi), thus is identified as a deterring factor to linkage to HIV care and treatment. This is what some of the PLHIV and the care providers said:

“We refer our clients to either ... hospital [about 10-15 Km] to... the health center also about same distance. They say 'I do not have bus fare for now” [IDI-HCP11].

“Transport is very costly. Sometimes, I borrow money from friends and sometimes I come with my bicycle but I do not have the energy to ride for a long distance” [IDI-Client2].

“Binti-manyanga is far, it is about 100 kilometers from here and the cost of transport is very high about 28000 to 30000 [about $14] per trip” [FGD4].

Discussion
The study sought to explore the facilitators and barriers to linkage into HIV care after testing HIV positive in the rural settings of Mbeya region from both facility-based and mobile/outreach sites, aiming at identifying challenges/gaps and informing implementation strategies needed for strengthening health services and care for individuals diagnosed with HIV. The literature on linkage to care indicates that while many studies have explored and described barriers to linkage to HIV treatment and in various settings, fewer studies have looked at the facilitating factors and to a lesser extent exploring both together. In this study, multiple factors were identified to influence linkage to care in newly HIV positive diagnosed individuals and we identified these factors under four levels, namely individual, healthcare provider, health system and contextual levels (Fig. 1).

Based on the findings of this study, as indicated in Fig. 1, access and linkage to care plays out at different levels, however, the individual-level and health system-levels
barriers were most prominent. At the individual level, HIV positive individuals cited stigma as a very important barrier to linkage to care. This underlines the importance of scaling up of educational programs and community HIV-support groups. At the health system level, clinic overcrowding and long waiting times were emphasized by both the HIV-positive individuals and the healthcare providers. These findings are in line with similar studies in Sub-Saharan African countries.

**Individual level**

At the individual level, the study revealed that having symptoms of disease (being sick at the time of diagnosis), the disclosure of HIV status, and support from family/relatives were facilitators to linkage to care. This finding is supported by the HIV positive individuals and healthcare providers who participated in the qualitative study. Social and moral support from the HIV-positive individuals' families and spouses, although not identified in the quantitative data as significant to linkage to care were salient in the qualitative inquiry. This result corresponds to other similar studies on linkage to care [34–37].

In this study, the most frequently reported barriers to linkage into HIV care include fear of stigma related to HIV, lack of disclosure, being asymptomatic at the time of diagnosis and denial. However, belief in witchcraft and belief in spiritual healing were reported to hinder linkage into HIV care. Similar findings were identified in other studies on linkage to HIV care in Sub-Saharan countries [19, 21, 36, 38, 39]. This emphasizes the importance to empower communities, households and support multiple stakeholders in increasing community HIV/AIDS awareness and establishment of HIV support groups in communities to discussing issues related to stigma and access to HIV care [24, 40].

**Healthcare provider level**

We found that healthcare providers’ moral and practical support and good patient-staff relationships enhance linkage to HIV care. Conversely, the perceived experience of negative provider attitudes, lack of respect and/or use of abusive language from healthcare providers to patients was reported by the study participants to impede successful linkage to HIV care. Other studies report corresponding results [10, 19, 21, 41]. However, in this study, the healthcare providers in some instances suggested that negative relationships with clients are related to a shortage of staff at the site and high workloads. Existing literature indicates that basic resources, effective management and supportive supervision issues need to be addressed within a health system in order for the patient-centered care of high interpersonal quality to become a priority for health care providers [42, 43].

**Health system level**

At the health system level, we found the availability of good referral procedures and well-organized clinics services to be important facilitators for linkage to HIV care. Etul et al., (2014) in their study on enhancing linkage to
care reported that availability of CD4 testing at the point of care and a short message service (SMS) reminder of appointment to patients was a facilitator to linkage. We also found that in some clinic settings, testing and linkage to care were performed on the same day (same day registration) and sometime CD4 test was also done on the same day.

Healthcare providers indicated that the mobile clinic staff took measures to promote linkage to care. For instance, one of the healthcare providers running the mobile clinics reported that they situated their mobile laboratory near a health facility such as a hospital, health center or dispensary to link their HIV and TB clients to the existing system for further care. It was also reported by the healthcare provider from mobile/outreach services that the peer educator, usually after counseling and testing, escorts the newly diagnosed individuals to the care center to ensure linkage. By adopting the above-mentioned strategies, the linkage to care rates from the mobile testing individual could be improved; these findings suggest that the disadvantages of testing outside of a multi-service facility are not overcome even by highly motivated and proactive staff action.

Barriers to linkage in care at health system level included poorly organized clinic procedures and visits schedules, overcrowding and long waiting time and lack of resources including staff and equipment at the clinic were salient barriers to successful linkage into HIV care. While some studies have indicated that having HIV testing services and HIV care on the same spot improves rates of linkage to care and ART coverage [20, 21], the integration of these services, if not well coordinated and organized could also constitute a barrier to linkage to care. These factors were similar to some of the health system barriers reported in other HIV care linkage studies [6, 17, 39, 44]. However, the qualitative findings reported here, suggest that even poorly integrated « one stop shops » are preferable to multiple visits to separate facilities.

Contextual level
The context level factors that were identified in this study were related to the distance to the healthcare facility and the cost of transport. For respondents living in close proximity to the clinic, distance and cost were not a challenge, however, it was a prominent challenge to respondents who lived further than 10 km. However, our earlier analysis of a larger quantitative dataset indicated that there was no significant difference between the rates of linkage to care for HIV-positive individuals who lived less than 10kms from the healthcare facility compared to those who lived more than 10kms from the healthcare facility [23]. Other barriers identified by the study participants at the individual, provider and institutional levels could have influenced the decisions not to register for HIV treatment and care more than the influence of the distance. Our findings also suggest that both respondents extrapolate from their own personal experience, since participants for whom distance was a personal barrier reported it as such, while those who lived close to a facility did not identify that this could be a potential barrier.

A number of studies have also reported the influence of long distances and transport costs on linkage to care behaviors of individuals diagnosed with HIV [3, 15, 44, 45]. Furthermore, some of the HIV-positive individuals reported that short distances to the clinic and low transport cost improved the rate of linkage to care.

Social and moral support from family members, friends, neighbors and significant others were reported to facilitate linkage and retention in HIV care, echoing findings reported by Genberg et al. [20] and Gerds et al. [46]. A possible mediator between disclosure of HIV status and early linkage is the perceived social and moral support that the HIV-positive individuals receive from their significant others after disclosure.

Strengths and limitations
One of the strengths of this study is that various stakeholders (Healthcare providers, and HIV-positive individuals), different data collection methods (FGDs and IDIs) and multiple sites (16 sites) were used to elicit relevant information. By triangulating the data source, collection methods and sites, we improved on the trustworthiness of the study.

However, a limitation of the study is that, while we explored the challenges and facilitators for linkage to care, we only interviewed individuals who were already under the care umbrella. We did not have access to those individuals who tested HIV positive but were not registered in care. In addition, we did not delineate the responses of those who tested in the mobile sites from those who tested at the facilities because both groups were entering care into the health facility-based sites. While conducting this study, it was identified that poor leadership and management at some of the facilities were responsible for poor linkage to care behaviors. Although this study focused on the factors influencing linkage to care, it did not focus in particular on the broader health system issues like health management and leadership. This may require further investigation to address the issues around leadership and health systems management.

Conclusion
Linkage to HIV care is an important step towards proper lifelong management of HIV infection. The findings of this study indicate that while there are many barriers to
linkage to care, facilitating factors are also explicitly identified by patients and by healthcare providers. We found that individual, healthcare provider, health system and contextual factors might all influence linkage into care, but that in this study setting, the individual-level and health system-level factors were the most prominent factors influencing access and linkage to care positively and negatively. In most cases the PLHIV and health care providers’ opinion were congruent except at the health care provider level where it was the PLHIV who shared their experience of less than optimal care. These findings emphasize the need for further problem -focused and action oriented strategies addressing individual level factors, notably stigma, and health system factors, notably under-resourced and poorly coordinated facilities. These challenges and the respective strategies are particularly important from the perspective of both patients and providers.

Implication for policy and practice
This study was undertaken in part to inform future interventions for hard-to-reach, low-income settings with moderately high HIV prevalence rates. Interventions to achieve optimal coverage in light of adopting the ‘Test and Treat’ model of HIV treatment and care recommended by the World Health Organization must address at least the individual issues around fear of stigma, not feeling sick at the time of diagnosis, denial, poor health literacy, lack or fear of disclosure, beliefs in witch craft and concomitant medications. If linkage to care is to be improved, health system level factors in particular must be addressed, notably poor clinic procedures and visit schedules, clinic overcrowding, long waiting times at the clinic, and adequacy of health workers and CD4 testing machines. Among interventions that could be implemented to address some of the challenges of linkage to care are improved counseling strategies and the establishment of HIV support groups and community interaction programs to discuss and address HIV stigma-related matters in the community. At the health system level, continued scale-up of HIV testing and treatment, removing barriers to access to HIV care services, and improving availability of human and other resources are pertinent. In addition to this, improving HIV care clinic procedures for the provision of better quality of care and treatment services to PLHIV is needed. Implementation of interventions aiming at actively strengthening the identified facilitating factors – which largely mirror the barriers - may be particularly promising in enhancing the capabilities of the government health systems, delivery of services and health care providers in the rural settings.

Acknowledgements
The authors are very thankful to all study participants and dedicated research assistants, namely Jane Merere, Philimin John, Nestory Sidinda, Aloyce Kabuche, Benson Msomba and data entry team at MRCC for special cooperation that facilitated data collection and processing. The especially thank NMRC Mobile Diagnostic and Training Centre (MDTC) project coordinators and all healthcare providers at the study sites and the home-based cares (HBCs) for their hard work, and HIF—Global Health International for funding the MDTC. The authors thank the Regional Medical Officer (RMO), the District Medical officers (DMOs), the District AIDS Control Coordinators (DACC) and the facility/site in-charges/managers for their continued cooperation and support. The authors thanks the University of the Western Cape (UWC) for approving the study and supervision.

Funding
This research was partially funded by the Mbeya Medical Research Centre (MMRC) and the African Doctoral Dissertation Research Fellowship (ADDRF) award offered by the Africa Population and Health Research Center (APHRC) Award 2014–2016-ADF 009, offered by the African Population and Health Research Centre (APHRC) in partnership with the International Development Research Centre (IDRC) for financing and supporting the study. The University of Western Cape – funded for attending workshops and retreat in Cape Town. Institute of Tropical Medicine-Antwerp also funded a writing retreat at Institute of Tropical Medicine (ITM)-Antwerp through the SIPHi scholarship for the writing of the first draft of the manuscript.

Availability of data and materials
The data set supporting the results of this article is available in the figshare repository.

Authors’ contributions
ES and CZ are primarily responsible for the study design, planning, coordination, supervision and obtained funding. ES and FM collected and assembled the data. ES, FM and CZ responsible for analysis, interpretation of results and manuscript preparation. AM, WL and CZ study supervisors and critical review and edits of the manuscript. All authors read and approved the final manuscript.

Ethics approval and consent to participate
The study protocol was approved by the National Ethical Committee/ Medical Research Coordinating Committee at the National Institute for Medical Research in Tanzania, on 12 May 2014REF: NIMR/HQ/R.8a/Vol. IX/ 1732, and written informed consent for participation in the study was obtained from all study participants before any study procedure.

Consent for publication
Not Applicable.

Competing interests
The authors declare that they have no competing interests.

Publisher’s Note
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References


Tab 20
Gender, HIV-Related Stigma, and Health-Related Quality of Life Among Adults Enrolling in HIV Care in Tanzania

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Published online: 30 March 2019
© Springer Science+Business Media, LLC, part of Springer Nature 2019

Abstract
HIV-related stigma has been associated with worse health-related quality of life (HRQoL) among people living with HIV (PLWH). Little is known about how different types of HIV-related stigma (i.e., anticipatory, internalized, or enacted HIV-related stigma) influence HRQoL and whether these relationships differ by gender. The sample included 912 PLWH aged 18 years or older enrolling in HIV care at four health facilities in Tanzania. HRQoL was assessed with the life satisfaction and overall function subscales of the HIV/AIDS-Targeted Quality of Life (HAT-QoL) instrument. Sex-stratified multivariable logistic regression modeled the association of anticipatory, internalized, and enacted HIV-related stigma on poor HRQoL. Across all participants, the mean life satisfaction score was 63.4 (IQR: 43.8, 81.3) and the mean overall function score was 72.0 (IQR: 58.3, 91.7). Mean HRQoL scores were significantly higher for women compared to men for overall function (5.1 points higher) and life satisfaction (4.3 points higher). Fourteen percent of respondents reported recent enacted HIV-related stigma and 13% reported recent medium or high levels of internalized stigma. In multivariable models, high internalized and high anticipatory stigma were significantly associated with higher odds of poor life satisfaction and poor overall function in both men and women. Psychosocial interventions to prevent or reduce the impact of internalized and anticipatory stigma may improve HRQoL among persons in HIV care. Future research should longitudinally examine mechanisms between HIV-related stigma, poor HRQoL, and HIV care outcomes.

Keywords HIV · Stigma · Quality of life · Tanzania

Introduction
The World Health Organization recommends antiretroviral therapy (ART) for all people living with HIV (PLWH), regardless of CD4 cell count [1]. This policy, often referred to as Treat All, is informed by evidence that earlier HIV treatment is associated with improved outcomes across the HIV care continuum and reduced HIV transmission [2–5]. In recent years, as access to ART has expanded, due in part to the implementation and scale-up of Treat All policies, HIV-related morbidity and mortality have decreased and life expectancy among PLWH has increased [6, 7]. In many settings, treatment of HIV has shifted to a chronic care model of disease management [8]. Given these shifts in the treatment and clinical outcomes among PLWH, greater attention is needed to their health-related quality of life (HRQoL) and potentially modifiable factors that influence HRQoL among PLWH.

Though precise definitions vary, HRQoL is a multidimensional construct that reflects one’s quality of life through
assessment of physical, mental, emotional, and social functioning [9]. Poor HRQoL has been associated with suboptimal HIV treatment outcomes including worse engagement in care, poor ART adherence, and increased mortality, as well as poor mental health in both resource-rich and resource-poor settings [10–13]. Greater understanding of factors that influence HRQoL among PLWH is critical to identifying effective strategies to improve the health and well-being of PLWH.

HIV-related stigma is common among PLWH and associated with poor HRQoL [14–16]. HIV-related stigma can take many forms including anticipatory stigma, internalized stigma, and enacted stigma. Anticipatory stigma concerns individuals’ expectations of experiencing enacted HIV-related stigma as a result of being HIV-positive. Enacted HIV-related stigma involves experiencing stigmatizing behaviors or negative treatment due to one’s HIV status. Internalized HIV-related stigma occurs when an individual adopts stigmatizing beliefs about PLWH and applies these stigmatizing beliefs to themselves. In the framework of the relationship between HIV-related stigma and the health and well-being of PLWH [17], Earnshaw and Chaudoir posit that different dimensions of HIV-related stigma may differentially impact health-related outcomes, including HRQoL, and emphasize the importance of understanding the relationship between HIV-related stigma and quality of life disaggregated by type of stigma and type of well-being measure assessed [17]. Despite consistent findings that HIV-related stigma is associated with worse HRQoL, understanding of how different dimensions of stigma (e.g., internalized, anticipated, or enacted) are related to different components of HRQoL, remains limited, particularly in sub-Saharan Africa, which continues to bear a disproportionate burden of the HIV epidemic. A more nuanced understanding of the relationship between HIV-related stigma and HRQoL is warranted.

Previous research has found differences in how men and women living with HIV perceive and experience HIV-related stigma [13, 18, 19]. For example, among PLWH in the United States, HIV disclosure concerns were associated with increased health-related worries among women, but not among men living with HIV [20]. Among PLWH in China, women living with HIV endorsed significantly higher internalized HIV-related stigma compared to men [21]. Gendered experiences of HIV-related stigma may be informed by differences in the social and economic position of men and women across societies and by the social construction of both stigma and gender across settings. Previous research has found that women living with HIV often indicate concerns about the real or anticipated social and relational impact of HIV-related stigma in their lives and the lives of their children or other family members, including social rejection, isolation, and violence [22]. Research with women living with HIV in the U.S. found that women’s decision-making around HIV disclosure prioritized protecting social relationships and minimizing potential negative social effects of disclosure [22]. Given these gendered differences in experiences of HIV-related stigma, the relationship between HIV-related stigma and HRQoL may be meaningfully different for men and women living with HIV. However, little is known regarding whether the relationship between types of HIV-related stigma and types of HRQoL differs by gender. It is important to understand to what extent HIV-related stigma and HRQoL function differently among men and women. The objectives of this analysis were (1) to examine the relationship between three dimensions of HIV-related stigma (anticipatory, internalized, and enacted stigma) and two components of HRQoL (overall function and life satisfaction) and (2) to assess whether these relationships differ by gender.

Methods

Data were collected as part of a study conducted at four HIV treatment clinics in the Kagera region of northwestern Tanzania. All clinics were supported by the Tanzanian Ministry of Health with technical assistance from ICAP at Columbia University via funding from the President’s Emergency Plan for AIDS Relief (PEPFAR) at the time of data collection. Individuals were eligible to participate in the study if they were: (1) aged 18 years and older, (2) newly enrolling in HIV care and (3) not known to be eligible for ART (based on World Health Organization (WHO) stage and/or CD4 count) at enrollment in HIV care between March 2012–November 2013. From March 2012 until April 2013, the Tanzanian national guidelines recommended ART initiation for patients with WHO stage IV or CD4+ count < 200 cells/μL, or WHO III with CD4+ < 350 cells/μL; in April 2013 the guidelines were expanded to include all patients with CD4+ < 350 cells/μL. The original study enrolled 920 individuals. The current sample is comprised of 912 individuals for whom data on HRQoL and gender were available. The study was approved by the Institutional Review Boards of the National Institute for Medical Research of the United Republic of Tanzania, Columbia University Medical Center, and the City University of New York.

Data Collection

Patients potentially eligible for study participation were identified by providers within 90 days of their first clinic visit. Interested patients were referred to study staff for eligibility screening and consent procedures. Data collection consisted of a structured interview conducted by trained research assistants which included questions on
sociodemographics, HIV-related stigma, and health-related quality of life.

**Measures**

**Health-Related Quality of Life**

Health-related quality of life was assessed using the HIV/AIDS-Targeted Quality of Life (HAT-QoL) instrument. The HAT-QoL has demonstrated reliability and validity among PLWH [23, 24] in resource-poor settings, including sub-Saharan Africa [25, 26]. This analysis includes two subscales of the HAT-QoL: the overall function subscale (6 items) and the life satisfaction subscale (4 items). Participants were asked to report on how often they were able to complete a given health-related task or felt a particular way in the previous 4 weeks. Response options ranged from 1 (none of the time) to 5 (all of the time). Scores for each subscale were transformed linearly to a possible range of 0–100, according to a prescribed algorithm, with higher values indicating better functioning and higher life satisfaction.

**Recent Internalized Stigma**

Internalized stigma in the past 3 months was measured with the 5-item negative self-perception subscale (e.g. *You felt that you did not deserve to live, You felt that you were no longer a person*) of the HIV/AIDS Stigma Instrument, PLWHA (HASI-P), developed in sub-Saharan Africa [27]. An additional item not from this scale (*You thought someone had cursed you*) also was included. Response options ranged from *Never* (4) to *Most of the time* (1) and were recoded so that higher scores represented higher internalized stigma (Cronbach’s alpha = 0.86). Responses were categorized into three categories: none, low, and medium or high levels of internalized stigma.

**Recent Anticipatory Stigma**

Study investigators knew of no scales validated in sub-Saharan Africa to measure anticipatory HIV-related stigma at the time of data collection. Thus, anticipatory stigma was assessed with 12 Yes/No items created in accordance with the concept described by Earnshaw and Chaudoir (e.g., *If others know or suspect you are HIV positive, your partner might get violent; your children might be abused or discriminated against; family members might treat you differently*). A total anticipatory stigma score was constructed as the proportion of endorsed items from among all questions the participant was eligible to answer (i.e., participants without children or without a partner were not eligible to answer those respective items) (Cronbach’s alpha = 0.65). Anticipatory stigma scores were categorized into tertiles based on distribution in the study sample.

**Recent Enacted Stigma**

Enacted stigma in the past 3 months was measured with eight items selected from HIV/AIDS Stigma Instrument-PLWA (HASI-P) subscales (verbal abuse, fear of contagion, and social isolation); items inquired about how often the participant had experienced rejection due to their HIV status (e.g., *You were told that you have no future, You were told that God is punishing you, Someone stopped being your friend*), with response options ranging from *Never* (4) to *Most of the time* (1) (Cronbach’s alpha = 0.70) [27]. Because the reported frequency of occurrence of all items was low, the summary measure was coded as *any recent enacted HIV-related stigma versus no recent enacted HIV-related stigma*.

**Sociodemographic Characteristics**

Sociodemographic variables included age, sex, education, religion, relationship status, employment status, food insufficiency, and time away from home.

**Statistical Analysis**

Univariate analyses were conducted to assess the mean overall function and life satisfaction scores for the entire sample population and separately by gender. Sex-stratified analyses of differences in group mean HRQoL scores by type of HIV-related stigma were conducted using t-tests or ANOVA procedures, as appropriate. Logistic regression was used to model the association of HIV-related stigma and poor HRQoL separately by gender. In multivariable analyses, poor quality of life was defined as being in the lowest quality of life quartile as compared to the top three quartiles. Adjusted analyses controlled for age, relationship status, and employment status. All analyses accounted for clustering by health facility using proc survey logistic in SAS Version 9.4. Because internalized stigma was highly correlated with enacted stigma, multivariable regression models were run separately to examine the relationship between each type of HIV-related stigma and HRQoL.

**Results**

Of the 912 participants included in this analysis, 63.2% were female (Table 1). The median age was 35 years (Interquartile range [IRQ]: 28, 42). Three quarters (77.9%) of participants had ever attended school. The majority of participants (58.1%) were married or in a relationship. Most participants (61.8%) were Catholic. Past-year food insufficiency was
Table 1 Sociodemographic characteristics and HIV-related stigma by health-related quality of life among adults enrolling in HIV care and not known to be eligible for ART in Tanzania

<table>
<thead>
<tr>
<th>Sociodemographic characteristics</th>
<th>Overall n (%)</th>
<th>Overall function</th>
<th>Life satisfaction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>p value</td>
<td>Mean</td>
</tr>
<tr>
<td><strong>Sex</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>336 (36.8)</td>
<td>68.8</td>
<td>0.0038</td>
</tr>
<tr>
<td>Female</td>
<td>576 (63.2)</td>
<td>73.9</td>
<td>65.0</td>
</tr>
<tr>
<td><strong>Ever attended school</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>710 (77.9)</td>
<td>72.4</td>
<td>0.3727</td>
</tr>
<tr>
<td>No</td>
<td>202 (22.1)</td>
<td>70.6</td>
<td>61.4</td>
</tr>
<tr>
<td><strong>Relationship status</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married or in a relationship</td>
<td>529 (58.1)</td>
<td>75.4</td>
<td>&lt;0.0001</td>
</tr>
<tr>
<td>Never married</td>
<td>42 (4.6)</td>
<td>64.9</td>
<td>50.3</td>
</tr>
<tr>
<td>Widowed</td>
<td>118 (13.0)</td>
<td>70.3</td>
<td>64.3</td>
</tr>
<tr>
<td>Divorced/separated</td>
<td>222 (24.4)</td>
<td>66.0</td>
<td>59.4</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18–25</td>
<td>120 (13.2)</td>
<td>76.0</td>
<td></td>
</tr>
<tr>
<td>26–40</td>
<td>532 (58.7)</td>
<td>72.8</td>
<td></td>
</tr>
<tr>
<td>41–50</td>
<td>172 (19.0)</td>
<td>68.4</td>
<td></td>
</tr>
<tr>
<td>&gt; 50</td>
<td>82 (9.1)</td>
<td>68.0</td>
<td></td>
</tr>
<tr>
<td><strong>Religion</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catholic</td>
<td>564 (61.8)</td>
<td>72.5</td>
<td></td>
</tr>
<tr>
<td>Protestant</td>
<td>205 (22.5)</td>
<td>73.0</td>
<td></td>
</tr>
<tr>
<td>Muslim</td>
<td>72 (7.9)</td>
<td>71.5</td>
<td></td>
</tr>
<tr>
<td>Seventh day adventist</td>
<td>10 (1.1)</td>
<td>57.9</td>
<td></td>
</tr>
<tr>
<td>Born again</td>
<td>58 (6.4)</td>
<td>66.4</td>
<td></td>
</tr>
<tr>
<td>Other/none</td>
<td>3 (0.3)</td>
<td>73.6</td>
<td></td>
</tr>
<tr>
<td><strong>Frequency of food insufficiency in past year</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Never/seldom</td>
<td>766 (84.9)</td>
<td>73.6</td>
<td>&lt;0.0001</td>
</tr>
<tr>
<td>Sometimes/often/always</td>
<td>136 (15.1)</td>
<td>63.2</td>
<td></td>
</tr>
<tr>
<td><strong>Currently employed for payment</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>352 (38.9)</td>
<td>72.0</td>
<td>0.9446</td>
</tr>
<tr>
<td>Yes</td>
<td>553 (61.1)</td>
<td>71.9</td>
<td></td>
</tr>
<tr>
<td><strong>Away from home &gt; 1 month in last year</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>253 (27.9)</td>
<td>69.1</td>
<td>0.0309</td>
</tr>
<tr>
<td>No</td>
<td>655 (72.1)</td>
<td>73.0</td>
<td></td>
</tr>
<tr>
<td><strong>Study site</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mugana</td>
<td>168 (18.4)</td>
<td>79.6</td>
<td>&lt;0.0001</td>
</tr>
<tr>
<td>Ndolage</td>
<td>269 (29.5)</td>
<td>72.1</td>
<td></td>
</tr>
<tr>
<td>Nyakahanga</td>
<td>268 (29.4)</td>
<td>67.5</td>
<td></td>
</tr>
<tr>
<td>Rubya</td>
<td>207 (22.7)</td>
<td>71.5</td>
<td></td>
</tr>
<tr>
<td><strong>HIV-related stigma</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enacted stigma</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>716 (86.0)</td>
<td>73.6</td>
<td>0.0151</td>
</tr>
<tr>
<td>Any</td>
<td>117 (14.0)</td>
<td>67.6</td>
<td></td>
</tr>
<tr>
<td>Internalized stigma</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>487 (53.8)</td>
<td>73.9</td>
<td>&lt;0.0001</td>
</tr>
<tr>
<td>Low</td>
<td>304 (33.6)</td>
<td>73.1</td>
<td></td>
</tr>
<tr>
<td>Medium or high</td>
<td>115 (12.7)</td>
<td>61.9</td>
<td></td>
</tr>
<tr>
<td><strong>Mean (range)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anticipatory stigma</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bottom tertile (least stigma)</td>
<td>2.9 (0–10)</td>
<td>78.8</td>
<td>&lt;0.0001</td>
</tr>
<tr>
<td>Middle tertile</td>
<td>18.7 (11–27)</td>
<td>70.5</td>
<td></td>
</tr>
<tr>
<td>Top tertile (most stigma)</td>
<td>49.7 (28–100)</td>
<td>66.3</td>
<td></td>
</tr>
</tbody>
</table>

*aMissing by variable: relationship status n = 1, age n = 6, food insufficiency n = 10, away from home for > 1 month n = 4, enacted stigma n = 79, internalized stigma n = 6, anticipatory stigma n = 7*
relatively uncommon with 84.9% reporting never or seldom experiencing food insufficiency in the past year. The majority of participants were currently working for pay (61.1%) and had not spent more than 1 month away from home in the past year (72.1%). Most participants (78.1%) had disclosed their HIV status to someone. Among those who disclosed their status to someone (n = 712), 51.8% had disclosed their status to a spouse or partner, 33.3% had disclosed their status to a parent, 21.8% had disclosed their status to a friend, and 13.5% had disclosed their status to a child.

Across all participants, the mean life satisfaction score was 63.4 (IQR: 43.8, 81.3) and the mean overall function score was 72.0 (IQR: 58.3, 91.7). In bivariate analyses, mean HRQoL scores were significantly higher for women compared to men for overall function (5.1 points higher) and life satisfaction (4.3 points higher) (Fig. 1). As shown in Table 1, for both overall function and life satisfaction, mean scores were highest among participants who were married or in a relationship and lowest among participants who had never been married. Similarly, food insufficiency was significantly associated with mean overall function and life satisfaction scores, with those reporting experiencing food insufficiency never or seldom in the past year reporting significantly higher mean overall function ($p < 0.0001$) and life satisfactions ($p < 0.0001$) scores compared to those who reported food insufficiency sometimes, often, or always in the past year. Employment status was significantly associated with mean life satisfaction score ($p = 0.0133$), but not with mean overall function score, while having been away from home for more than 1 month in the past year was significantly associated with mean overall function score ($p = 0.0309$), but not with mean life satisfaction score.

Fourteen percent of respondents reported having experienced recent enacted HIV-related stigma and 12.7% reported recent medium or high levels of internalized stigma. In relation to anticipatory stigma, almost two-thirds (63.5%) of respondents indicated concern that people might gossip about them if they knew or suspected that they were HIV-positive. Almost half (46.4%) of respondents with children worried that their children might become upset or fearful if they knew or suspected that the respondent was HIV-positive. In bivariate analyses, experience of each form of stigma (anticipatory, internalized, and enacted HIV-related stigma) was associated with lower mean HRQoL scores (Table 2). For both anticipated and internalized stigma, higher levels of stigma were associated with significantly lower mean overall function and life satisfaction scores overall and when stratified by gender. Mean HRQoL scores were significantly higher for those who reported no internalized stigma compared to those who reported medium or high levels of internalized stigma for overall function (women: 12.3 points higher, $p < 0.0001$; men: 12.6 points higher, $p = 0.04$)

![Fig. 1 Mean health-related quality of life scores by gender among adults enrolling in HIV care and not known to be eligible for ART in Tanzania](image)

### Table 2: HIV-related stigma and health-related quality of life among adults enrolling in HIV care and not known to be eligible for ART in Tanzania by gender

<table>
<thead>
<tr>
<th></th>
<th>Mean overall function score</th>
<th>Mean life satisfaction score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Women</td>
<td>Men</td>
</tr>
<tr>
<td></td>
<td>n  Mean  p value</td>
<td>n  Mean  p value</td>
</tr>
<tr>
<td>Enacted stigma</td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>438 75.7 0.006</td>
<td>278 70.4 0.48</td>
</tr>
<tr>
<td>Any</td>
<td>84 67.9 &lt;0.0001</td>
<td>33 66.9 0.005</td>
</tr>
<tr>
<td>Internalized stigma</td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>309 75.7 &lt;0.0001</td>
<td>178 70.7 0.04</td>
</tr>
<tr>
<td>Low</td>
<td>184 75.6 0.003</td>
<td>120 69.1 0.003</td>
</tr>
<tr>
<td>Medium or high</td>
<td>82 63.4 0.003</td>
<td>33 58.1 0.003</td>
</tr>
<tr>
<td>Anticipatory stigma</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bottom tertile</td>
<td>177 80.9 &lt;0.0001</td>
<td>128 76.0 0.0003</td>
</tr>
<tr>
<td>Middle tertile</td>
<td>206 73.7 0.0003</td>
<td>112 64.8 0.0003</td>
</tr>
<tr>
<td>Top tertile</td>
<td>188 67.7 0.0003</td>
<td>94 63.4 0.0003</td>
</tr>
</tbody>
</table>
and life satisfaction (women: 16.2 points higher, \( p < 0.0001 \); men: 19.9 points higher, \( p < 0.0001 \)). A similar pattern was observed between anticipatory stigma and HRQoL for both women and men. In bivariate analyses, mean life satisfaction scores were significantly higher among those who reported no enacted stigma compared to those who reported having experienced enacted stigma overall (9.8 points higher) and separately among women and men (women: 8.5 points higher, \( p = 0.005 \); men: 15.0 points higher, \( p = 0.0009 \)). Having experienced enacted stigma was associated with significantly lower overall function score among women, but not among men (7.8 points lower among women vs 3.5 points lower among men).

In adjusted multivariable analyses (Table 3), experience of each form of stigma (anticipatory, internalized, and enacted) was associated with higher odds of poor HRQoL. Women who reported high levels of anticipatory stigma had 2.0 \( [95\% \text{ CI} \ 1.2, 3.6]\) times the odds of poor overall function and 2.1 \( [95\% \text{ CI} \ 1.2, 3.7]\) times the odds of poor life satisfaction compared to women who reported low levels of anticipatory stigma. A similar relationship between high anticipatory stigma and poor overall function and poor life satisfaction was found among men (Table 3). Enacted stigma was associated with significantly increased odds of poor life satisfaction among women \( [aOR \ 2.0 \ [95\% \text{ CI} \ 1.2, 3.4]] \). However, the relationship between enacted stigma and poor life satisfaction did not reach statistical significance among men \( [aOR \ 2.1 \ [95\% \text{ CI} \ 1.0, 4.7]] \). Having experienced enacted stigma was not significantly associated with poor overall function among women or men.

### Table 3

<table>
<thead>
<tr>
<th></th>
<th>Poor overall function</th>
<th>Poor life satisfaction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Women ( n = 503 )</td>
<td>Men ( n = 305 )</td>
</tr>
<tr>
<td></td>
<td>Bivariate OR (95% CI)</td>
<td>Multivariable OR (95% CI)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Enacted stigma</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>Yes</td>
<td>1.54 ( (0.91, 2.62) )</td>
<td>1.62 ( (0.93, 2.81) )</td>
</tr>
<tr>
<td><strong>Internalized stigma</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>Medium</td>
<td>0.74 ( (0.45, 1.22) )</td>
<td>0.74 ( (0.44, 1.24) )</td>
</tr>
<tr>
<td>High</td>
<td>1.94 ( (1.08, 3.49)^* )</td>
<td>2.18 ( (1.17, 4.05)^* )</td>
</tr>
<tr>
<td><strong>Anticipatory stigma</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>Medium</td>
<td>1.59 ( (0.92, 2.75) )</td>
<td>1.37 ( (0.77, 2.42) )</td>
</tr>
<tr>
<td>High</td>
<td>2.18 ( (1.26, 3.77)^* )</td>
<td>2.03 ( (1.15, 3.60)^* )</td>
</tr>
</tbody>
</table>

\( ^* p < 0.05 \)

\( ^a \)Adjusted for age, marital status, and employment

\( ^b \)Models include enacted stigma, but not anticipatory or internalized stigma

\( ^c \)Models include internalized stigma, but not anticipatory or enacted stigma

\( ^d \)Models includes anticipatory stigma, but not internalized or enacted stigma

### Discussion

In a large sample of PLWH enrolling in HIV care in Tanzania, health-related quality of life was significantly lower among men as compared to women in both overall function and life satisfaction. Previous research examining the

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This page appears to include a table with data comparing the effects of different forms of stigma on health-related quality of life (HRQoL) across women and men, along with discussion around the implications of these findings.
relationship between gender and HRQoL has found gender to be consistently associated with HRQoL among PLWH. However, the directionality of this relationship has varied across studies. Similar to current findings, studies with individuals initiating ART in Ethiopia and with individuals testing HIV-positive in Kenya found that HRQoL was higher among women than men [13, 28]. However, another study with ART patients in Ethiopia found that men reported significantly higher quality of life compared to women [29]. The mechanisms through which gender influences HRQoL across settings and populations warrant further investigation.

High levels of anticipatory stigma were significantly associated with poor overall function and poor life satisfaction among both women and men. The authors were unable to identify previous research on the relationship between anticipatory HIV-related stigma and HRQoL from sub-Saharan Africa. However, among PLWH in Sweden, anticipatory stigma, measured by concerns about public attitudes, was significantly associated with poor physical HRQoL [30]. In this same study, though, concern regarding disclosure of one’s HIV status, another component of anticipatory HIV-related stigma, was not significantly associated with worse HRQoL [30]. Among PLWH in the United States, disclosure concerns were significantly associated with poor HRQoL among men and women [20]. Future research should examine to what extent the relationship between anticipatory stigma and HRQoL varies by the component of anticipatory stigma assessed (e.g., disclosure concerns, concerns about public attitudes). Factors that mediate or moderate the relationship between anticipatory stigma and HRQoL should also be examined, including whether such mediating or moderating factors differ by gender. For example, effective coping strategies or greater social support may reduce the impact of anticipatory stigma on poor HRQoL while maladaptive coping mechanisms, limited social support, or social isolation may have a synergistic effect on the relationship between anticipatory stigma and HRQoL. Greater understanding of the relationship between anticipatory stigma and HRQoL can lead to the identification of potential intervention targets to mitigate the impact of anticipatory stigma on HRQoL and improve the quality of life of PLWH. Such research is particularly needed with PLWH in sub-Saharan Africa where the prevalence and impact of HIV-related stigma remain high [31–33].

Internalized HIV-related stigma was associated with poor overall functioning and life satisfaction among both men and women. While research into the relationship between internalized HIV-related stigma and HRQoL in sub-Saharan Africa remains limited, a study of PLWH in Spain similarly found that internalized stigma was associated with worse HRQoL [34]. This study also found that the relationship between internalized stigma and HRQoL was mediated by group identity, suggesting that interventions to foster social cohesion and increase social support may be a promising strategy to mitigate the negative impact of internalized stigma on HRQoL [34]. Peer support interventions may be particularly effective at reducing the prevalence and impact of internalized HIV-related stigma, particularly as a longitudinal study with PLWH in Uganda found that internalized stigma was associated with subsequent low levels of social support [35]. However, findings related to the relationship of peer support and HIV treatment outcomes remain equivocal [36–38]. Internalized stigma has been consistently associated with poor mental health, including depressive symptoms and poor emotional well-being. Examination of the extent to which psychological distress mediates the relationship between internalized HIV-related stigma and poor HRQoL and whether this relationship differs by gender is warranted. Evidence-based mental health interventions for PLWH should consider incorporating components to reduce and manage internalized HIV-related stigma and adapted interventions should be implemented and evaluated.

In multivariable analyses, enacted stigma was not significantly associated with overall functioning or life satisfaction among men. However, enacted stigma was significantly associated with poor life satisfaction among women. Previous research into the relationship between enacted HIV-related stigma and HRQoL remains equivocal. Among PLWH in Spain, enacted stigma was significantly associated with worse HRQoL [34]. However, no significant relationship between enacted stigma and HRQoL was found when examined among PLWH in Sweden [30]. Neither study examined the relationship between enacted stigma and HRQoL separately by gender. However, research with women living with HIV in the United States found that women were particularly concerned about the negative social consequences of HIV-related stigma [22]. Similarly, research in South Africa found that the level of HIV-related stigma reported by one’s community, operationalized as the percent of people in a village endorsing HIV-related stigma, was negatively associated with HIV testing among women, but not men [39]. Gender differences in the relationship between enacted stigma and HRQoL may be influenced by differences in the social positioning and socialization of women compared to men. If women place greater emphasis on preserving social relationships, women may be more negatively impacted by stigmatizing views and behaviors of community members compared to men. Additional research into the relationship between gender, enacted stigma, and HRQoL is needed.

This work has limitations worth noting. First, we assessed the relationship between HIV-related stigma and HRQoL prior to ART initiation. Future work should assess this relationship across the care continuum and examine whether there are critical points (e.g., diagnosis, disclosure) at which PLWH are particularly vulnerable to the negative effects of stigma and poor HRQoL. Additionally, given the
cross-sectional nature of our study, temporality of the relationship between HIV-related stigma and HRQoL could not be established. It is possible that people with poor HRQoL are more sensitive to experiences of HIV-related stigma. Longitudinal research is needed to better understand pathways between HIV-related stigma and HRQoL. Further, data were collected from individuals at four HIV clinics in Tanzania. As such, results cannot be generalized to PLWH in other settings or PLWH not engaged in care. As both HIV-related stigma and HRQoL may pose barriers to engagement in care, the relationship between HIV-related stigma and HRQoL may be meaningfully different among PLWH not engaged in care. In addition, anticipatory stigma items in this study did not assess anticipatory stigma specifically in a health care setting or from health care workers. Future research should examine anticipatory stigma specifically in relation to health care settings. Finally, this analysis examined two aspects of HRQoL. Future work should examine the relationship between HIV-related stigma and other components of HRQoL.

HIV-related stigma was associated with worse HRQoL among men and women. More nuanced understanding of the longitudinal pathways between stigma and poor HRQoL can inform intervention development and adaptation. Interventions to enhance the HRQoL of PLWH should incorporate stigma reduction components. Psychosocial interventions to prevent or reduce the impact of internalized and anticipatory stigma may improve HRQoL for PLWH and should be considered across a range of HIV services. More research is needed to understand to what extent the mechanisms between these types of stigma and HRQoL differ by gender and whether gender-specific anticipatory and internalized stigma reduction intervention strategies are warranted. Anti-stigma interventions at the community level are also needed and may particularly benefit women living with HIV.

Acknowledgements This project was supported by a research grant from the National Institute of Mental Health (Supplement to Grant Number R01MH089831). The clinics included in this analysis received support from ICAP at Columbia University through funding from the President’s Emergency Plan for AIDS Relief. The content is solely the responsibility of the authors and does not necessarily represent the official views of the funders. The funders had no role in study design, data collection and analysis, decision to publish, or preparation of the manuscript.

Compliance with Ethical Standards

Conflict of interest The authors declare they have no conflict of interest.

Ethical Approval All procedures performed in this study involving human participants were in accordance with the ethical standards of the institutional and/or national research committee and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards.

Informed Consent Informed consent was obtained from all participants included in the study.

References


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Tab 21
Another Generation of Stigma? Assessing Healthcare Student Perceptions of HIV-Positive Patients in Mwanza, Tanzania

12 authors, including:

Sahil Aggarwal
Duke University Medical Center
28 PUBLICATIONS 23 CITATIONS

Debora H. Lee
University of California, Irvine
15 PUBLICATIONS 118 CITATIONS

Reece Fenning
University of California, Los Angeles
5 PUBLICATIONS 15 CITATIONS

Catherine Diamond
University of California, Irvine
44 PUBLICATIONS 1,374 CITATIONS

Some of the authors of this publication are also working on these related projects:

HIV Stigma View project

Femtosecond Laser-Enabled Keratoplasty with zig-zag pattern: Comparison of Suture Pattern View project
Another Generation of Stigma? Assessing Healthcare Student Perceptions of HIV-Positive Patients in Mwanza, Tanzania

Sahil Aggarwal, BS,1 Debora H. Lee, BS,1 William B. Minteer, BS,1 Reece T.H. Fenning, BS,1 Shella K. Raja, BS,1 Megan E. Bernstein, BA, MS,1 Kaavya R. Raman, BS,1 Sean P. Denny, BS,1 Priya A. Patel, BA,1 Mark Lieber, BA, MS,1 Allison O. Farfel, BA,1 and Catherine A. Diamond, MD, MPH2

Abstract

HIV-related stigma remains a persistent global health concern among people living with HIV/AIDS (PLWA) in developing nations. The literature is lacking in studies about healthcare students’ perceptions of PLWA. This study is the first effort to understand stigmatizing attitudes toward HIV-positive patients by healthcare students in Mwanza, Tanzania, not just those who will be directly treating patients but also those who will be indirectly involved through nonclinical roles, such as handling patient specimens and private health information. A total of 208 students were drawn from Clinical Medicine, Laboratory Sciences, Health Records and Information Management, and Community Health classes at the Tandabui Institute of Health Sciences and Technology for a voluntary survey that assessed stigmatizing beliefs toward PLWA. Students generally obtained high scores on the overall survey instrument, pointing to low stigmatizing beliefs toward PLWA and an overall willingness to treat PLWA with the same standard of care as other patients. However, there are gaps in knowledge that exist among students, such as a comprehensive understanding of all routes of HIV infection. The study also suggests that students who interact with patients as part of their training are less likely to exhibit stigmatizing beliefs toward PLWA. A comprehensive course in HIV infection, one that includes classroom sessions focused on the epidemiology and routes of transmission as well as clinical opportunities to directly interact with PLWA—perhaps through teaching sessions led by PLWA—may allow for significant reductions in stigma toward such patients and improve clinical outcomes for PLWA around the world.

Keywords: AIDS, HIV, patient care

Introduction

Since the implementation in 2000 of the United Nations Millennium Development Goals for the year 2015, significant progress has been made in reducing HIV transmission and improving access to antiretroviral therapies (ARTs), especially in developing nations. Indeed, the incidence of new HIV infections has dropped 40% globally, and 7.6 million HIV-positive patients have avoided death by gaining access to ARTs.1 However, HIV still remains a prominent global concern. In 2015, an estimated 19 million people living with HIV/AIDS (PLWA) resided in eastern and southern Africa, where ~960,000 new global HIV infections occurred and 470,000 people died from the complications of AIDS.2 Despite governmental efforts to increase ART access in Tanzania, only about 63–83% (150,000 to 200,000) of PLWA requiring medication were receiving ARTs in 2011.3 Suboptimal ART use is not specific to Tanzania; only 44% of adult men and 59% of adult women, ages 15 and over, in eastern and southern Africa had access to therapy in 2015.5

HIV-related stigma remains a persistent global health concern among PLWA in developing nations, further complicating prevention efforts and access to medications.3–6 UNAIDS defines HIV stigma as the negative beliefs, feelings, and attitudes toward people living with HIV that result in discriminatory behavior.7 HIV stigma often results from a fear of transmission and the association of HIV with culturally sensitive activities such as sex, drug use, and prostitution that bring into question the character of an individual infected with HIV.8 The stigma can present itself as verbal discrimination (gossiping, taunting, or blaming by community members), social discrimination (reduced visits by friends and family),

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physical discrimination (violence toward PLWA), and institutional discrimination (loss of employment and inequitable provision of healthcare services). Consequently, PLWA often experience isolation and internalized stigma, wherein an individual with a disease state perceives himself or herself as less valuable than others in the community and produces negative self-perceptions. Numerous studies have also reported that individuals affected by stigma suffer from negative psychosocial and mental effects as well as reduced adherence to ARTs and disclosure to sexual partners.16–19 Of particular interest to this study is stigma in healthcare settings, which manifests as neglect, denial of services, disclosure of HIV status to others without patient consent, and verbal abuse by healthcare providers.20 There are several reports of healthcare-related stigma by providers contributing to the negative physical and mental health of PLWA.20–22 However, many of the healthcare providers surveyed in these previous studies may hold different values from the current healthcare students who are being raised in a different generation. Healthcare students stand as the future healthcare leaders of their communities and understanding their perceptions toward HIV-positive patients will provide insight into generational changes in perceptions of HIV. It will also act as a way to ascertain the potential need for incorporation of educational curricula that target reduction of HIV-related stigma.

To our knowledge, HIV-related stigma among healthcare students in Tanzania has never been studied. Further, no study has assessed stigma in healthcare students entering nonclinical professions, such as medical laboratory or health information management, which are indirectly involved with patient care. In this study, we surveyed healthcare students in Mwanza, Tanzania, entering both clinical and nonclinical fields for various aspects of HIV-related stigma to better understand its potential impact on PLWA.

Materials and Methods

Setting

The study was conducted over a 4-week period in June 2016 at the Tandabui Institute of Health Sciences and Technology (TIHEST) in Mwanza, Tanzania. Mwanza is the second largest city in Tanzania and has an ~4.6% HIV prevalence rate.21 TIHEST is a health professions training institute recognized by the Tanzanian Ministry of Health that offers certificates and diplomas in Clinical Medicine, Laboratory Sciences, Health Records and Information Management, Nursing, and Community Health.

Study participants

Study participants were drawn from Clinical Medicine, Laboratory Sciences, Health Records and Information Management, and Community Health classes at TIHEST. At TIHEST, Clinical Medicine students who complete 1 year of pre-clinical and 1 year of clinical training are given the title of Clinical Assistant, and those who pursue another additional year of clinical training are titled Clinical Officers.

While individuals trained in Clinical Medicine are not permitted to perform complex surgical procedures, they can conduct basic physical examinations, prescribe medications, and perform minor surgical procedures such as those involved in childbirth. Students who complete the Clinical Medicine program are not considered physicians; the purpose of Clinical Medicine training programs is to increase the number of individuals within developing nations who are able to provide basic medical care to regions lacking health services.23 Laboratory Science students at TIHEST are extensively trained in diagnostics through a 2-year program, learning how to prepare specimens for microscopic viewing as well as how to identify pathology. Health Records and Information Management students take a 2-year program to learn how to manage patient health information, and Community Health students undergo a 1-year curriculum that prepares them to enter social work, nursing, or radiologic imaging.

A basic outline of the core courses of each program by year (Table 1), obtained from TIHEST administration, reveals that Clinical Medicine students are the only students who complete several clinical rotations and are directly involved in the handling and treatment of patients. They are also the only

| Table 1. Courses Relevant to Infectious Disease, Patient Care, and HIV at TIHEST |
|------------------|------------------|------------------|------------------|
| **Clinical Medicine Year 1** | **Communication and counseling skills** | **Microbiology, parasitological, and medical entomology** | **Communicable diseases** |
| **Clinical Medicine Year 2** | **Patient care** | **Health promotion** | **Counseling** |
| **Clinical Medicine Year 3** | **Clinical rotations in various specialties** | **Laboratory Sciences Years 1–3** | **Management of HIV/AIDS and TB** |
| | | | **Ethics and professionalism** |
| | | | **Clinical rotations in various specialties** |
| | | | **Health Records and Information Management Years 1–3** |
| | | | **Communication skills and customer care** |
| | | | **Infection, prevention, and control** |
| | | | **Quality assurance** |
| | | | **Leadership and management** |
| | | | **Community health** |
| | | | **Health records management** |
| | | | **Laboratory ethics and professional code of conduct** |
| | | | **Diagnostic pathology in hematology and blood transfusion** |
| **Community Health Year 1** | **Fundamentals of communication and customer service** | **Infection prevention and control** | **Management of healthcare facility environment** |
| | | | **Prevention and control of diseases** |
| | | | **Community-based health promotion** |

TIHEST, Tandabui Institute of Health Sciences and Technology.
students specifically enrolled in an HIV/AIDS course during the optional third year of study. However, it is still important to consider the stigmatizing attitudes that other healthcare students entering nonclinical professions may hold toward HIV-positive patients as they will still be indirectly involved in patient care through diagnostics and/or handling private health information. Consequently, we classified the students into Clinical Medicine Year 1 (pre-clinical experience only), Clinical Medicine Years 2–3 (pre-clinical and clinical experience), or Other (Health Records and Information Management, Laboratory Sciences, and Community Health) for the purposes of our analysis of survey responses.

**Study design**

The University of California, Irvine, granted Institutional Review Board approval for this cross-sectional study. A composite survey was developed utilizing questions from three previous studies to assess the healthcare students’ perceptions of HIV-positive patients in three domains: personal or cultural beliefs about HIV, HIV education, and clinical interactions with HIV-positive patients. The finalized survey consisted of 18 questions: 9 questions assessed personal or cultural beliefs about HIV, 5 assessed HIV education, and 4 assessed clinical interactions with HIV-positive patients (Table 2). The survey was translated into Swahili, the primary language of Tanzania.

For each question, responses of “Agree,” “Disagree,” or “Don’t know” were the possible options. “Don’t know” was included as an option to ensure that participants did not leave questions unanswered. A scoring scheme was developed so that higher scores indicated lower levels of stigmatizing beliefs toward HIV. For questions 1, 3, 4, 5, 7, and 9–14, a response of “Agree” was given a score of 0, while a response of “Disagree” was given a score of 1 because a response of “Disagree” indicated a lower level of stigmatizing beliefs.

For questions 2, 6, 8, and 15–18, a response of “Agree” was given a score of 1, while a response of “Disagree” was given a score of 0 because a response of “Agree” indicated a lower level of stigmatizing beliefs. A response of “Don’t know” was always given a score of 0. Consequently, the highest score that a student could receive for personal or cultural beliefs about HIV was 9, for HIV education was 5, and for clinical interactions with HIV-positive patients was 4, summing up to a perfect total score of 18. In addition to the survey, basic demographic information—age, gender, and student type (Clinical Medicine Year 1, Clinical Medicine Year 2, Health Records and Information Management, Laboratory Sciences, or Community Health)—was collected.

**Recruitment**

Study investigators invited potential participants to complete the voluntary survey and provided them with the survey and information sheets, available in both English and Swahili. A convenience sampling method was used to recruit participants as only those students who were present at the TIHEST campus over the course of the 1-month study period were actively recruited for survey completion. Participants gave verbal consent after speaking with coinvestigators about the study and reviewing the information sheet.

Participants were informed that no identifying information would be obtained, all responses were anonymous, and there were no repercussions for survey responses on school

<table>
<thead>
<tr>
<th>Table 2. Overall Responses to Each Question of the Survey</th>
<th>Agree, % (n)</th>
<th>Disagree, % (n)</th>
<th>Don’t know, % (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal/cultural beliefs about HIV</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 HIV is a punishment for bad behavior</td>
<td>23.1 (48)</td>
<td>70.2 (146)</td>
<td>6.7 (14)</td>
</tr>
<tr>
<td>2 People living with HIV should feel ashamed of themselves</td>
<td>2.4 (5)</td>
<td>95.7 (199)</td>
<td>1.9 (4)</td>
</tr>
<tr>
<td>6 People living with HIV should be allowed to have babies if they wish</td>
<td>53.4 (111)</td>
<td>43.3 (90)</td>
<td>3.4 (7)</td>
</tr>
<tr>
<td>7 People who get HIV/AIDS through sex or drug use got what they deserved</td>
<td>30.8 (64)</td>
<td>57.7 (120)</td>
<td>11.5 (24)</td>
</tr>
<tr>
<td>8 I am afraid of people who are HIV positive</td>
<td>11.1 (23)</td>
<td>87.0 (181)</td>
<td>1.9 (4)</td>
</tr>
<tr>
<td>9 I would feel ashamed if someone in my family got HIV/AIDS</td>
<td>15.4 (32)</td>
<td>79.3 (165)</td>
<td>5.3 (11)</td>
</tr>
<tr>
<td>10 I would feel ashamed if someone I know got HIV/AIDS</td>
<td>14.4 (30)</td>
<td>82.2 (171)</td>
<td>3.4 (7)</td>
</tr>
<tr>
<td>11 I would feel ashamed if a classmate got HIV/AIDS</td>
<td>17.3 (36)</td>
<td>79.8 (166)</td>
<td>2.9 (6)</td>
</tr>
<tr>
<td>12 I would feel ashamed if I were infected with HIV</td>
<td>35.1 (73)</td>
<td>60.6 (126)</td>
<td>4.3 (9)</td>
</tr>
<tr>
<td><strong>HIV education</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Most people living with HIV have had many sexual partners</td>
<td>26.0 (54)</td>
<td>68.3 (142)</td>
<td>5.8 (12)</td>
</tr>
<tr>
<td>4 People living with HIV could have avoided HIV if they had wanted to</td>
<td>69.2 (144)</td>
<td>25.0 (52)</td>
<td>5.8 (12)</td>
</tr>
<tr>
<td>5 People get infected with HIV because of irresponsible behaviors</td>
<td>11.1 (23)</td>
<td>87.5 (182)</td>
<td>1.4 (3)</td>
</tr>
<tr>
<td>13 I would not share eating utensils with people who have HIV/AIDS because I am afraid of HIV infection</td>
<td>9.1 (19)</td>
<td>90.4 (188)</td>
<td>0.5 (1)</td>
</tr>
<tr>
<td>14 I would not buy from a food vendor who has HIV/AIDS</td>
<td>11.5 (24)</td>
<td>86.5 (180)</td>
<td>1.9 (4)</td>
</tr>
<tr>
<td><strong>Clinical interactions with HIV-positive patients</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 I am willing to work with HIV-positive patients</td>
<td>78.8 (164)</td>
<td>19.2 (40)</td>
<td>1.9 (4)</td>
</tr>
<tr>
<td>16 If I worked with HIV-positive patients, I would provide the same quality of care to them that I provide to other patients</td>
<td>88.0 (183)</td>
<td>11.5 (24)</td>
<td>0.5 (1)</td>
</tr>
<tr>
<td>17 If asked, I am willing to do a physical examination of an HIV-positive patient</td>
<td>81.3 (169)</td>
<td>15.9 (33)</td>
<td>2.9 (6)</td>
</tr>
<tr>
<td>18 If I worked with HIV-positive patients, I would talk with them just like other patients</td>
<td>90.9 (189)</td>
<td>7.7 (16)</td>
<td>1.4 (3)</td>
</tr>
</tbody>
</table>
evaluations. If students were still unclear about the study after speaking with co-investigators and consulting the information sheet, we enlisted the assistance of TiHEST administrative staff to clarify the study’s purpose and its response anonymity in Swahili. While every effort was made by co-investigators and TiHEST staff to ensure that students had a private space to complete the survey, in some cases when space was limited, study investigators monitored a classroom with participants to ensure they could not see one another’s responses.

**Data analyses**

Data were analyzed using XLSTAT 2016 for Windows. All variables were characterized using descriptive statistics, with frequencies and percentages reported for categorical variables and means, standard deviations, and medians reported for continuous variables. Participants who did not complete all questions on the survey were excluded in all analyses.

Scores for each of the three survey categories were plotted to assess normality. Nonparametric tests were used for analyses, including Mann–Whitney tests for dichotomous variables (e.g., sex) and Kruskal–Wallis tests for categorical variables with multiple levels (e.g., student type). Due to the heavily skewed distributions, the subscore variables were split into two roughly even categories—low values, less than the median, and high values, greater than or equal to the median. A two-way ANOVA was conducted to compare the main effects of age (age ≤ 24, age > 24) and student type (Clinical Medicine Year 1, Clinical Medicine Years 2–3, Other) and the interaction effect between the two variables on stigma scores. Associations between personal and cultural beliefs and HIV education subscores against clinical interaction subscores were assessed using chi-squared tests. A p-value < 0.05 was considered statistically significant.

**Results**

A total of 255 students at TiHEST took the survey, but 45 students were excluded because they did not complete all questions on the survey, and the remaining sample consisted of 210 students. The mean age was 23.9 years, and the average age of students in Clinical Medicine Year 1 was 23.5 years, in Clinical Medicine Years 2–3 was 27.2 years, and in Other students was 21.6 years, with the differences between these ages being statistically significant (p < 0.0001) (Table 3). Of all students who took the survey, mean scores of 5.9, 3.6, and 3.4 as well as median scores of 6, 4, and 4 were obtained for personal or cultural beliefs about HIV (9 points total), HIV education (5 points total), and clinical interactions with HIV-positive patients (4 points total) subscores, respectively. As the subscores suggest, there was a negative skew in the distributions of subscores and the total score, pointing to an overall trend in low stigmatizing beliefs toward HIV (Fig. 1).

A breakdown of responses to each question of the survey was reviewed, with several notable points emerging that the subscores themselves did not elicit (Table 2). With regard to personal and cultural beliefs about HIV, 23.1% of all participants believed that HIV is a punishment for bad behavior and 30.8% believed that people who got HIV from drug use or sex deserved to become infected. Additionally, more participants cited that they would feel ashamed if they themselves became infected with HIV than if someone close to them was infected. Further, despite an overall high HIV education subscore among participants, 69.2% believed that individuals who are HIV positive could have avoided infection if they wanted to and 26.0% believed that HIV-positive patients have had many sexual partners. Despite this, the overwhelming majority of participants would be willing not only to work with HIV-positive patients but also to provide an equitable quality of care to other patients with whom they would interact.

An analysis of subscores was conducted in the context of demographic variables and in relationship to one another. While subscores were similar between male and female respondents, students older than 24 years were more likely to obtain a higher personal and cultural beliefs about HIV subscore than were those younger than 24 years old (7.0 vs. 6.5, p = 0.03; Table 4). There was also a significant difference between the personal and cultural beliefs about HIV subscore means between students in different programs, with Clinical Medicine Years 2–3 students exhibiting the highest score (6.8 for Clinical Medicine Year 1 vs. 7.1 for Clinical Medicine Years 2/3 vs. 6.2 for Other, p = 0.01). This difference in HIV stigma levels among the three student types remained significant when the subscore was totaled (13.8 vs. 14.3 vs. 13.6, respectively, p = 0.04) (Table 4).

The interaction between age and student type on total score was not significant (p = 0.22) (Table 5). However, when the effects of age and student type on total score were analyzed simultaneously, there were no significant main effects of age (p = 0.40) or student type (p = 0.28) on total score. Students with high personal and cultural beliefs about HIV subscores were more likely than those with low subscores to achieve high clinical interaction scores (73.9% vs. 54.3%, p = 0.005) (Table 6).

**Discussion**

HIV-related stigma has public health consequences that complicate lifelong treatment of affected patients beyond access to ARTs. This study is the first effort toward understanding stigmatizing attitudes toward HIV-positive patients.
by healthcare students in Tanzania, not just those who will be directly treating patients but also those who will be indirectly involved through nonclinical roles, such as handling patient specimens and private health information. In this study, we provide a point-by-point interpretation of significant findings.

**Individual survey item responses**

While healthcare students generally scored well on the overall survey, responses to individual questions indicate gaps in knowledge about HIV and in personal or cultural beliefs about PLWA. With regard to HIV education, over two-thirds of respondents believed that PLWA could have avoided HIV if they wanted to, and over one-fourth believed that PLWA have had many sexual partners. This suggests that the students were less aware of the routes of HIV infection beyond behavioral routes such as drug use and sex with same sex or different sex partners. Education about the routes of transmission outside of an individual’s control, such as mother-to-child transmission, may foster a greater sense of empathy in these future healthcare leaders. In fact, qualitative studies have found that community members are more supportive of PLWA who contracted HIV without participating in socially improper behaviors, such as women who become infected from their husbands, children who become infected from their mothers, and healthcare workers infected while working.8

With regard to personal and cultural beliefs about HIV, nearly one-fourth of the students believed HIV is a punishment for bad behavior and nearly one-third believed people who contracted HIV through drug use or sex deserved to become infected, suggesting that while students generally scored high on personal and cultural beliefs about HIV, they still exhibit blame toward PLWA.

Notably, survey responses showed that more students would feel ashamed if they themselves became infected with HIV than if someone close to them was infected. This may be suggestive of internalized stigma, which can be influenced by stigma from those around the affected patient, and has been found to contribute to several mental and public health

**FIG. 1.** Distribution of each subscore and total score for the survey. Higher scores indicate lower stigmatizing beliefs.
consequences, namely depression, social isolation, poor disclosure of HIV status, and unsafe sex practices. Since more students would feel ashamed of their own infection than that of others, it appears that internalized stigma plays a contributory role in that shame. It is important, therefore, that students learn not just about HIV infection and stigma by one’s community but also about how to tackle the mental health issues that PLWA experience as a result of internalized stigma.

Age and HIV stigma

Students who were older than the sample mean of 24 years had a significantly higher personal and cultural beliefs about HIV subscore than students who were younger than 24 years. This suggests that older students may exhibit less stigmatizing personal or cultural beliefs about PLWA than younger students. One possible explanation for this trend could be found in previous findings that report lower stigmatizing attitudes in individuals with higher levels of education. While we did not collect information about the educational backgrounds of the participants in the study, it may be possible that older students have had more educational experiences (in the form of other degrees or programs of study) than younger students in the same program. Importantly, further analyses revealed that second and third-year Clinical Medicine students were significantly older than first-year Clinical Medicine students, likely due to being further along in the program and in their education. It is important to note that this association was reduced to a nonsignificant p-value when student type and age were analyzed simultaneously.

Student type and HIV stigma

Student type had an association with stigmatizing attitudes, with Clinical Medicine students in their second or third year of study having a significantly higher personal and cultural beliefs about HIV subscore as well as overall score on the survey instrument than first-year Clinical Medicine students and students in other healthcare fields.

While we did not collect information about the educational backgrounds of the participants in the study, it may be possible that older students have had more educational experiences (in the form of other degrees or programs of study) than younger students in the same program. Importantly, further analyses revealed that second and third-year Clinical Medicine students were significantly older than first-year Clinical Medicine students, likely due to being further along in the program and in their education. It is important to note that this association was reduced to a nonsignificant p-value when student type and age were analyzed simultaneously.

Table 4. Differences in Subscores by Gender, Age, and Student Type

<table>
<thead>
<tr>
<th>Subscore</th>
<th>Male (n = 130)</th>
<th>Female (n = 78)</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal/cultural beliefs</td>
<td>6.9±2.1 [7]</td>
<td>6.7±2.0 [7]</td>
<td>0.75</td>
</tr>
<tr>
<td>HIV education</td>
<td>3.6±1.1 [4]</td>
<td>3.5±0.9 [4]</td>
<td>0.46</td>
</tr>
<tr>
<td>Clinical interactions</td>
<td>3.4±1.1 [4]</td>
<td>3.6±1.2 [4]</td>
<td>0.90</td>
</tr>
<tr>
<td>Total</td>
<td>13.7±3.0 [14]</td>
<td>13.6±2.9 [14]</td>
<td>0.61</td>
</tr>
</tbody>
</table>

Table 5. Differences Between Subscores with Student Type and Age Group as Main Factors

<table>
<thead>
<tr>
<th>Subscore</th>
<th>Student type</th>
<th>Age group&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Student type × age group&lt;sup&gt;a&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal/cultural beliefs</td>
<td>0.22 (CM2/3 &gt; CM1 &gt; O)</td>
<td>0.30</td>
<td>0.42</td>
</tr>
<tr>
<td>HIV education</td>
<td>0.48</td>
<td>0.56</td>
<td>0.05</td>
</tr>
<tr>
<td>Clinical interactions</td>
<td>0.56</td>
<td>0.40</td>
<td>1.00</td>
</tr>
<tr>
<td>Total</td>
<td>0.25 (CM2/3 &gt; CM1 &gt; O)</td>
<td>0.40</td>
<td>0.22</td>
</tr>
</tbody>
</table>

<sup>a</sup>p values were extracted from Mann–Whitney test or Kruskal–Wallis test.
Scores are represented as mean ± standard deviation [Median].

Key

<table>
<thead>
<tr>
<th>Agree</th>
<th>Disagree</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stigmatizing Questions: 1, 3, 4, 5, 7, 9–14 (e.g., HIV is a punishment for bad behavior)</td>
<td>+0</td>
<td>+1</td>
</tr>
<tr>
<td>Nonstigmatizing Questions: 2, 6, 8, 15–18 (e.g., I am willing to work with HIV patients)</td>
<td>+1</td>
<td>+0</td>
</tr>
</tbody>
</table>
association lessened when student type and age were examined simultaneously; although this relationship is not to the extent of being statistically significant, we believe the prevailing low p-value suggests that student type is still somewhat associated with HIV stigma scores, namely the personal and cultural beliefs about HIV subscore and the total score.

The major difference between second and third-year Clinical Medicine students and all other students may involve two factors. First, second- and third-year Clinical Medicine students uniquely receive clinical training, and thus the opportunity to interact with patients and PLWA, as part of their program to complement the pre-clinical courses they took during their first year. Indeed, previous studies have found that pre-clinical students are more stigmatizing and less willing to work with PLWA than clinical students.35,36 Our finding also supports the contact hypothesis, which claims that interpersonal interactions with individuals in a particular group can reduce prejudice toward that group.37 Previous studies in the context of HIV have found benefits of the application of the contact hypothesis in reducing stigmatizing attitudes and beliefs toward HIV-positive patients. Individuals who have had direct contact with PLWA have been found to exhibit less blame,38 increased tolerance,39 and overall reduced stigmatizing attitudes40–43 toward PLWA.

Second, third-year Clinical Medicine students are the only students who take a specific course about HIV. While we did not distinguish between second- and third-year students in our data collection, it is possible that this specific education allows for third-year students to have lower overall stigmatizing beliefs toward PLWA. Indeed, previous literature has cited that more knowledge about HIV contributes to lower stigmatizing beliefs.44 Clinical Medicine students in their second and third years of training had the lowest overall score on the survey, suggesting that clinical experience or an HIV education course plays a role in their lower stigmatizing beliefs. This finding is meaningful because it suggests the need for all students, not just Clinical Medicine students, to have patient contact as part of their training curriculum as well as knowledge-building HIV courses.

Further, there was a significant positive association between the personal and cultural beliefs about HIV subscore and clinical interactions subscore, suggesting a relationship between students’ personal opinions about PLWA and the way they handle such patients in a clinical setting. The contact hypothesis may be one explanation, in that the patient interactions and clinical experience gained by second- and third-year Clinical Medicine students could play a role in improving personal and cultural beliefs about HIV. However, students’ personal opinions contrarily could change the way they treat patients, or other factors may be at play. Future studies are needed to further investigate the relationship between personal beliefs about HIV and clinical interaction.

Educating future healthcare providers

Generally, students obtained high scores on the overall survey instrument, pointing to low stigmatizing beliefs toward PLWA and a willingness to work with and treat PLWA with the same standard of care as other patients. However, there are gaps in knowledge that exist among a large proportion of students, such as a comprehensive understanding of all routes of HIV infection beyond unsafe sex and drug use. It is vital for healthcare students and providers alike to be educated about the biology and psychosocial aspects of HIV infection as it will allow them to establish trusting relationships with PLWA. A poor relationship with healthcare providers—either a lack of trust in the provider or poor treatment on the part of the provider—has consistently been found to be associated with negative health outcomes and retention of care, not just in Tanzania but also in other developing and developed communities around the world.45–48

Our study suggests that students who interact with patients as part of their training are less likely to exhibit stigmatizing beliefs toward PLWA. We believe that requiring all students to complete a comprehensive course in HIV infection—covering the basic science, clinical, social, and mental health aspects of the virus—that includes opportunities to interact with PLWA may allow for significant reductions in stigma toward such patients and improved clinical outcomes for PLWA around the world. A recent study pointed to the benefits of such a program, where even inviting PLWA to be instructors for medical students—a patient instructor model—has been found to reduce the stigmatizing attitudes of those students.49 Unfortunately, such a practice has not yet been implemented on a large scale. Therefore, future studies should investigate the merits of programs that incorporate direct contact with PLWA in changing the potentially stigmatizing perceptions of healthcare students.

Study limitations

This study is not without limitations. Because the study relied on survey responses to assess stigmatizing beliefs, there is the potential for response bias. While we surveyed participants over the course of a month in an attempt to survey as many students available on campus as possible, we inevitably could not collect data from all students at TIHEST due to time constraints. Additionally, this study only surveyed healthcare students at TIHEST and thus findings

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**Table 6. Differences in Clinical Interaction by Other Subscores**

<table>
<thead>
<tr>
<th></th>
<th>High personal/cultural beliefs (n = 138)</th>
<th>Low personal/cultural beliefs (n = 70)</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>High clinical interaction</td>
<td>73.9% (102)</td>
<td>54.3% (38)</td>
<td>0.005</td>
</tr>
<tr>
<td>High HIV education</td>
<td>70.0% (89)</td>
<td>61.4% (51)</td>
<td>0.188</td>
</tr>
</tbody>
</table>

*p* values were extracted from chi-squared test. Low personal/cultural beliefs is score of 0–3; high personal/cultural beliefs is score of 4–5; and high clinical interaction is score of 4; Median of personal/cultural beliefs score was 7; median of HIV education score was 4; and median of clinical interaction score was 4.
cannot be extrapolated to all Tanzanian or African healthcare students. Finally, given the limited resources of the school and the region in general, it was difficult to obtain a private room for each student to complete the survey, and it is possible that the presence of other students in the same room taking the same survey may have influenced some responses. Regardless of these limitations, this study is the first to investigate healthcare students’ perceptions about HIV and PLWA in Tanzania and to survey students who are not directly involved with patient care, but are still intimately involved with the healthcare process.

Acknowledgments
The authors would like to express their gratitude to Erick Oguta for his persistent efforts in forming relationships with the various partners on the ground in Mwanza. They would also like to thank the Tandabui Institute of Health Sciences and Technology (TIHEST) for allowing them to conduct the study and use resources such as classroom space and staff for survey administration. Finally, the authors would like to thank Jackline Mueni Muthoka and Johnes Ghati Kitololo for their assistance in translating the survey instrument and study information sheet into Swahili. This work was supported by the Infectious Disease Society of America Medical Scholars Program; University of California, Irvine, School of Medicine Global Initiative; and PENDulum Global.

Author Disclosure Statement
No competing financial interests exist.

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Tab 22
Social Network Influence on HIV Testing Among Urban Men in Tanzania

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Abstract

Men in sub-Saharan Africa have low HIV testing rates. Social networks exert an important influence on men’s HIV-related behavior. We examined associations between network factors and HIV testing among men in Dar es Salaam, Tanzania. Data are from the baseline assessment of an HIV prevention trial with 48 primarily male networks. Among 923 sexually active men, 52% had ever tested for HIV. In a random effects logistic regression model, men in the network core were 1.50 times more likely (p < .05) to test than those in the periphery. Percentage of women in the network was associated with men’s increased HIV testing (AOR 4.24, p < .05). Perception of network HIV stigma was negatively associated with HIV testing (AOR 0.92, p < .01). Thinking at least one close friend tested for HIV was associated with increased testing (AOR 2.66, p < .001). Social network interventions are a promising approach for scaling up men’s HIV testing.

Keywords

Social networks; Men; Sub-Saharan Africa; HIV testing
Introduction

To meet the UNAIDS 2020 target that 90% of all HIV-positive people know their HIV status [1], men in sub-Saharan Africa need to be targeted for HIV testing [2]. Men in the region are consistently under-represented in HIV testing [3–5]. Men’s low uptake of testing in sub-Saharan Africa delays their entry into treatment and care, increases their risk for mortality, and heightens their potential to transmit HIV to their partners, thus effecting the HIV prevalence rates for both men and women [3, 6]. Nevertheless, a recent systematic review revealed that few HIV testing interventions in sub-Saharan Africa specifically target men [7].

There has been a call for research to understand factors that influence men’s engagement in HIV testing and treatment in sub-Saharan Africa [8]. Qualitative studies suggest that barriers to HIV testing for men include fear, stigma, perceptions that health care services are mostly for women, and norms associated with masculinity [2, 9–11]. Factors that facilitate HIV testing for men include, but are not limited to, fulfilling family obligations and their peers getting tested [9, 12].

According to a national survey in Tanzania in 2011–2012, an estimated 47% of men aged 15–49 had ever tested for HIV [13]. A study based on 11 years of data from the HIV voluntary counseling and testing (VCT) clinic at the national hospital in Dar es Salaam found that only 35% of men had previously had an HIV test and only 25% knew their partner’s HIV status [4]. Previous research in Tanzania has shown that characteristics such as low education, low SES and young age have been negatively associated with HIV testing for men [4, 13].

Men’s HIV testing behavior may be shaped by the norms within their peer groups or networks [14]. Significant, positive associations have been consistently demonstrated between peer behaviors and other HIV risk behaviors among young men including inconsistent condom use [15–18], early sexual debut [19], and number of sexual partners [20], although all of these studies have been conducted outside of sub-Saharan Africa. Evidence from Tanzania indicates that young men’s HIV-related behaviors are shaped by their interactions with their peers [21–24]. Research suggests that more aggressive efforts are needed to change norms that underlie men’s HIV testing behavior in Tanzania [4].

Social network analysis is a tool for conceptualizing and quantifying social norms, network structure and composition, and these analyses can help researchers identify specific targets and pathways for interventions [25]. Studies have used network analysis to examine the relationship between social networks and HIV prevention behavior, such as condom use [15, 26]. A few studies have also examined the link between networks and HIV testing. In a study among male sex workers in China, having a small network or a network with few members who had tested for HIV was associated with an individual never having HIV tested [27]. In a study among Indian truck drivers and their apprentices, several network characteristics (having many friends, closeness among friends, and the importance of friends’ advice) were positively associated with the acceptance of rapid HIV testing [28].
Social network analysis remains underused for examining HIV-related behaviors in sub-Saharan Africa, despite the fact that network research may be important for addressing the magnitude of the epidemic in the region [29]. A recent study from Tanzania used network analysis [30] to examine network-level influence on young men’s engagement in concurrent sexual partnerships [24]. Network closeness, measured by the average number of friendships in each network, and normative concurrency behavior in the network (whether or not the majority of network members engaged in concurrency) were significantly associated with young men’s individual concurrency behavior [24]. These results suggest that network-level characteristics are an important source of influence on young men’s behavior in this context.

To generate hypotheses for the current study, we drew on theoretical and empirical evidence. The structural theory of social influence suggests that network structures may influence behaviors through flow of information [31]. Theory suggests that sociometric, or complete, networks can be divided into core, a sub-group in which actors are maximally connected, and periphery in which actors are loosely connected to the core [32]. Because those in the core are the most connected members of the network, they may receive the most information from other network members [33]. Therefore, they may be exposed to a wider range of views about the benefits of testing. Thus, we hypothesized that men in the network core would be more likely to have tested for HIV than men in the periphery.

We next considered network composition, or characteristics of the network members, which may influence behavior by shaping norms [25]. Women have higher rates of HIV testing and thus networks in which women are also members may make testing more normative in those networks. Therefore, we hypothesized that men who were members of networks with a greater proportion of women members would more likely have tested for HIV.

We also considered network norms for HIV stigma. Research from sub-Saharan Africa has demonstrated the relationship between social norms for HIV stigma and HIV testing for men [34–37]. A study in Nigeria showed that community-based social norms for HIV stigma were strongly and directly related to men’s, but not women’s, readiness to test for HIV [35]. In South Africa, positive attitudes towards people living with HIV/AIDS were associated with ever having tested [36]. Based on this prior literature, we hypothesized that social norms related to HIV stigma would be associated with HIV testing, such that those men who reported that their social networks held more stigmatizing norms would be less likely to have tested for HIV.

Finally, drawing on theory about social norms that suggests that network members are more likely to report making decisions about HIV risk behaviors that are in line with what they perceive is prevalent (descriptive norms) and appropriate (injunctive norms) [38], we hypothesized that the norms of men’s close friends in the network would be associated with men’s HIV testing behavior. Descriptive norms are thought to influence behavior by motivating individuals to behave in the way that they believe others are behaving and injunctive norms motivate individuals to behave in the way they perceive that others want them to behave [38]. Specifically, we hypothesized that men who thought at least one close friend had tested for HIV (descriptive norm) would be more likely to have tested than men who perceived none of their close friends had tested. Additionally, we hypothesized that men
with at least one close friend who encouraged HIV testing (injunctive norm) would be more likely to have tested than men with close friends who did not encourage testing [15].

The purpose of this study was to examine how network structure, composition and norms are associated with HIV testing among men. Previous work showed that “camps”, stable social networks of mostly men, are an important source of friendship and influence for young men in Dar es Salaam [23, 24]. Camps are urban social networks of between 20 and 77 members and they have elected leaders [23]. Prior research demonstrated the stability of the camps; camps existed for an average of 8 years [23]. Most members reported being loyal to one camp, attending the camp regularly, and returning even after time away. Camps were formed by youth to have a common space within their neighborhood for socializing or engaging in activities like sports or music. A few camps moved to a different location or changed their names, but they usually remained within the same neighborhood [23]. Male members described the closeness they felt towards their fellow camp members, living “as one family in the camp”, supporting each other when they had problems, and helping each other find work and other opportunities. In addition, camp networks were diverse in their inclusion of women members; while some camps had few women members, other camps had several women members and included women in leadership positions [23]. We draw on baseline data using 48 randomized camp networks from an HIV and gender-based violence prevention intervention trial in Dar es Salaam [39].

Methods

Study Setting

Dar es Salaam is the commercial capital and largest city in Tanzania. The city has a population of 4.36 million, approximately 10 % of the total Tanzanian mainland population [40]. The HIV prevalence in Dar es Salaam is 6.9 % which is higher than the national average of 5 % [13]. The HIV prevalence among women in Dar es Salaam is 8.2 % and among men is 5.3 % [13].

Ethical Review

The study procedures and instruments were approved by the University of North Carolina at Chapel Hill Institutional Review Board as well as the Muhimbili University of Health and Allied Sciences (MUHAS) Senate Research and Publications Committee.

Study Procedures

We first enumerated all camps within four wards of Dar es Salaam. Using the PLACE (Priorities for Local AIDS Control Efforts) method [41], we identified 294 unique camps in operation and then screened them for eligibility (≥20 members;<80 members; camp was in existence for at least 1 year; camp did not participate in our pilot study; camp was perceived as safe and no weapons previously used in a fight at the camp). Out of the 172 eligible camps, we randomly selected 60 for inclusion in our trial [39].

From each camp we obtained rosters of all current camp members. The roster data were collected from the camp leader. Rosters included the first name, last name, nickname,
gender, birth date, and phone number of each camp member. We then contacted, confirmed eligibility and scheduled appointments with each eligible camp member. Camp members were eligible to participate if they were 15 years or older, were a camp member for more than 3 months, visited the camp at least once a week, planned on residing in Dar es Salaam for the next 30 months, and were willing to provide contact information for a friend or family member to be used in the event we could not contact the participant for future follow-up assessment. For these reasons, 112 individuals (5.7 %) were ineligible and 49 (2.5 %) refused to participate. We reached but were unable to schedule appointments with 197 participants (10.1 %) and were unable to contact 90 individuals after three attempts (4.6 %). A total of 1500 participants consented and completed the baseline behavioral assessment between October 2013 and March 2014. One camp (n = 9) was removed from the study because their leader falsified information with regards to the camp’s eligibility. The final sample was n = 1491 (1249 men and 242 women) within 59 camp networks. Our overall response rate among potentially eligible participants (n = 1836) was 81.2 %.

Research suggests that missing data from a significant number of network members will have a negative effect on the estimation of network properties, as strength of relationships is underestimated [42], centrality and degree measures become unstable [43], and network mapping becomes unreliable [44]. Following a recommended approach [45], we included in the analysis only those networks with >60 % response rates. Thus, we excluded 11 out of 59 networks. The non-response rate among the 48 remaining networks ranged from 0.0 to 36.4 %. Out of the 1540 individuals that were listed as members of the 48 camps, 269 did not complete the baseline survey and 54 were excluded from the analytic sample because they did not provide information on whether they had tested or some other key network variables. We also excluded 206 women from the analysis because this study was focused on men’s HIV testing. Women in the networks were included in the estimates of network properties, but not in the assessment of the outcome variable. We also excluded 115 men who never had sex because they represented a unique sub-group of men, with low rates of HIV testing, that was unlikely to have been motivated to test due to decreased risk for infection. 27 male members provided all baseline data, but no information on their social networks. Their network ties were imputed as described below. Therefore, the total number of male respondents included in the final sample of 48 networks was 923.

Survey Procedure

During the baseline assessment, we asked each member if he or she would be willing to spend up to 1 h to complete a structured survey with a study interviewer. Those members who were interested were asked to provide written informed consent to participate. After consent, camp members were interviewed in private study offices close to their camp. All participants were given 5000 Tanzanian shillings, as well as a referral card describing local health resources.

The baseline survey was implemented using tablets programmed with a custom-designed CAPI (computer-assisted personal interviewing) instrument. The baseline survey assessed demographic characteristics, age of sexual debut, and HIV risk behaviors, among other characteristics. The relevant measures are described in greater detail below.
**Outcome Variable: HIV Testing**

The outcome variable was dichotomous. Participants were asked “Have you ever had a test for HIV/AIDS?” Affirmative responses were coded with a one and negative responses were coded with a zero.

**Demographic Characteristics**

Participants were asked for their age in years and whether they were ever married. They were also asked how many children they had. A dichotomous variable was created to indicate whether or not the respondent had at least one child. Socioeconomic status (SES) was assessed using responses to a wealth index assessing ownership of 10 different household assets [46]. Principal components analysis was conducted on the assets index and then SES was categorized into terciles using the entire baseline sample of men and women.

**Education**

Respondents were asked “What is the highest level of school you have completed?” In order to assess whether increasingly higher levels of education were associated with greater odds of testing, we created three dummy-coded variables to indicate completion of three different education levels: “form three”; “form four”; and “above form four”, which were all compared to the same reference value of “form two or less”. We also created one dichotomous variable to indicate whether the respondent was currently a student.

**Camp Average for Members’ Time Spent in Camp**

We included a variable to represent, on average, how much time camp members spent in each camp, as an indication of the extent to which the camp was a meaningful socialization site for camp members. Each respondent was asked “How often would you say you come to your camp?” Response options endorsed included: every day, several times a week, and one time per week. Only 5% of the sample endorsed coming one time per week, and the other respondents all came more often. To create a meaningful comparison we dichotomized responses to “every day” versus “once to several times per week”. We aggregated responses by camp to compute the average for each camp.

**Social Network Assessment**

The tablet was programmed to display the camp roster for the participant’s particular camp. The camp rosters included the first name, last name, nickname, age and gender for every person in the camp. The interviewer read each name aloud and the participant was asked whether he/she knew that person. Next, the tablet was programmed to display all the known camp members and the participant was asked whether each of the known camp members was a friend, acquaintance, or somebody he/she didn’t get along with.

**Network Structure: Core**

The “core” is a network sub-group in which actors are maximally connected. The actors who are not maximally connected form the “periphery” of the network [33]. We used UCINET for Windows [47] to fit a discrete core/periphery model for each camp network using only the friendship ties. UCINET finds a partition for each network graph such that the
correlation between the data and the pattern matrix induced by the partition is maximized. UCINET uses a genetic algorithm for detecting the ideal core-periphery structure [33]. UCINET also generates a fit index, defined as the correlation between the observed data matrix and a hypothetical ideal core-periphery matrix for a network of the same size. The fit index can be interpreted as a correlation coefficient. The correlation coefficient was .94 for the camp networks, indicating that our data strongly conform to the core-periphery structure. Each respondent was given a value indicating whether he was in the core or not. Those who were in the core were given a value of one and those who were not in the core were given a value of zero. Figure 1 depicts one camp’s core-periphery structure.

Network Composition: Proportion of Women in the Camp

We included a continuous variable indicating proportion of women members in the camp.

Network Norm: HIV Stigma

Respondents’ perception of the network norm for HIV stigma was assessed by asking a series of questions about whether they perceived their fellow camp members as endorsing HIV stigma. We used items from a study on community level HIV stigma in Uganda [48]. In the Ugandan study, the items were internally consistent and demonstrated significant associations with HIV testing [48]. We included three items from this study and related them specifically to the respondent’s own camp: “In your camp, how many people think people with HIV have brought shame on their families?”; “In your camp, how many people would avoid visiting the homes of people with HIV?”; and “In your camp, how many people think that if you have HIV you have done wrong behaviors?” For each question, the responses included “no one” with a value of one; “very few people” with a value of two; “some people” with a value of three; and “most people” with a value of four. Among the sample included in this analysis, the reliability of these items was $\alpha = .80$. The items were summed and included as a total score in the analysis.

Descriptive and Injunctive Norms: Closest Friends

Each participant was asked to identify his two closest friends from the list of camp members he had identified as friends. If the participant did not have two or more friends in the camp, the tablet displayed both friends and acquaintances. Each participant was then asked a series of follow-up questions for the two closest friends. The follow-up question to assess descriptive norms was “Do you think friend X ever had an HIV test?” The question to assess injunctive norms was “Has friend X encouraged you to get an HIV test?” The response options included “yes”, “no”, or “declined to answer”. For those who declined to answer for either friend or both friends, we imputed a zero, conservatively assuming that the participant did not have a friend whom they thought had tested for HIV or that the participant did not have a friend who encouraged him to have an HIV test. A dichotomous variable was created for each type of norm indicating an affirmative response for at least one of the respondent’s two closest friends.
Network Imputation

We imputed outgoing ties from those network members who did not respond to the behavioral or network assessments. We used information on who nominated the non-respondents as friends because the non-respondents were included on the rosters. Following recommendations by Znidarsic et al. [45], imputation by reconstruction was used for networks in which reciprocity, or mutual friendship connections between network actors (range 0.0–1.0), among respondents was above 0.4 (14 camps). In the reconstruction procedure, all missing ties from non-respondents to respondents were replaced with the observed value of the tie in the opposite direction. Hence, whenever there was a tie from respondent i to non-respondent j, we imputed a tie from j to i. For ties between non-respondents, we used random imputation based on the observed density of the network. Mode imputation was used in networks where reciprocity was below 0.4 (34 camps) [45]. In this method, for each actor missing, ties were imputed based on the mean value of known incoming ties. Setting the threshold at 0.5, missing ties were imputed when an actor was chosen as a friend by at least half of the respondent actors.

Analysis

Descriptive statistics, including the mean, standard deviation, as well as the minimum and maximum for all variables were calculated to characterize the entire study sample. We conducted random effects logistic regression, accounting for the clustering of men within camp networks, to assess unadjusted and adjusted associations between our independent variables of interest, including camp-level variables, and HIV testing. The intraclass correlation (ICC) was computed using a method for binary outcomes ($\sigma^2 = \pi^2/3$) [49] and the significance of the group variance was used to assess the significance of the ICC [50]. We conducted a robustness check by running the models with and without imputed ties. All the effect sizes remained significant in both models. The effects for age and percentage of women in the camp were slightly attenuated and dropped one level of significance (one asterisk) in the model with imputation. The variables of having at least one child and HIV stigma increased one level of significance in the imputed model. Based on these limited differences, we present the results with imputed network ties. All analyses were conducted in Stata software Version 13.

Results

Among 923 men in the 48 camps included in the analysis (average age = 27), 51.5% reported ever having tested for HIV (Table 1). Among the camps, the proportion of men who had tested ranged from 20.0 to 84.2%. Camp network membership explained 4.08% (ICC) of the total variance in HIV testing ($r^2 = 0.14$, $p = .03$). 76% of the women in the 48 camps had ever tested for HIV (data not shown). Table 1 shows other characteristics of the men in the sample.

In Table 2 we present adjusted odds ratios (AORs) from the random effects logistic regression model predicting HIV testing and incorporating all imputed ties. We tested all possible interactions in the model and none were significant. Regarding demographic characteristics, age (AOR 1.03, 95% CI 1.00–1.05) and having children (AOR 1.83, 95%
CI 1.21–2.78) were positively associated with ever testing, while ever having been married and currently being a student were not associated with testing. Those men who were categorized in the middle (AOR 1.61, 95 % CI 1.08–2.38) or highest level (AOR 1.54, 95 % CI 0.97–2.43) on the household asset index, compared to the lowest, were more likely to have tested. Having education level of form four (AOR 2.01, 95 % CI 1.39–2.89) or above form four (AOR 2.59, 95 % CI 1.40–4.80), compared to form 2 or less, was positively associated with testing. Regarding camp characteristics, the average for the amount of time members spent in the camp was not significantly associated with testing. In terms of camp network structure, men in the network core were 1.50 times (95 % CI 1.10–2.04) more likely than those who were in the periphery to have ever tested. In terms of camp network composition, the higher the proportion of women in the respondent’s camp network, the more likely a male respondent was to have ever tested for HIV (AOR 4.24, 95 % CI 1.39–12.98). Respondents’ perception of the network norm for HIV stigma was negatively associated with testing, such that higher levels of perceived HIV stigma in the network meant a lower likelihood for testing (AOR 0.92, 95 % CI 0.87–0.98). When both descriptive and injunctive norms were included in the model, only descriptive norms were significantly associated with HIV testing. Men who thought that at least one close friend in their network had ever tested were 2.66 times (95 % CI 1.76–4.00) more likely to have ever tested than those whose thought that neither of their two closest friends had tested. We also present illustrations of the results with network graphs in Fig. 2a and b.

Discussion

This is the first study to our knowledge that examines network structure, composition, and norms and their association with men’s HIV testing in sub-Saharan Africa. Men have low rates of HIV testing in the region and few interventions have specifically targeted these men for testing [3, 7]. Innovative strategies to promote men’s testing are needed in order to meet the UNAIDS 2020 goal that 90 % of those who are HIV positive should be diagnosed [1]. In this analysis, we examined 48 sociometric networks comprising 923 men in Dar es Salaam, Tanzania. Although 52 % of our sample reported ever having an HIV test, there was significant variation of HIV testing by network, with the proportion of men testing in each network ranging from 20.0 to 84.2 %. This variation warranted a closer look at network influence on HIV testing for men in this context. Building on prior studies that have shown the importance of men’s peers in their willingness to test for HIV [9, 12], we found that structural and compositional characteristics of men’s peer networks and norms within these networks were associated with HIV testing. Our results suggest that leveraging networks, their structure, and the norms they propagate, could increase rates of HIV testing for men.

We found that men in the network core were more likely to have tested for HIV than men in the network periphery. Core network members can serve as gatekeepers of information within these networks, allowing information to flow rapidly [51]. Therefore, it could be that men in the core of the camps learned more information about HIV testing, and were more likely to test. Theoretically, people at the network core can reach many people in the network quickly with information [25]. An intervention implication is that targeting core network members to spread messages about behavior change may result in rapid diffusion of
those messages [51]. Thus, targeting core network members to promote HIV testing may be a useful intervention strategy for men.

In terms of network composition, we found that men who were members of networks with greater proportions of women were more likely to have tested for HIV. The effect of women in the networks may be because testing was more normative for women; 76% of women included in the networks in this study had ever HIV tested. Camps with more women members may have experienced a more normative environment for HIV testing for all members of those camps. It is worth noting that this composition effect was significant above and beyond the descriptive norms of closest friends.

Like other studies, we found that men who perceived higher levels of HIV stigma in their networks were less likely to have HIV tested [35, 52]. This suggests that despite efforts to reduce HIV stigma in Tanzania, the negative influence of HIV stigma on testing persists [53]. Research from sub-Saharan Africa has shown that stigma is more associated with men’s HIV testing than women’s [35]. Interventions that target social networks have the potential to reduce stigma by changing harmful stigmatizing norms that may prevent the uptake of HIV prevention behaviors [51, 54]. Other researchers have shown that the process of having an HIV testing experience in and of itself is associated with a reduction in HIV stigma [55].

Our study showed that the descriptive norm for testing, measured by participants’ perceptions that at least one of their close friends had HIV tested, was strongly and positively associated with men’s HIV testing. When we included both the descriptive norm and the injunctive norm in our model, only the descriptive norm was significant, suggesting that the descriptive norm may be more strongly associated with HIV testing behavior. We note that our study focused on examining men’s perceptions of descriptive and injunctive norms. We know from theory that these perceptions may not match actual norms in that individuals tend to underestimate healthy behaviors in their peers [56]. In fact, other studies in this region have shown that to be true with regard to HIV testing [57]. However, our results highlight the importance of perceived norms and echo calls to correct perceptions when they are incorrect to maximize prevention efforts [57]. Furthermore, qualitative studies from sub-Saharan Africa show that men are more likely to test when they go with a friend or when a friend advises them to test [9, 12]. Thus, these findings collectively suggest that intervention efforts should promote communication about HIV testing among men and their closest friends in order to shift the descriptive norms about testing within these networks. Other research has similarly suggested that although men generally talk about HIV with friends in their networks, few men explicitly communicate with their friends about HIV testing [58]. Interventions that specifically target peer normative influence by engaging men within networks to talk about HIV testing are needed.

Limitations

Missing data are a problem in network analysis because of the dependent structure of networks and the need to have information from all network actors to constitute network variables [42, 45]. In our study, we excluded 11 out of 59 camps because they had more than 40% missing respondents and thus assessment of their network characteristics would have
been imprecise. At relatively low levels of non-response (<40% missing), imputation methods perform better in estimating network variables than ignoring the non-respondents. We followed a current recommended approach by imputing missing network data for those camps that had >60% response [45]. Future research, however, may develop more complex methods for dealing with network nonresponse [45].

Due to the cross-sectional nature of this study, we cannot assess the direction of the effects reported here. We don’t know whether camp membership preceded HIV testing. Although we know that most of these young men were members of their camps for an average of 6 years (Table 1), suggesting that they probably were camp members before they tested. Our cross-sectional study also limits our ability to evaluate recall bias regarding HIV testing. In the trial of which the data for this study come from, we plan to assess how network factors influence HIV testing over the course of the intervention. In addition, it is unlikely that men were in the network core because they had tested for HIV. Given that HIV testing is not yet normative among men in this context, it would be highly unlikely for a respondent to move from the periphery to the core because they had HIV tested. Furthermore, HIV testing may lead to lower levels of stigma, rather than vice versa. Longitudinal or intervention research is warranted to assess the causality of this relationship. Our study is also limited in that we only assessed descriptive and injunctive HIV testing norms for men’s two closest friends. Therefore, we were not able to examine associations between HIV testing behavior and the social norms of men’s larger peer networks.

Finally, the networks we studied are not generalizable to networks of other young men in Tanzania. We cannot compare our results to networks of young men who are not camp members, or who do not live in impoverished urban areas like the ones in our study setting. Future studies of young men’s networks in sub-Saharan Africa will be useful for exploring these comparisons.

Conclusion

We showed that network structure, composition, and norms were associated with HIV testing behavior among urban Tanzanian men. Interventions that target social networks and core network members to diffuse behavior change, as well as change descriptive norms and norms related to stigma, may hold promise for increasing men’s HIV testing rates. Social network interventions have resulted in sustained changes for a number of health behaviors [59], including promotion of condom use [60, 61] and reduction of multiple partners [62]. Network interventions are likely to have greater reach and be more cost-effective than interventions aimed at individuals because they can disseminate health promotion messages more rapidly and to a wider target audience [51, 63, 64]. Reaching a large number of men quickly may be a worthwhile strategy in sub-Saharan Africa where many more men need to know their HIV status. Targeting naturally occurring networks, like the camps in this study, is a feasible and effective intervention approach because it facilitates access to men in settings where they regularly socialize [23, 65]. Future studies should assess whether network interventions can effectively scale up HIV testing for men in sub-Saharan Africa.
Acknowledgments

We wish to acknowledge the work and dedication of our research team in Chapel Hill and Dar es Salaam including Peter Balvanz, Lauren Hill, Mrema Noel Kilonzo, Deus Kajuna, Brenda Mkony, Joyce kondela and Gema Lambert. We would like to thank the participants of our study for their time and cooperation.

Funding Research reported in this publication was supported by the National Institute of Mental Health of the National Institutes of Health under Award Numbers R01MH098690 (awarded to S. Maman) and F31MH103062 (awarded to M. Mulawa), and T32AI007001, a training grant from the National Institute of Allergy and Infectious Diseases (awarded to D. Conserve). The content is solely the responsibility of the authors and does not necessarily represent the official views of the National Institutes of Health.

References


Fig. 1.
One camp’s network structure, with core and periphery highlighted
Fig. 2.

a Illustration of results using network graph of one camp. b Illustration of results using network graph of one camp.
<table>
<thead>
<tr>
<th>Variable type</th>
<th>Variable</th>
<th>Mean or %</th>
<th>SD</th>
<th>Min, Max</th>
</tr>
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<tr>
<td>Dependent</td>
<td>HIV tested</td>
<td>51.5 %</td>
<td></td>
<td>0, 1</td>
</tr>
<tr>
<td>Demographic</td>
<td>Age</td>
<td>26.8</td>
<td>7.2</td>
<td>15, 59</td>
</tr>
<tr>
<td></td>
<td>Ever married</td>
<td>26.5 %</td>
<td></td>
<td>0, 1</td>
</tr>
<tr>
<td></td>
<td>≥1 child</td>
<td>38.9 %</td>
<td></td>
<td>0, 1</td>
</tr>
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<td></td>
<td>Current student</td>
<td>8.7 %</td>
<td></td>
<td>0, 1</td>
</tr>
<tr>
<td></td>
<td>Years camp member</td>
<td>6.3</td>
<td>4.5</td>
<td>0.3, 36</td>
</tr>
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<td>Socioeconomic status</td>
<td>Middle</td>
<td>38.9 %</td>
<td></td>
<td>0, 1</td>
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<td></td>
<td>High</td>
<td>36.6 %</td>
<td></td>
<td>0, 1</td>
</tr>
<tr>
<td>Education completed</td>
<td>Form 3</td>
<td>4.0 %</td>
<td></td>
<td>0, 1</td>
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<tr>
<td></td>
<td>Form 4</td>
<td>21.9 %</td>
<td></td>
<td>0, 1</td>
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<td></td>
<td>&gt;Form 4</td>
<td>7.5 %</td>
<td></td>
<td>0, 1</td>
</tr>
<tr>
<td>Camp average for members’ time spent in camp</td>
<td>Every day</td>
<td>68.9 %</td>
<td>0.1</td>
<td>.4, .9</td>
</tr>
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<td>Network structure</td>
<td>In network core</td>
<td>35.9 %</td>
<td></td>
<td>0, 1</td>
</tr>
<tr>
<td>Network composition</td>
<td>% Women in camp</td>
<td>15.2 %</td>
<td>0.1</td>
<td>0, 66.7 %</td>
</tr>
<tr>
<td>Social norm perception</td>
<td>HIV stigma in camp</td>
<td>2.4</td>
<td>2.6</td>
<td>0, 9</td>
</tr>
<tr>
<td>Injunctive norm</td>
<td>≥1 close friend encouraged HIV testing</td>
<td>47.9 %</td>
<td>0.5</td>
<td>0, 1</td>
</tr>
<tr>
<td>Descriptive norm</td>
<td>Thinks ≥1 close friend tested for HIV</td>
<td>37.1 %</td>
<td>0.5</td>
<td>0, 1</td>
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</table>
Table 2
Random effects logistic regression predicting HIV testing among 923 men

<table>
<thead>
<tr>
<th>Demographic characteristics</th>
<th>Adjusted odds ratio (AOR)</th>
<th>95 % CI</th>
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<tbody>
<tr>
<td>Age</td>
<td>1.03 *</td>
<td>(1.00, 1.05)</td>
</tr>
<tr>
<td>Ever married</td>
<td>1.08</td>
<td>(0.70, 1.69)</td>
</tr>
<tr>
<td>Have at least one child</td>
<td>1.83 ***</td>
<td>(1.21, 2.78)</td>
</tr>
<tr>
<td>Currently a student</td>
<td>1.15</td>
<td>(0.65, 2.03)</td>
</tr>
<tr>
<td>Socioeconomic status</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle</td>
<td>1.61 **</td>
<td>(1.08, 2.38)</td>
</tr>
<tr>
<td>High</td>
<td>1.54 *</td>
<td>(0.97, 2.43)</td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Form three</td>
<td>0.77</td>
<td>(0.36, 1.67)</td>
</tr>
<tr>
<td>Form four</td>
<td>2.01 ***</td>
<td>(1.39, 2.89)</td>
</tr>
<tr>
<td>Above form four</td>
<td>2.59 ***</td>
<td>(1.40, 4.80)</td>
</tr>
<tr>
<td>Camp average for members’ time spent in the camp</td>
<td>1.20</td>
<td>(0.40, 3.58)</td>
</tr>
<tr>
<td>Network structure</td>
<td></td>
<td></td>
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<tr>
<td>Core member</td>
<td>1.50 **</td>
<td>(1.10, 2.04)</td>
</tr>
<tr>
<td>Network composition</td>
<td></td>
<td></td>
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<tr>
<td>Percentage of women in the camp</td>
<td>4.24 ***</td>
<td>(1.39, 12.98)</td>
</tr>
<tr>
<td>Social norm perception</td>
<td></td>
<td></td>
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<tr>
<td>HIV stigma</td>
<td>0.92 ***</td>
<td>(0.87, 0.98)</td>
</tr>
<tr>
<td>Injunctive norm</td>
<td></td>
<td></td>
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<tr>
<td>At least one close friend encouraged HIV testing</td>
<td>1.01</td>
<td>(0.68, 1.50)</td>
</tr>
<tr>
<td>Descriptive norm</td>
<td></td>
<td></td>
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<tr>
<td>Thinks at least one close friend HIV tested</td>
<td>2.66 ***</td>
<td>(1.76, 4.00)</td>
</tr>
</tbody>
</table>

* p < 0.1;  
** p < 0.05;  
*** p <0.01
Tab 23
An Institutional Field of People Living with HIV/AIDS Organizations in Tanzania: Agency, Culture, Dialogue, and Structure

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Communication research on public health organizations and people living with HIV/AIDS (PLWHA) have paid insufficient attention to PLWHA organizations. These organizations, constituted and operated by PLWHA, advocate on behalf of PLWHA with more powerful institutions in society and serve as sources of empowerment and support. I drew on the culture-centered approach to health communication and institutional perspectives on health organizations to explore PLWHA organizations in Tanzania, namely, their cultural and structural contexts, agency, and dialogue. Tanzania has 1.5 million PLWHA and a 5.3% adult prevalence rate that ranks it as 12th highest in the world. Through interviews with leaders of 10 PLWHA organizations, I found a cultural context of HIV stigma and discrimination, a structural context consisting of corruption and bureaucratic politics in governing bodies as well as lack of access to resources, agency to impact PLWHA and members of society in a variety of ways, and processes of dialogue within advocacy networks of PLWHA organizations and in network collaborations with the government. I conclude with implications for improving the organizations’ interactions with their structural context and for developing the contribution from the culture-centered approach to health communication on structures as health organizations and systems.

Keywords: culture-centered approach, HIV/AIDS, institutional perspectives on health organizations, people living with HIV/AIDS organizations, sub-Saharan Africa

People living with HIV/AIDS (PLWHA) organizations are understudied in communication research. PLWHA organizations are non-profit organizations (NPOs) constituted and operated primarily by volunteers who are PLWHA. These organizations emerge out of dissatisfaction with responses to the HIV/AIDS epidemic by more powerful societal actors (e.g., government); they pursue the interests of PLWHA by advocating on behalf of PLWHA in their communities and societies (Maguire et al., 2001). It is important to focus on PLWHA organizations because PLWHA in the Global South face continuing problems such as stigma and discrimination (Okoror et al., 2014). Moreover, these organizations have implications for the empowerment, support, and well-being of PLWHA.

Although one body of communication research on health organizations has recognized a variety of public health organizations (e.g., Cooren et al., 2008; Desouza and Dutta, 2008; Zoller, 2010; Cooper and Shumate, 2012) and another body of research on PLWHA has considered various contexts that shape and are shaped by PLWHA (e.g., Hardy et al., 2006; Miller and Rubin, 2007; Iwelunmor et al.,
Studies of Communication Contexts of PLWHA

People living with HIV/AIDS have been studied in four different contexts: interpersonal, organizational, cultural, and structural. Although these contexts intersect (e.g., the forms of social support PLWHA obtain from health professionals shapes and is shaped by organizational, cultural, and structural contexts), I begin by examining literature emphasizing the interpersonal context. In subsequent sections, I review literature emphasizing organizational, cultural, and structural contexts. Although this review is informative in terms of the considerations and findings of previous communication research on PLWHA, very little attention has been paid to Tanzania. Yet, a majority of the studies that attended to the cultural and structural contexts of PLWHA were based in Africa and, as such, may bear some similarities with the Tanzanian context.

The Interpersonal Contexts of PLWHA

Studies with emphasis on the interpersonal context find PLWHA obtain social support from family, friends, and professionals. From these support networks, PLWHA receive emotional, informational, and instrumental support (e.g., Oetzel et al., 2014). For example, Miller and Rubin (2011) studied Kenyan PLWHA through focus groups and surveys to discover PLWHA motivations for obtaining support from religious leaders. They found participants seeking emotional support more than material support. Studies have also examined PLWHA’s status disclosures such as strategies and target reactions (e.g., Miller and Rubin, 2007; Catona et al., 2015). For example, Caughlin et al. (2009) studied U.S. college students’ reactions to disclosure messages from a hypothetical sibling. They found mostly positive reactions to plain and simple messages.

The Organizational Contexts of PLWHA

Research on the Canadian Treatment Advocate Council (CTAC), a multisectoral collaborative initiative formed in 1996, distinguished among three types of HIV/AIDS NPOs (Maguire et al., 2001, 2004; Maguire and Hardy, 2005; Hardy et al., 2006). One type was HIV/AIDS service organizations. These were NPOs (of paid non-PLWHA employees) that provided health and social services to PLWHA (e.g., counseling, housing). Another type was PLWHA organizations. They arose out of dissatisfaction with response to the epidemic by governments, the medical research establishment, and pharmaceutical companies and had a political agenda to confront these actors on behalf of PLWHA. Another type was AIDS activist organizations. These were radical organizations of volunteers living with HIV/AIDS who engaged in confrontational tactics such as civil disobedience and demonstrations.

Research on HIV/AIDS organizations has mostly focused on HIV/AIDS service organizations (e.g., Dearing et al., 1996; Arya and Lin, 2007; Okoror et al., 2014). For example, Kwiat et al. (2001) used network analysis to study different types of collaborative linkages among 30 HIV/AIDS service organizations in Baltimore, MD, USA. They found "ad hoc" networks based on information-exchange and client-referral linkages having greater

The Literature Review

Communication and Public Health Organizations

Whereas hospitals specialize in the care and treatment of illness, the mandate of public health organizations exceeds that of treatment, oftentimes emphasizing prevention (Zoller, 2010). Because public health organizations operate in and across various sectors, communication research has examined those from the governmental sector (e.g., Barbour et al., 2016), the intergovernmental sector (e.g., Johnny and Mitchell, 2006), and the non-governmental (NGO) sector (e.g., Desouza and Dutta, 2008).

In an example encompassing the governmental sector, Murray et al. (2011) explored the partnership between the Catholic Church and Brazil’s Ministry of Health. They found that a series of meetings between the two organizations, starting in 1999, led to the creation of the AIDS Pastoral, a regional Latin-American network for HIV/AIDS care and prevention that combined biomedical and spiritual approaches. In an example incorporating the intergovernmental sector, Atouba and Shumate (2010) examined the network structure among 108 international development organizations. They hypothesized that organizations from the same sector will have a greater chance of forming collaborative relationships. They found this to be true of the intergovernmental sector but not of the NGO sector. As an example from the NPO sector, Murphy (2013) conducted an ethnography of a partnership between a U.S academic institution and a Kenyan NGO engaged in HIV/AIDS education. The study found that tensions, which arose when the global (e.g., science) met the local (e.g., norms) in the partnership’s interactions, sustained as well as temporarily shifted power relations between a postcolonial global North and South.

2010; Ho and Robles, 2011), neither body of work has focused much on PLWHA organizations.

The United Nations (UN) estimated that 71% of worldwide HIV infections and 75% of AIDS-related deaths take place in sub-Saharan Africa (United Nations Programme on HIV/AIDS, 2015). These estimates point to the continuing importance of HIV/AIDS research in this context. I drew on the culture-centered approach to health communication (CCA) (Dutta, 2008) and institutional perspectives on health organizations (Lammers et al., 2003) to conduct interviews with 11 PLWHA who were leaders of 10 PLWHA organizations in Tanzania. Findings pointed to the cultural and structural contexts of the organizations, their exercises of agency, and their engagement with processes of dialogue.

Tanzania is a nation of 51 million located in east Africa (Central Intelligence Agency, 2015). Its major languages are Arabic, English, and Swahili (Maxon, 2009). The UN estimated that Tanzania has 1.5 million PLWHA and a 5.3% adult HIV prevalence rate that ranks the 12th highest in the world (United Nations Programme on HIV/AIDS, 2015). I next review the communication literature on public health organizations and PLWHA after which I present the research questions, methods, and findings. I conclude with a discussion and implications.
densities than formal networks based on written-agreement and joint-program linkages.

**The Cultural Contexts of PLWHA**

Studies of the cultural contexts of PLWHA have focused on the cultural beliefs, practices, traditions, and values of African communities that shape the experiences of PLWHA. These studies describe a cultural context where families play a central role in the experiences of PLWHA, gender inequality characterizes the experience of female PLWHA, societies place high value on childbearing and parenting, PLWHA encounter extreme levels of stigma and discrimination, and faith and spirituality are considered important resources for coping with HIV/AIDS (e.g., Dageid and Duckert, 2008; Greeff et al., 2008; Iwelunmor et al., 2010; McArthur et al., 2013; Mupenda et al., 2014). For example, Saleem et al. (2016) interviewed 10 female and 11 male PLWHA in Tanzania to study their post-diagnosis childbearing experiences. Although most had not discussed childbearing with a provider before deciding to conceive, they received mixed reactions from various parties. From providers, they received negative reactions such as reprimands for getting pregnant without seeking advice. From partners and the extended family, they received pressure to have children.

**The Structural Contexts of PLWHA**

Studies of PLWHA rarely attend to their structural contexts. One exception comes from DeJong and Mortagy’s (2013) study of the Sudanese PLWA Care Association. They recognized structural constraints on the organization’s fight against stigma and discrimination when they acknowledged how difficulty it was for members to engage in association activities requiring personal expenses (e.g., transportation costs) because their HIV-positive status exacerbated their levels of poverty. Another exception comes from Ho and Robles (2011) who interviewed 24 PLWHA to understand their treatment experiences for HIV-related neuropathy. Participants expressed vulnerability from neuropathy symptoms that led to job loss and lack of insurance. They expressed a need for acupuncture and massage therapy (AMT) to counter or complement biomedical pills. Yet, they raised concerns about structural issues such as funding reductions for AMT that threatened its availability and cost.

**THE CULTURE-CENTERED APPROACH TO HEALTH COMMUNICATION**

Culture-centered approaches to health represent departures from mainstream Western theories of health that emphasize individual/psychological determinants of health. They instead emphasize sociocultural factors that shape community health, particularly in non-Western communities (see Singhal, 2003; Airhihenbuwa et al., 2014; Dutta, 2015).

I next review the central ideas of the CCA and the research that has adopted it. The CCA is a framework that attends to the various contexts found in the PLWA literature (particularly organizational, cultural, and structural). Inspired by subaltern and postcolonial studies, the CCA examines the interplay of agency, culture, dialogue, and structure in the health of the marginalized in postcolonial contexts (Dutta, 2008). It prioritizes inquiry that challenges the dominant architecture of Western knowledge/illness models and contributes cultural constructions of health by the marginalized (e.g., Sastry, 2016). Structures form the economic bases of the material and social components of society. Although conceived primarily as constraining and painful (Dutta, 2007), structures constrain and enable access to resources (Dutta, 2015). Structures are also less-encompassing health systems such as administrative arrangements, clinics, and hospitals (Dutta, 2008). Culture is the dynamic web of beliefs, values, and meanings that generate community norms and traditions. Agency challenges notions of the subaltern as passive objects to be acted upon and foregrounds their knowledgeability, networks of solidarity, and resistances (Dutta, 2015). Dialogue points to engagement with community voices that facilitates indigenous constructions of health and the participation of members in articulating health problems and solutions.

Studies have drawn on the CCA to study marginalized groups coping with or vulnerable to HIV/AIDS (Acharya and Dutta, 2012; de Souza, 2012; Basu et al., 2016). For example, Muturi and Mwangi (2011) conducted focus groups with older Kenyan adults to provide suggestions for HIV prevention. They found recommendations for communicators (e.g., religious leaders), contexts (e.g., public meetings), and programs (e.g., mass HIV testing).

Although the interpersonal context of PLWHA (e.g., family communication) intersects with the other three contexts, I draw on the culture-centered approach to health communication to engage primarily in inquiry of the organizational, cultural, and structural contexts of PLWHA.

**INSTITUTIONAL PERSPECTIVES ON HEALTH ORGANIZATIONS**

Institutional perspectives are missing from studies of PLWHA organizations. These perspectives transcend a focus on any one organization to that of a field of organizations and emphasize similar properties of organizations explained by a shared environment (e.g., Seo and Creed, 2002; Scott, 2014). Lammers et al. (2003) applied tenets from institutional perspectives to health organizations such as “hospitals, health maintenance organizations, or health advocacy groups” (p. 320). They outlined institutional tenets such as (a) organizations emerge as means to achieve culturally valued ends, (b) the external rather than the internal environment provides the logic of organizational systems, (c) society is characterized by “pervasive beliefs about appropriate conduct that are idiosyncratic to organizations in a particular sector” (p. 321), and (d) isomorphic processes of organizational fields contribute to uniformity across organizations.

Communication research on public health organizations and PLWHA have rarely acknowledged PLWHA organizations. More importantly, they have yet to study a field or set of these organizations and they have rarely considered the structural contexts of PLWHA. Research that attends to these issues can provide a more comprehensive understanding of the contexts.
that shape and are shaped by these understudied organizations and the ways in which they act in concert and/or similarly. Accordingly, I posed the following research questions—animated by the central CCA concepts of agency, culture, dialogue, and structure—of a field of organizations constituted and operated by the marginalized (PLWHA) in the postcolonial context of Tanzania:

RQ1: What characterizes the cultural context of a field of PLWHA organizations?
RQ2: What characterizes the structural context of a field of PLWHA organizations?
RQ3: How are PLWHA organizations and their members exercising agency?
RQ3a: How, if at all, are PLWHA organizations engaging in dialogue?

MATERIALS AND METHODS

Procedures

This field study received authorization from the office of the Tanzania Commission for Science and Technology and my university’s Institutional Review Board. Upon approvals, I recruited leaders of HIV/AIDS NGOs in Dar es Salaam (DSM) for interviews. DSM, a city of five million, is the most populated in Tanzania (Central Intelligence Agency, 2015). Available data on DSM indicate an adult HIV/AIDS prevalence rate of 7%; this includes a 31% rate for female commercial sex workers, 22% for men who have sex with men, and 16% for intravenous drug users (Results from the 2011–12 Tanzania HIV/AIDS and Malaria Indicator Survey: HIV Fact Sheet by Region, 2015). I recruited participants through site visits to NGO offices; phone calls, text messages, and e-mails; and snowball sampling. I scheduled private interviews with participants in office spaces belonging to their NGO. I began by having participants complete informed consent to research and demographics forms. The interviews were semistructured, and I conducted them in English. I also audio-recorded the interviews and took notes. Upon completion, I compensated each participant $15 in Tanzanian shillings for their time and asked them for contacts who occupied leadership positions in Tanzanian HIV/AIDS NGOs.

Data Reduction

For the study reported here, I focused on 11 interviews from a larger study involving 36 interviews with Tanzanian leaders of HIV/AIDS NGOs. The larger study consisted of interviews conducted in Tanzania over a 3-month period (where I also conducted upon my return to the US. The 11 interviews were of leaders of 10 PLWHA organizations. I identified them as such through status disclosures, interview content, and NGO names. I conducted nine of these interviews in person and two over Skype.

Participants and PLWHA Organizations

All 11 participants were natives of Tanzania. They held titles such as “Executive Director” and “Executive Chairperson.” Eight were males and three were females. They averaged 44.36 years of age (ranging from 24–62 years). Seven had the equivalent of high school diplomas, two had bachelor's degrees, one had a Master's degree, and one reported “other.” They averaged 8.36 years of employment with their current NGO (ranging from 2 to 21 years).

All 10 NGOs were based in DSM. On average, they had existed for 12.00 years (range: 6–21 years). Seven reported nationwide operations and three reported community-based operations. Six described their organization as networks composed of several PLWHA organizations. Two described their networks as community based and the other four described theirs as national.

The 11 interviews averaged 53.05 min (ranging from 31.31 to 77.52 min). To enhance credibility (Lincoln and Guba, 1985), I employed a transcriptionist of east African descent who comfortably understood participants’ accents. Transcriptions resulted in approximately 182 single-spaced pages of text. Moreover, I improved the accuracy of the transcriptions with a team of graduate students, one of whom, born and raised in Kenya, was fluent in Swahili.

Data Analysis

To address the research questions, I drew on the constant comparative method (CCM) (Glaser and Strauss, 1967; Corbin and Strauss, 2015). In building from a comparative analysis of units to broader themes, the CCM consists of identifying units, open coding, and axial coding.

I began by deciding on the most basic unit for data analysis (Miles et al., 2014). Although analysts can choose among several units that vary in size and abstraction, I chose semantic relationships or units of meaning (Spradley, 1979) because they can be specified in direct relevance to research questions, they are not restricted to a specific length, and they encourage the analyst to engage with latent content (Hsieh and Shannon, 2005).

I identified units separately for each RQ. For RQ1, I searched for “X as an element of culture encompassing PLWHA organizations.” In line with a directed approach (Hsieh and Shannon, 2005), I drew guidance from literature highlighting African cultural contexts of PLWHA (e.g., Saleem et al., 2016). I posed questions of the data such as “What beliefs, meanings, and values encompass PLWHA organizations?” For RQ2, I searched the transcripts for “X as an aspect of structure encompassing PLWHA organizations.” Also in line with a directed approach, I drew

1Through the demographics questionnaire, I measured variables such as age, education, gender, number of years employed with current NGO, place of birth, religion, and NGO jurisdiction.

2Sample questions included, “How, if at all, is HIV/AIDS in Tanzania a crisis?” “Please describe the work your organization does in the area of HIV/AIDS.” “Please describe your current role or duties.” “How does culture in Tanzania promote the spread of HIV/AIDS?” How does culture in Tanzania prevent HIV/AIDS?”

3By excluding the selective coding step of grounded theory (e.g., Glaser and Strauss, 1967), the CCM can be used to strike a balance between (a) openness to qualitative data and (b) the guiding lens of a preexisting theory.
guidance from CCA research on structures (e.g., Sastry, 2016). I posed questions such as “What are the broader socio-economic constraints on PLWHA organizations?” For RQ3, I searched for “X as PLWHA organization/member agency.” Here, I drew guidance from CCA research emphasizing agency (e.g., Basu and Dutta, 2008). I posed questions such as “How are PLWHA organizations/members interacting with culture and structure?” For RQ3a, I probed data that addressed RQ3 for the communication processes of dialogue (Dutta, 2008).

I performed open coding separately for each RQ (Corbin and Strauss, 2015). Open coding involves constant comparison between units, deciding on labels (or codes) for new units, and identifying and labeling emergent themes. I sorted units receiving identical or similar codes into themes and labeled them. I observed the practice of coding the data in every way (Glaser, 1978). Stated differently—I gave a unit multiple codes when it seemed appropriate.

After arriving at a set of themes for each RQ, I performed axial coding by identifying relationships among themes, integrating them into categories, and deciding on labels. For RQ1 on culture, I integrated four themes into one category. For RQ2 on structure, I collapsed five themes into two categories, and for RQ3 on agency, I merged four themes into two categories.

FINDINGS

The Cultural Contexts of PLWHA Organizations

HIV/AIDS Stigma and Discrimination

For RQ1, I found four themes for the category on HIV/AIDS stigma and discrimination: the various spaces of stigma and discrimination, the denial of economic opportunities and material resources, social marking and alienation, and cultural concealment of HIV-positive status.

The Various Spaces of Stigma and Discrimination

Participants highlighted the pervasive nature of HIV stigma and discrimination by reporting on occurrences in diverse spaces such as families, government offices, religious organizations, schools, and workplaces. For example, Rehema, a female executive chairperson, spoke of violence that women living with HIV suffered from their husbands who were also HIV positive, “Men were not able to go to the clinic, so they were using their wives’ drugs. That’s why we are fighting against gender violence, drug sharing, because if you don’t give the drugs to your husband, your husband can beat you.” Rehema broached the problem of drug sharing. As a result of stigma associated with obtaining HIV medication in public, men shared their wives’ HIV medication; this practice oftentimes resulted in domestic violence when wives refused to share. In addition to the families, Imani, a male chairperson, spoke of stigma and discrimination in workplaces, “if you are found to be positive while in the job, they sometimes create an unconducive environment so that you can leave.” In contrast, Juma, a male executive director, recounted his challenges with government:

We struggled for around one year because [government] did not get our vision. When we talk about we are positive living, we need to be registered, they said, “why do you ask to be registered? Because you are going to be buried very soon. Why should we give you registration because you are going to die?” It was a terrible environment.

Juma shared the resistance he faced from government officials while trying to register his PLWHA organization. Because the officials regarded HIV/AIDS as a death sentence (see Iwelunmor and Aihirhenbuwa, 2012), they failed to understand the need for the organization.

Denial of Economic Opportunities and Material Resources

In addition to diverse spaces of stigma and discrimination, I found denial of economic opportunities and material resources as another theme. PLWHA were denied economic opportunities such as businesses and jobs. Imani spoke of this denial, “In communities, some people who are entrepreneurs, who have small businesses. They are making fish or selling bananas, foodstuffs. If they [potential clients] know you are infected, they don’t come to buy at your place simply because you are infected.” Neema, a female executive secretary, made the following contribution, “The problem is that most people lose their jobs if they know that they are HIV-positive.” In addition to denial of economic opportunities, PLWHA were also denied material resources such as property. Omary, a male general secretary, gave an example from the family context, “When someone in the family, maybe the father of the family passes away, the other family members discriminate against the mother and children. Sometimes they take all the wealth that the father had left.” While talking about the withholding of financial resources for PLWHA from the government, Biko, a male program coordinator, made the following comment, “Because of stigma and discrimination, we were discriminated, that’s why we had to fight that we belong to this nation and we are entitled to whatever is there for us. So to people with a discriminative mind, it’s war.”

Social Marking and Alienation

In addition to denial of economic opportunities and material resources, I also found the theme of social marking and alienation. This theme characterized the social isolation and marginalization of PLWHA. For example, participants described situations where HIV-positive children attending schools were being marked. Omary explained, “Because it happened that one of the primary schools in this country, they were forcing to put red ribbons on children with HIV.” This type of marking, in turn, led to the social alienation and isolation of PLWHA. Juma, in assessing the social treatment of PLWHA, spoke of this alienation, “It is improving over time but some people do not want to see or hear from people who are already infected.” Imani spoke also of this alienation and isolation, but by organizations in

*I use Tanzanian pseudonyms to represent contributions from the study’s participants.
the community, “Because there are some organizations, because of stigma and discrimination in which the stigma index still is very high, of which if concerned with [PLWHA], especially young people, they are not very much interested in working with you.”

**Cultural Concealment of HIV-Positive Status**

In addition to social marking and alienation, I found a theme on cultural concealment of HIV-positive status. Because of the prevalence of HIV stigma and discrimination and cultural taboos around sex-related topics, Tanzanians were largely silent on HIV-related topics such as HIV-positive status. Neema shared the following about parents withholding the HIV-positive status of their children, “What can I say? If the children are HIV+, the parents know but they do not tell their children that they are positive.” Remmy, a male monitoring and evaluation officer, spoke of how Tanzanian youth initially concealed their HIV-positive status, “we have been working with young people living with HIV/AIDS for quite a long time now. In the earlier stages, it was not easy. Most of this people were not open and they used to hide their status.” Jakaya, another male monitoring and evaluation officer, identified his PLWHA organization’s clients as those who had difficulty disclosing their HIV-positive status to family members: “These are people who share the home and don't have education about HIV/AIDS. And they are worried of coming in front to say themselves that they are suffering.” This theme pointed to a culture of silence and concealment around a positive HIV status. For a summary of findings, see Table 1.

**The Structural Contexts of PLWHA Organizations**

**Corruption and Bureaucratic Politics**

For RQ2, I present the “corruption and bureaucratic politics” category before the “lack of access to health resources” category.

**Corruption in Governing Bodies**

This category centered on the subtle corruption of government officials and the political and opaque practices of the government and the national council5 surrounding the funding of HIV programs. PLWHA organizations were required to officially register their existence with the government and to obtain permission to conduct programs. In their interactions with the government, participants reported corrupt practices where officials subtly sought to extract bribes. Jakaya described his experience as follows, “When you go asking for permission for a bonanza, the first idea that goes in their mind is that you have funds. They tend to delay or to make things hard in order for you to at least give them something.” Believing the NGOs had funding to implement the HIV programs for which they were seeking permits, government officials would create unnecessary delays and hurdles in order to receive bribes. Oresto, a male chief executive officer, described the government's unrealistic expectations of his PLWHA organization’s finances: “Working with the government as a key partner, well, there has been too much expectations. The government was expecting so much from the organization. Given the internal problems like financing, the organization was not able to meet the expectations.”

**Bureaucratic Politics in Governing Bodies**

Participants further described the funding for HIV programs by the government and the national council as corrupt and lacking transparency. Biko pointed to corrupt officials who refused to release funds even after being authorized to do so: “The officials in certain positions may create problems when releasing funds. They just sit on the requests. Even if they have been authorized, somebody [government official] can decide to do what they want to do.” Participants also complained about the lack of transparency in the decision-making processes of governing bodies on the funding of HIV programs6:

Jakaya: The experience has been good so far because we have collaborated [with the national council] in implementing a number of projects. It has also helped our organization and others secure funds for implementing activities for reaching people living with HIV/AIDS although it also has its own politics and stuff like that.

I: What do you mean by politics?

Jakaya: Sometimes things are not as smooth or as easy as they are expected to be. There are many opportunities but due to some politics, some get funds while some do not. It is hard to know the criteria for this one to get it and this one not.

Participants pointed to the subtle corruption of government officials and the opaque decision-making processes of the government and the national council in funding HIV programs.

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5 A non-profit governance structure for PLWHA organizations that represented PLWHA in government policy-making forums.

6 In the following excerpt, “I” refers to interviewer.
Lack of Access to Health Resources
For RQ2, I also found the category of lack of access to health resources. It consisted of the three themes of “lack of financial resources for health,” “lack of access to HIV/AIDS medication,” and “lack of health services in rural regions.”

Lack of Financial Resources for Health
Participants discussed the lack of financial resources for health for individual PLWHA, the government, the national council, and their own NGOs. Omary discussed the government’s lack of financial resources as compromising its ability to deliver on the promise of free HIV medication: “They say that this treatment is provided by the government for free but when you go to ask it, they say that it depends on the cash the government has. If there is no cash, there is no service. It disturbs people.” Biko spoke of the diversion of funds meant for PLWHA:

There are some funds which are supposed to go to people. For instance, to purchase medicine for opportunistic diseases, but in most cases are not available. Even some funds are meant for nutrition to people already diagnosed with HIV and TB that are diverted to others.

Rehema spoke of her NGO’s lack of financial resources, “Our organization is for women living with HIV, people living with HIV. We have got many challenges here because nowadays, HIV funds, pockets have already nothing.” Pengo, a male executive chairperson, spoke of the lack of financial resources for individual PLWHA. He made the point that PLWHA would stop taking HIV medication if they could not afford food:

Most of the people have been sick for a long time; they have sold their property. Now they are poor. So they can’t access even three meals a day; most of them are so poor. So they are stopping taking drugs because they don’t have food.

This theme covered the lack of financial resources for health at various levels: individual PLWHA, the PLWHA organizations, the national council, and the government.

Lack of Access to HIV/AIDS Medication
In addition to lack of financial resources for health, participants reported difficult access to antiretroviral medication (ARV). Oresto connected the lack of access to medication to the lack of government resources for health:

We see that donors are reducing amount of financing to HIV/AIDS. This has created a burden for the government. It has actually threatened those who are being put on treatment because they are not certain whether this is going to be available. Because once you are on treatment, it’s for life. You cannot opt not to take it today, saying that you may re-start in the next month. That is all about defaulting. It is about impacting on adherence to treatment as well.

Pengo spoke of the high cost of ARVs and the effort to make it more affordable, “The drug was high cost so we try to force to reduce the price of ARV drugs and then to advocate with the pharmaceutical companies in South Africa and East Africa, and xxxx and other organizations.” Rehema spoke on lack of access to authentic ARVs: “Two years ago there was a problem of getting ARVs. Then they discussed in parliament, but up to date, there is no serious action taken against people who made that bad thing of fake ARVs.” Omary spoke of a drug shortage at dispensaries that led to receiving incomplete doses:

Most people are sick and the ability to get the right dose is difficult. I don’t know but, for example, here in town, we manage to access drugs, but not all the time. Maybe you are supposed to be given one month dose, sometimes you are provided with half-a-month. When they go, there is a shortage of drugs.

Despite government policy to provide free ARVs to PLWHA, several reported difficult access.

Lack of Health Services in Rural Regions of Tanzania
In addition to lack of financial resources for health and lack of access to medication, participants spoke of difficult access to health services for PLWHA living in rural regions. Biko said, “We know our country is very vast and some areas are very remote. There are villages which since independence they have never seen a government official. Those people are left alone dying there. If they get the disease, no assistance is going on.” Omary also spoke on this theme as follows, “Another area is that in the rural places, infrastructure is not good. It is not easy for the ministry of health to make sure that medicine is well supplied in the HIV-infected rural areas. Some of them are missing those areas.” Pengo described the types of challenges that PLWHA in rural areas face:

HIV is a problem because of affordability and accessibility of the drugs because most of the care treatment centers are located at cities or district headquarters. So clients are coming from the villages where it’s too far to access the treatment. So accessing the treatment depends on when he gets some money or when he borrows money from someone else, which will enable him or her to travel from point A to point B to access the drug. So that can cause problems for the one taking drugs. So that’s a very big problem.

Pengo pointed to distance and money as treatment barriers faced by PLWHA residing in rural regions. For a summary of the findings, see Table 1.

Agency of PLWHA Organizations
Impacting PLWHA
For RQ3, I first present the categories of “Impacting PLWHA” and “Impacting members of Tanzanian society.” I then address RQ3a by presenting the theme “advocacy networks and dialogue.” For “Impacting PLWHA,” I next present the themes “facilitating
HIV-positive status disclosures” and “improving access to health resources.”

Facilitating HIV-Positive Status Disclosures
HIV stigma and discrimination largely led to the silencing of PLWHA. Neema spoke of the detrimental effects of stigma and discrimination that she hoped to help PLWHA overcome, “I am HIV+. I can encourage other young people who are positive, but they discriminate themselves. They are afraid to speak and open up their status.” As a result of the silencing of PLWHA, the PLWHA organizations encouraged people to disclose their HIV-positive status. Imani spoke on this when he stated “since inception this organization was started to advocate for young people to come up and disclose their status so that they can advocate for stigma and discrimination as well as encourage others to live positively.” Through HIV-positive disclosures, PLWHA resisted the cultural norms and practices that silenced them, they overcame any fears they had of others becoming aware of their status, and they became examples for others to follow. An initiative by which some organizations facilitated status disclosures (particularly those of youth) was youth clubs.

PLWHA organizations dedicated to youth implemented youth clubs to educate PLWHA (e.g., sexual reproductive rights) and to create a discursive space where they could open up. As Jakaya put it, “we have tried to create those clubs for young people so that they can be more easily open and talk about their challenges and things like that.” Participants consulted with leaders of institutions that served PLWHA (e.g., clinics, hospitals, and schools) to form youth clubs within those institutions. The clubs relied on activities that appealed to youth. For example, in response to my interview question on the best way to reach Tanzanian youth, Neema expanded on the activities of youth clubs, “The best way to reach youth is through edu-entertainment. When we go to work with young people, most of the young people, they like music. That is why I said edu-entertainment because they like music, drama, and theater.”

Improving Members’ Access to Health Resources
In addition to facilitating status disclosures, the organizations also worked to improve members’ access to health resources. For example, Pengo described his organization’s effort to reduce the cost of HIV medication:

The drug was very high costed so we try to force to reduce the price of ARV drugs and then to advocate with the pharmaceutical companies in South Africa and east Africa. We have been advocating in South Africa. We have been advocating in Kenya to reduce the price. In the end, we find that we win that and the cost of the drug was dropped and now people are issuing the drugs in our country.

Jakaya too described his NGO’s efforts at improving PLWHA access to health resources, “We advocate for the rights of [PLWHA] by ensuring they have access to quality health services or education services. We also sometimes help organize young [PLWHA] with economic opportunities, entrepreneurship.” Juma also spoke of assistance to orphans living in rural regions, “We are using our organization to help people who are living in villages outside of Dar es Salaam. We call remote areas. We go there with uniforms, scholastic materials, we supply them.” By recognizing areas of difficult access to health resources, the organizations performed advocacy work, empowered PLWHA to obtain resources, and/or directly provided resources.

Impacting Members of Tanzanian Society
For RQ3, I found the category of “impacting members of Tanzanian society.” This category included the themes of “advocacy and solidarity networks” and “community education and sensitization.”

Advocacy and Solidarity Networks
PLWHA organizations formed networks to involve PLWHA at the grassroots and to leverage their collective influence in advocacy with the government. Pengo, a network leader, described his network as follows, “Small small organizations in the districts are coming together and forming a network.” Biko, another network leader, described his three-district network, “It has only three members, three networks. But every network has its own members. For instance, Kinondoni [one of Dar es Salaam’s three municipalities] alone has 42 small NGOs which are members of this network.”

Participants pointed to an association between the prevalence of stigma and discrimination in a community and the development and size of networks. For example, Biko stated, “In the past we were discriminated, segregated, and stigma was high. So that was one of the reasons we [PLWHA organizations] decided to come together.” In another example, Pengo stated, “In other districts, the level of stigma is very high. For other districts, the level of stigma is very low. So we can have a big number of organizations within a district. But for a district where the stigma is very high, it is a very little number.”

The networks challenged stigma and discrimination at grassroots and national levels. A national-level example comes from a network’s involvement in shaping policy on marking HIV-positive schoolchildren. Oresto, another network leader, spoke to this when he said “In the past we actually wanted to influence some policies, especially the policy that was discriminating schoolchildren who were living with HIV/AIDS, because they were being labeled.”

Through advocacy to the government, the networks also sought to improve PLWHA’s access to health resources. Pengo articulated his network’s vision as such, “The vision of the organizations is to see that all PLWHA are not discriminated in that they are accessing the quality treatment as per the universal access.” Biko spoke of his network’s “fight” for the government to prioritize funding for HIV/AIDS:

You know some leaders think that HIV/AIDS is not a priority. They have their own priorities. Whatever it is that’s a priority to him, he would like to channel the
funds to those areas. And they leave alone [PLWHA]. That is why the council and organizations have stood together and fought the war.

Rehema, another network leader, also spoke of working with the government to improve access to health resources for PLWHA, “Because when you are working with [PLWHA], you sometimes need support from government. So in order for government to know what exactly you need, you must sit together and see how you can solve the issue that is needed by [PLWHA].” She went on to give examples of PLWHA issues her network had broached: more ARVs, better nutrition, better health facilities, and integrated health care.

Community Education and Sensitization

In addition to networks, the organizations also combatted HIV stigma and discrimination by educating communities. Juma shared, “There was a misunderstanding of information about HIV/AIDS. There was a misunderstanding about deaths. That's why we came together and we decided to form the organization first to combat stigma and discrimination and to advocate for human rights as a people.” He later went on to describe his NGOs' efforts at combatting stigma and discrimination, “Education and sensitization. We educate by using TVs. We educate as PLWHA by radio.” Another participant, Omary, stated, “We set up activities that involve the police force to make people aware that discrimination is illegal.” Remmy, on the other hand, described a diffusion process whereby those educated by his NGO would educate others, “My NGO deals with those people by providing education to other people who have the ability themselves to come out and say they are suffering from HIV/AIDS and go and give the education to other people.” The organizations drew on various channels to educate people about HIV and to combat stigma and discrimination.

In addition to educating communities, participants described efforts that targeted the clients and members of different organizations. As Juma put it, “We started slowly with staff, doctors, nurses, patients. They requested us to go to them to train them at their workplaces, at their markets, at their small businesses, and at their fisheries. Everywhere.” Similarly, Jakaya stated, “We have been working with care and treatment centers. We have also been working with schools, teachers in schools, trying to improve the environment where [PLWHA] can live just like any other human being without being discriminated or stigmatized.”

Dialogue and Advocacy Networks

For RQ3a, I found organizations engaged in dialogue within organizational networks and in network collaborations with governing bodies. Rehema described her network as follows, “We are in 20 regions. In these regions, we have women groups and other district organizations of women living with HIV. So these are our members.” She then described dialogic practices within the all-female network:

When we do something for national interest, we include them, we plan together, and then we implement together. We discuss issues within our organization, how to improve the quality of lives of women living with HIV. So when we meet, we discuss how we can access funds, how we can make their lives better, how women living with HIV can be involved with issues around them, and also we discuss advocacy issues in order to improve our lives.

By involving female PLWHA in decision-making, planning, and implementation, the advocacy network engaged its members in dialogue. Furthermore, other leaders of network organizations also described their collaborations with governing bodies as involving dialogue. For example, after claiming his organization was the first in Tanzania to import antiretroviral drugs from the global north, Juma stated, “It took, in our country, 5 years for the government to agree to sit with us and develop a national treatment and care plan.” This contribution implies a dialogic process, albeit delayed, where a national plan to provide HIV medication was created in partnership with the government. Biko also described a dialogic process taking place with government, “now with any intervention being done in the municipal, we are consulted and we give our consent or we participate. So in everything relating to HIV done by any council or government, we do participate. In the past, that was a dream.” See Table 1 for a summary of the study’s findings.

DISCUSSION

Through in-depth interviews with leaders of 10 PLWHA NGO organizations in Tanzania, I find a cultural context of HIV/AIDS stigma and discrimination (e.g., social marking and alienation), structural contexts consisting both of corruption and bureaucratic politics in governing bodies and lack of access to health resources (e.g., ARVs), organizational agency to impact PLWHA (e.g., improving access to health resources) and members of Tanzanian society (e.g., through advocacy networks of organizations), and dialogic processes in advocacy networks and in network collaborations with the Tanzanian government (see Table 1).

Several of the findings are consistent with those of previous research on PLWHA. First, my finding of a Tanzanian cultural context of HIV stigma and discrimination is consistent with findings of a high prevalence of HIV stigma and discrimination in African communities (e.g., Petros et al., 2006; Aihiihenbuwa et al., 2009; Okoror et al., 2014). For example, drawing on a focus group study of women living with HIV/AIDS in South Africa to explore the experience of stigma in healthcare settings, Okoror et al. (2014) found stigmatizing practices such as specific file colors being used for HIV-positive patients and sections of the healthcare setting reserved only for PLWHA. Although Okoror et al. (2014) focused on stigma in a healthcare setting, this study’s participants reported stigma and discrimination in diverse spaces (e.g., families, workplaces). Second, my finding of a structural context of lack of health resources is also consistent with previous research on PLWHA (e.g., Ho and Robles, 2011; Defjon and Mortagy, 2013). For example, drawing on interviews with personnel of HIV/AIDS NGOs, Kiley and Hovorka (2006) researched the role of NGOs in Botswana’s national response to HIV/AIDS. They found the NGOs constrained by a lack of
financial and human resources. Although this study also found
the NGOs suffering from lack of resources, the study found the
problem of lack of access to be particularly acute for PLWHAs in
rural regions of Tanzania. Third, my finding of PLWHA organiza-
tions working to improve access to health resources (e.g., cost
of treatment) is consistent with previous findings from research
on PLWHA organizations (e.g., Maguire et al., 2001; Dejong
and Mortagy, 2013). For example, research on the CTAC found
PLWHA organizations working to secure affordable and effective
treatment for PLWHA (e.g., Hardy et al., 2006). In light of the
advent of ARVs and problems of its access in Tanzania (e.g.,
authenticity, shortages), the PLWHA organizations sought to
improve their members’ consistent access to quality ARVs.

In addition to reinforcing previous research, these findings
make new contributions. Whereas previous research that attended
to the structural contexts of PLWHA focused on the experiences
of PLWHA within these contexts, my finding of corruption and
bureaucratic politics in governing bodies contributes the very
processes that create the structural contexts. For example, in
previous research, Dejong and Mortagy (2013) found that the
poverty of members of a PLWHA organization, which made it
difficult for them to afford such things as transportation fees, lim-
ited their engagement with the organization. In another example,
Ho and Robles (2011) found PLWHA expressing vulnerability
from lack of insurance and fears about the future availability
and cost of AMT. Although insightful, these findings describe
the experiences of PLWHA within particular structural contexts.
My finding of corruption and bureaucratic politics where, for
example, governmental officials created unnecessary delays and
hurdles to extract bribes and refused to release funds allocated to
PLWHA organizations begins to shed light on some of the very
processes that create the structural contexts and the economic
vulnerabilities experienced by PLWHA in Tanzania.

My findings also contribute new insights into the initiatives
and partnerships of PLWHA organizations. To create discursive
spaces that encourage HIV-positive disclosures and resist the
cultural silence created by HIV stigma and discrimination,
PLWHA organizations formed youth clubs. By partnering with
organizations that catered to PLWHA such as clinics, hospitals,
and schools, the PLWHA organizations leveraged their resources
(e.g., programs, volunteers) to reach and impact young PLWHA
that were clients of other organizations in the community.

My finding of networks of PLWHA organizations also makes
new contributions to the literature. Although Maguire et al. (2001)
were one of the first to introduce us to PLWHA organizations,
the geographical, historical, structural, and cultural contexts of
their PLWHA organizations differ markedly from those of this
study. Furthermore, whereas Maguire et al’s study focused on
cross-sector partnerships, I found networks composed exclu-
sively of NGOs. These networks embody important principles
of institutional perspectives on health organizations in that
they are constituted by multiple health organizations from the
same sector (Lammers et al., 2003). The field mobilizes PLWHA
organizations at the grassroots and draws upon their collective
influence to advocate, at local and national levels, on behalf of
Tanzanian PLWHA. Despite similarities in purpose, sector, and
type of health organization, the networks also differ. While some
are district networks, others span the whole nation, continental
regions, and even the globe. Those in Tanzania also form around
salient PLWHA identities (e.g., journalists living with HIV/AIDS,
women living with HIV/AIDS, young PLWHA, 50+), suggestive
of an underlying peer-education model where peers provide
social influence and social support. An important contribution
to culture-centered research is the principles of dialogue upon
which the networks are formed and through which they operate.
The networks unify the voices of PLWHA, facilitate their involve-
ment in issues affecting them, and elevate their collective
voice in decision-making forums (e.g., government) at local,
national, and international levels.

These findings have implications for practice. Although the
organizations are addressing stigma and discrimination and
PLWHAs lack of access to health resources, additional steps can
be taken to address corruption and bureaucratic politics. In subtly
extracting bribes and refusing to fund HIV programs, government
and council officials are making erroneous assumptions about the
urgency of the epidemic and the preexisting funds available to
the NGOs. These assumptions can be countered and modified
through ongoing dialogue between the NGOs and governing
bodies—dialogue based on more robust partnerships on HIV
initiatives, greater transparency on NGO finances, and mutual
recognition of urgency. In the context of ongoing dialogue,
erroneous assumptions can be modified, officials may lessen their
expectations for financial gain, and they may more readily release
funds allocated for HIV programs.

The findings have further implications for the CCA. Although
the CCA conceives of “structures” as the economic bases of socie-
ties (Dutta, 2007) and less-encompassing health organizations/
systems (see Dutta, 2008), CCA research has emphasized the
former. In light of this study’s focus on PLWHA organizations
and findings on governing bodies and advocacy networks, these
less-encompassing structures can be more fully theorized from a
CCA perspective. They can be conceived as economic actors that
are enabled and constrained by access to resources, as cultural
systems characterized by particular health beliefs and values,
and as collectives that have the ability to engage in processes of
dialogue as they interact in particular ways with other actors in
their cultural and structural contexts.

Limitations and Future Research
The study has a few limitations that provide opportunities for
future research. First, although the sample of 11 PLWHA is a
small one, it represents leaders of 10 different PLWHA organiza-
tions and the reported themes have substantive grounding in
the interviews. To generate more knowledge in particular of
PLWHA advocacy networks, future studies can be based on
a larger sample of network leaders. As these networks operate
across sub-Saharan Africa and the world, future research can
focus on transnational networks of PLWHA. Second, the study
is limited in its exclusive focus on NGO leaders. Although they
provide a valuable perspective, more insight (particularly into
cultural and structural contexts) may be gained from samples
that include rank and file members of PLWHA organizations.
Third, the study is limited in including only PLWHA organiza-
tions based in the urban city of DSM. In light of the finding
of difficult PLWHA access to health services in rural Tanzania, future research on PLWHA organizations can focus on those based and/or operating in rural communities of Tanzania.

CONCLUSION

The study draws on the CCA and institutional perspectives on health organizations to explore the cultural and structural contexts of PLWHA organizations, organizational agency, and dialogic processes. Although the PLWHA organizations face several problems in their cultural and structural contexts (e.g., stigma and discrimination, corruption), their formation of advocacy networks and their engagement of dialogic processes within and without these networks represent both theoretically interesting and indigenous communication processes for arriving at solutions that impact both PLWHA and policies affecting PLWHA in Tanzania.

AUTHOR CONTRIBUTIONS

The author confirms being the sole contributor of this work and approved it for publication.

REFERENCES


ACKNOWLEDGMENTS

I dedicate this article to the memory of my father and mentor Johnson Oluwole Olufowote (PhD, Plant Breeding, Cornell University, 1994) who slept in 2016. The study received funding from a University of Oklahoma College of Arts & Sciences Junior Faculty Summer Fellowship. I acknowledge invaluable assistance from the following with gaining authorization and collecting data in Tanzania: Dr. Herbert F. Makoye with the University of Dar es Salaam, Mrs. Yusta Mganga with the MS-Training Centre for Development Cooperation, Mr. Mupape Mukuli, and Dr. Michael J. Soreghan with the University of Oklahoma. I thank the following graduate students who assisted me with transcribing and managing the interview data: Johnson Aranda, Danni Liao, and Emma Wang. I also thank Dr. Michael W. Kramer with the University of Oklahoma for providing feedback on an earlier version of this manuscript.

FUNDING

The study was supported by a junior faculty summer fellowship and additional research funds from the author's university.


Conflict of Interest Statement: The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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Stigma, facility constraints, and personal disbelief: why women disengage from HIV care during and after pregnancy in Morogoro Region, Tanzania

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Abstract

Millions of children are living with HIV in sub-Saharan Africa, and the primary mode of these childhood infections is mother-to-child transmission. While existing interventions can virtually eliminate such transmission, in low- and middle-income settings, only 63% of pregnant women living with HIV accessed medicines necessary to prevent transmission. In Tanzania, HIV prevalence among pregnant women is 3.2%. Understanding why HIV-positive women disengage from care during and after pregnancy can inform efforts to reduce the impact of HIV on mothers and young children. Informed by the tenets of Grounded Theory, we conducted qualitative interviews with 40 seropositive postpartum women who had disengaged from care to prevent mother-to-child transmission (PMTCT). Nearly all women described antiretroviral treatment (ART) as ultimately beneficial but effectively inaccessible given concerns related to stigma. Many women also described how their feelings of health and vitality coupled with concerns about side effects underscored a desire to forgo ART until they deemed it immediately necessary. Relatively fewer women described not knowing or forgetting that they needed to continue their treatment regimens. We present a theory of PMTCT disengagement outlining primary and ancillary barriers. This study is among the first to examine disengagement by interviewing women who had actually...
discontinued care. We urge that a combination of intervention approaches such as mother-to-
mother support groups, electronic medical records with same-day tracing, task shifting, and mobile technology be adapted, implemented, and evaluated within the Tanzanian setting.

Resumen
Millones de niños viven con el VIH en el África subsahariana. La principal vía de transmisión de esta infección es materno infantil. Pese a la existencia de intervenciones capaces de eliminar prácticamente por completo la transmisión materno infantil, en países de ingreso mediano bajo, solo 63% de las mujeres embarazadas que viven con el VIH acceden al tratamiento necesario para prevenir este tipo de transmisión. En Tanzania, la prevalencia de VIH en mujeres embarazadas es de 3.2%. Entender qué lleva a las mujeres VIH positivas a desvincularse de los servicios de atención médica durante y después del embarazo puede servir para informar las iniciativas que buscan reducir el impacto del VIH en las madres y niños de corta edad. Basados en los principios de la Teoría Fundamentada (Grounded Theory), hemos realizado entrevistas cualitativas a 40 madres puérperas seropositivas que se habían desvinculado de los servicios de atención médica para prevenir la transmisión materno infantil (PTMI). Casi todas las mujeres describieron la terapia antirretroviral como algo beneficioso, pero inaccesible dado su preocupación por el posible estigma. A su vez, varias mujeres relataron cómo su sentimiento de salud y vitalidad, junto a sus preocupaciones relativas a los efectos secundarios de la terapia, acentuaron el deseo de evitarla hasta que ésta fuese inminentemente necesaria. Relativamente pocas mujeres manifestaron no conocer, o haber olvido, continuar su régimen de tratamiento. Presentamos una teoría sobre el abandono de la terapia para la PTMI que describe tanto los obstáculos primarios y secundarios. Este estudio es uno de los primeros en describir el abandono del tratamiento antirretroviral a través de entrevistas a mujeres que habían decidido abandonarlo. Exhortamos adaptar, implementar y evaluar en Tanzania el uso de una combinación de intervenciones, como grupos de apoyo entre madres, expedientes médicos electrónicos con posibilidad de seguimiento inmediato, delegación formal de funciones entre los profesionales de la salud y el uso de nuevas tecnologías.

Keywords
HIV; prevention of maternal-to-child transmission; vertical transmission; maternal health; engagement in care; Tanzania

Palabras claves
VIH; prevención de la transmisión materno infantil; transmisión vertical; salud materna; participación en la atención médica; Tanzania

Introduction
Approximately 3.2 million children are living with HIV worldwide, and a majority of these children are in sub-Saharan Africa (1). The primary mode of childhood HIV infection is mother-to-child transmission (MTCT) (1, 2). Despite efficacious approaches to address the health needs of HIV-infected pregnant women and to prevent vertical transmission of HIV to their children, only 62% of eligible pregnant women in low- and middle-income priority
countries receive prevention of mother-to-child transmission (PMTCT) services (3). As PMTCT programs expand globally, greater attention has focused on why some pregnant women prematurely disengage from PMTCT care, even after they have already engaged with the health system (4, 5). Such attention is increasingly relevant as countries move to adopt the World Health Organization (WHO)’s Option B+ approach, which recommends that all HIV-positive pregnant and lactating women initiate lifelong antiretroviral therapy (ART) regardless of CD4 count. More recently, the WHO has recommended ART regardless of CD4 count for all people living with HIV (PLHIV), further highlighting the importance of retention in care. Given these policies, studies that examine the acceptability, feasibility, and sustainability of HIV care are vital to informing program success.

Gourlay and colleagues reviewed barriers to PMTCT access, initiation, and adherence in sub-Saharan Africa across social-ecological levels (6). At the individual level, key barriers included poor knowledge of mother-to-child HIV transmission, lower maternal education, and psychological issues following HIV diagnosis (6). Interpersonal or community-level barriers included stigma and fear of serostatus disclosure to partners, family, or community members; a lack of partner or community support; and preferences (or social expectations) in favor of traditional healers and birth attendants (6). Health system limitations included poor patient-provider relations, staff shortages, and difficulties accessing services (6). Nachega and colleagues’ review of studies from both high- and low-income settings determined that antiretroviral drug adherence during pregnancy is significantly below levels recommended for virologic suppression and that optimal adherence is particularly problematic during the postpartum period (7). Their review organized barriers to ART adherence into two categories: barriers related to HIV status and the pregnant state (an advanced stage of disease, pregnancy-related symptoms such as morning sickness and fatigue, and side-effects of ART regimens) and barriers related to individual characteristics (physical, economic, and emotional stresses; depression, particularly during the postpartum period; alcohol or drug use; drug regimen frequency and pill burden) (7).

Most qualitative research on barriers to PMTCT utilization and reasons for disengagement have drawn from interviews primarily or exclusively with community members including leaders and men (8–10), providers (8–12), HIV-positive pregnant women who are engaged in care (9–16), women whose status is unknown (8, 10), HIV-negative women (10), or a combination of these groups. At least three studies included women who disengaged from care, but they represented a small minority within the broader study sample (9, 11, 12). Still other studies have relied primarily on interviews with women who disengaged from care, but those women were enrolled in programs (17, 18), broader interventions such as self-help groups (19), breastfeeding studies (15), or clinical trials (14, 20). This distinction is meaningful because women who are engaged in care, or are enrolled in a PMTCT-focused program or trial, likely have a heightened “subjective sense of connectedness to care”(5): they may be receiving amenities (such as formula or food supplements or travel reimbursements (14, 20)), and they are, by virtue of their care seeking, overcoming the barriers that other women face. With at least one notable exception (21), few studies have undertaken in-depth, qualitative research to understand why women who start PMTCT fail to complete it by relying primarily or exclusively on data from women who have disengaged from care and are not enrolled in a trial. This absence of women who have disengaged from...
care has been described as “perhaps the most important gap” in the literature related to understanding and addressing PMTCT retention (22).

Study Setting

In Tanzania, 1.4 million people are living with HIV, including 250,000 children (23). HIV prevalence among pregnant women is 3.2% (24). Increases in access to PMTCT have been swift and consistent since the piloting of services in 2000. An estimated 96% of facilities that provide reproductive and child health (RCH) services also provide PMTCT (25). Among female respondents who had given birth in the two years preceding the 2010 Demographic and Health Survey (DHS), more than half (55%) had pretest counseling followed by an HIV test, after which they received test results; this represents an increase from the 2005 DHS when 27% had pretest counseling, and 9% were tested and received results (26). In 2011, the Tanzanian government aligned national PMTCT guidelines with the WHO’s 2010 revised recommendations for Option A, which extended ART eligibility to women with a CD4 count equal or below 350 cells per mm$^3$ and antiretroviral prophylaxis intake throughout the breastfeeding period for the infant. More recently, in 2013, the country began implementing Option B+, wherein all pregnant women living with HIV are offered life-long ART regardless of CD4 count and infants are given antiretroviral prophylaxis for six weeks after birth regardless of the chosen infant feeding mode.

At least four recent studies have examined PMTCT adherence and engagement in Tanzania (10, 20, 27, 28). A cohort study with 120 mother-child pairs, conducted in 2011 before Option A implementation, found only 10 pairs (8.3%) achieved at least 80% adherence rates in all PMTCT phases (before, during, and after delivery); one mother-child pair (0.8%) achieved a 95% adherence level for the entire PMTCT intervention (27). A 2013 qualitative study interviewed 23 Tanzanian women enrolled in ART for life (due to viral load) during PMTCT and asked about barriers to adherence; these women were part of a larger prospective cohort study and were later found to have detectable viral load (20). Women in the study reported decreased motivation to adhere to ART regimens once their children were deemed “safe” post-weaning. Additional barriers to adherence included feelings of adequate personal health, hopelessness, fears of stigma, poverty, and competing demands (20). A 2014 qualitative study in northern Tanzania highlighted the importance of patient-provider relationships in PMTCT engagement and noted that imbalances of power, unclear communication, disrespectful statements, discriminatory treatment, and inadequate counseling by providers undermined PMTCT clients’ trust in the health care system (10). However, a more recent mixed-methods study based in an urban referral facility in Dar es Salaam found no statistically significant difference in the experience of disrespect or abuse by HIV serostatus; the authors underscored that the overall prevalence of disrespect and abuse is high, indicating “a serious problem” in the maternal health sector generally (28).

Beyond HIV-specific indicators, Tanzania’s progress in recent years related to maternal, newborn and child health has been mixed. Though the country achieved its Millennium Development target for child mortality, maternal and newborn mortality remain high (approximately 8,000 and 48,000 annual deaths, respectively) (29, 30). Such deaths reflect insufficient care seeking in a weak health system. During pregnancy, nearly all Tanzanian
women (97.7%) attend at least one antenatal care (ANC) visit, yet only half (50.2%) deliver in a health facility and roughly a third (35%) attend a postnatal checkup (26). At the same time, the health system is not equipped to meet the needs of mother-baby pairs. Less than one in ten facilities is able to provide basic and comprehensive emergency obstetric care; the density of doctors or assistant medical officers (comparable to general physicians) is 0.73 per 10,000 people (31).

Methods

Design and Sampling

This study was embedded within a program evaluation of an integrated facility and community maternal, newborn, and child health intervention implemented throughout Tanzania by the Ministry of Health and Social Welfare with technical assistance from Jhpiego. Respondents included women who were enrolled in, and then disengaged from, PMTCT programs from January 2011 through January 2013. We use the term enrolled to describe women who were referred to a care and treatment center (CTC) during the antenatal period and assigned a follow-up appointment. We did not enter RCH wards to identify women who had tested positive but were never referred or transferred to the CTC. Women were considered eligible for this study if they were not enrolled in other studies and if they had missed their most recent CTC appointment by more than three weeks; if a woman disengaged from care after delivery, she was eligible to participate if her child was alive and being breastfed. Qualitative in-depth interviews sought to capture women’s descriptions of learning their HIV status and enrolling in and disengaging from PMTCT programs. Lines of probing were informed by Sweat and Denison’s social-ecological model, which emphasizes factors at both macro and micro levels that collectively underpin behaviors related to care seeking (32). Levels of the model include: superstructural, structural, environmental, relational, individual, and technological (32).

Research Team

Three Tanzanian research assistants fluent in Swahili with graduate-level education underwent a 5-day training on qualitative research methods and fundamentals of HIV/AIDS and PMTCT in the global and Tanzania-specific context. Pilot testing in a CTC located in Dar es Salaam was conducted to refine instruments and make final preparations for data collection.

Data Collection

Facility sampling—Through formative research conducted in 2012 and early 2013, we identified health facilities with relatively large PMTCT programs and staff who were amenable to having our research nested within their CTC for the study duration. Four facilities in Morogoro Region (two urban and two rural) were identified and the study team worked within each facility for 4–5 weeks beginning in February 2013.

Informed consent—Verbal informed consent was conducted by a Home-Based Care (HBC) provider, a person trained to discreetly navigate outreach to PLHIV. Using scripts, this provider contacted women via information provided in their medical files. If a woman
verbally consented to participate, she was asked to choose a time and place for an interview. Prior to the start of the interview, data collectors read a prepared script and asked for fingerprint consent.

**Participant recruitment**—Review of CTC files identified 229 eligible women, of whom 125 (55%) were successfully contacted by phone or address or via a treatment supporter. Forty women were interviewed across four facilities. Several dozen women declined either overtly or indirectly to be interviewed. Gathering reasons for declines was challenging. Reported reasons for declines included that a woman was traveling; that she or her baby had died; that (contrary to clinic records) she was continuing care in the same facility; or that she had transferred to another facility. At least 19 women agreed to be interviewed, but did not arrive on the day of the interview. In total, 40 interviews were conducted in a place of the respondent’s choosing (at their homes, in remote fields, at the home of relatives or friends, at health facilities (though not within CTCs, per respondent requests), in abandoned buildings, and at a bus stop). Several interviews were conducted at night (per women’s requests) to enhance discretion.

**The Interview**

All interviews were conducted in Swahili in one-on-one settings. While it is not possible to ascertain the full extent to which rapport was established, the richness of data within interviews and the gratitude that several women expressed for being given an opportunity to recount their experiences suggested to the research team that the women felt comfortable and appreciated participating in the interviews. Data collectors conducted no more than one interview each day, and took copious notes during and after each interview. At the close of the day (usually in the evening), all data collectors and the lead investigator gathered to discuss the day’s interviews, triangulate findings across interviews, and identify lines of questioning that could inform future interviews. The lead researcher took copious notes during these debriefing sessions. Notes were expanded upon throughout data collection to include contextual information and reflexive comments. On a weekly basis, all notes were shared with the wider research team, who commented on the notes and highlighted further venues for probing in later interviews.

**Analysis**

This study was informed by the tenets of grounded theory. All interviews were audio recorded in Swahili, transcribed, quality checked for completeness by a Swahili speaker (who listened to the original interview), translated into English, and again assessed for completeness and translation quality. A list of hierarchical codes, or codes that reflect relationships to one another in a tree or taxonomic structure (33), was developed and validated by co-investigators using debriefing notes made during data collection. Following this, an initial phase of line-by-line coding of information-rich interviews was conducted. Coded text and emerging relationships across codes were discussed among co-authors. Text was re-coded when applicable. Upon completing this process, investigators validated the final codebook and applied codes to all transcripts using MaxQDA (34). Codes were then rearranged into categories related to types of barriers and facilitators to PMTCT adherence. The lead author then drafted a summary report, circulated it among the broader research
team for input and discussion, and returned to the source data to draw out a deeper understanding of nuances in the data and to make comparisons across sites. A literature review followed the completion of this process and informed the presentation of the data.

Validity

This study sought to ensure trustworthiness and rigor, as well as authenticity (35–38). To foster trustworthiness, the research team triangulated findings across respondents and across investigators via daily debriefing sessions wherein the content of in-depth interviews and reflexive thoughts on each day’s interviews was discussed. The team also sought to enhance external validity via thick descriptions in interviews, and the routine building and sharing of debriefing notes with those team members who were not in the field during data collection or were less intimately involved in data analysis. This routine sharing of information also enabled development of an audit trail by allowing a broader base of researchers to follow the data collection progress throughout the study. Finally, the research team sought to achieve authenticity by considering the importance of fairness, evocation, and critical change (37, 38). In terms of fairness, we have attempted to present the data in a manner that reflects the source material in a truthful, unbiased manner. In terms of evocation, we have sought to be faithful to the deeply emotional and oftentimes disturbing nature of data that women shared. In terms of critical change, we have sought to raise stakeholders’ wider consciousness regarding the ways in which health programs have intimate and fundamental impacts on the lives and livelihoods of those they aim to serve (37).

Study team and reflexivity

The study team consists of three behavioral scientists, two of whom hold doctoral degrees (SAM, CEK) and one of whom is a physician (PJW). The team also includes two physicians who are intimately engaged in PMTCT policies and programming at the national level (MK, CK) and one individual who, as a young researcher and doctoral student, was among the first Tanzanian researchers to study HIV more than 30 years ago (JK). Perhaps the most important perspective that the research team collectively brings to this study is their shared concern that the complex social aspects of HIV not be overlooked in a largely biomedical response.

Ethical approval for this study was obtained from Muhimbili University of Health and Allied Sciences, and the Johns Hopkins Bloomberg School of Public Health.

Results

Timing of disengagement

Among the 40 study participants, disengagement from care often occurred during the antenatal period; women attended one or two visits, but disengaged from care thereafter. Only two women in this study attended more than four visits after delivery and subsequently ceased care seeking. Table 1 outlines when care seeking across the maternal health continuum ceased.
Factors affecting decisions to disengage from PMTCT services

In their narratives, women described careful, sometimes painful decision-making as they weighed the pros and cons of continuing in PMTCT care. Women spoke with depth, nuance, and conviction about factors that undercut intentions to continue in PMTCT programs including concerns about stigma (and the likelihood of being identified as HIV-infected based on a lack of privacy at facilities, attending facilities frequently, or needing to access and ingest medicine) as well as a sense that one’s own good health (evidenced by feelings of strength and vitality and by virtue of pregnancy) was proof that medicines were unnecessary. Factors that reinforced an underlying aversion to PMTCT included competing demands (economic or logistic), confusion related to drug adherence or facility-based appointments, and doubt as to whether going on drug treatment (particularly while asymptomatic) would bring tangible benefits. Factors mentioned rarely or with modest conviction included concerns about side effects for oneself or one’s baby, a preference for herbal remedies, a lack of will to survive, and forgetting an appointment.

We grouped reasons for disengaging from care into three non-mutually exclusive categories (Table 2). The first (and most salient) category – a designation determined by the authors – is entitled “ART as beneficial but inaccessible.” This represents those who describe ART as helpful, even necessary, but who feel that the barriers to accessing ART are impossible to overcome. The second category is called “ART as unnecessary or harmful,” which represents a sentiment described by some who felt that ART was either unnecessary or potentially dangerous. Finally, there is a third category labeled “Not knowing or forgetting to access ART,” which represents a minority of respondents who said they intended to continue care, but were either misinformed or forgot to maintain their treatment regimens.

Category 1. ART as beneficial but inaccessible

Social or economic isolation resulting from stigma (anticipated, enacted or observed)—Nearly every woman in this study described how the potential to be socially or economically isolated – in other words, stigmatized – undermined her motivation to continue PMTCT. As one 26-year-old woman who disengaged during ANC said, “The day they learn I have HIV is the day that I have died.” Stigma could be anticipated, enacted, or observed (as enacted upon others within a community) and could come from a woman’s partner, friends, family, or fellow community members. A minority of women described experiencing stigma from health workers. The most commonly described stigma was observed stigma. Several women described sitting in social settings while friends, who were unaware of their HIV status, ridiculed and mocked other women who were known to be HIV-infected using labels such as: “ruined one,” “hit,” “devalued,” “rotten,” “empty,” “promiscuous,” “sinful,” “a hooligan” (wahuni), “a prostitute,” or “the one that stepped on a wire.” These comments left respondents panicked about their fate (should their HIV serostatus become known) and distraught about how to reconcile their view of themselves with an altered, stigmatizing construction.

At times women wept as they described how anxiety and fear related to stigma were more pressing than the important yet less immediate risk of disease transmission. While stigma could take economic forms (for example, no longer being able to sell foods at a market or...
being financially exiled by spouses or family members), women’s narratives suggest that a more fundamental concern was that they could be socially isolated. Women described how spouses, family, and friends could abandon them and their children upon learning their status, out of fear of being associated with a PLHIV. Several women felt that they would no longer be part of the community if their status became known; they said community members would say things like “she inherited what she deserved” for “showing off” or “sleeping around,” and thus she “deserves to die” or “does not belong.” Most accounts of social isolation were described as something women witnessed as it was enacted upon others. One woman described how she decided against disclosing her status and continuing her regimen after she watched another HIV-infected mother be banished from her community. In another case, a woman whose HIV serostatus had become widely known described a desire to die as her reason for disengaging from care, saying she was abandoned by her spouse and unwanted by her family and community: “Everybody ran away and … I have nobody. I used to have a friend who would buy me soap. Now I can’t even get soap. I have nobody and nothing.” (age 30, disengaged during ANC).

Women also described heightened vulnerabilities related to pregnancy, birth, and motherhood as an additional reason to disengage from care. Respondents described how this period of their lives involved a heavier reliance on family and, to a lesser extent, the broader community, which could be irreparably jeopardized by an HIV-positive status and its accompanying social isolation. In a particularly disturbing case, a woman whose status became known described how she was hemorrhaging during delivery, but nobody in the community or her extended family would donate blood or money to help her survive.

In our community, it’s normal that people must sometimes donate blood or money to help a bleeding mother. If you don’t have blood or money, the providers will just leave you there (to die). But when I was giving birth, and I was in a bad condition, losing so much blood, nobody would help. People told me that I’m [HIV] infected so that’s why I can’t get better. My relatives went away. It was only my mother and my husband who took care of me. At that moment, when I gave birth to this child, I wanted God to take me away. – age 22, disengaged during postnatal period.

Accounts of enacted or perceived stigma often centered on the moments leading up to, during or immediately after receiving PMTCT services. Women described feeling watched as they were walking to facilities or entering a CTC. One woman described feeling “fingers pointing at me, just pressing down on me … the whole way from when I leave my home and as I wait at the facility” (age 28, disengaged following several visits during antenatal period). Another woman described thwarted attempts to enter a CTC: “I tried to go back twice. Both times I met friends (by the facility entrance). You see, if you go to that facility, you either turn this way (motions right hand) to go to the hospital building or you go straight to the AIDS CTC building. You turn one way or the other way. And then everyone can see when you turn the wrong way” (age 32, disengaged immediately after delivery). Once within a CTC, women described how providers told them to keep their serostatus a secret and “only share the information with those they can trust,” which one woman described as evidence of the shame of her status. Stigma from health professionals was described in four cases, all of which entailed a provider whose role within a facility was unclear, but who women reported
as well known for gossiping with clients and naming those seen accessing PMTCT services. Upon departing facilities, women recalled sensing that everyone was watching them or laughing at them. One woman described how friends had seen her taking “other medications” after an ANC visit, deduced her HIV status, and began hurling insults at her in public. This experience sparked fear that she and her husband would be incapable of relying on their social network in the event of a future emergency.

It was just in our normal conversation when we came across one another on the street. We were talking about several issues including HIV testing and that’s when one of them said, ‘Some have even tested and are even using medications and they are rotten even as they stand with us here. We have seen them taking medications the day before yesterday after going to the hospital. …Infected creatures!’ And that’s why I am – why we are – scared of going there. Once they see you have gone there, you can no longer have happiness with your friends or even your husband. If one day your husband needs money or help, others in the community will say, ‘You are living with a woman who is already rotten, you don’t deserve our help any longer.’ There is simply no mutual understanding once you use the medications. – age 34, disengaged during postnatal period

Stigma from community members was described by one woman as more easily ignored compared to stigma from family, partners, and friends.

The close relatives are the ones who stigmatize and hurt you. Being stigmatized by neighbors is nothing because they have nothing to contribute to your life… but to be abandoned by my own relatives. They said, ‘You’re on your own now,’ and that has weakened me. They don’t help me with medications. There are people in the streets who speak ill of me but this is nothing because they play no role in my life. My relatives now look down on me and that hurts. It hurts. – age 35, disengaged immediately after delivery

Lack of confidentiality due to design and delivery of health services in facilities—Women across all four facilities described how facility layout inhibited privacy because PMTCT services were nested within a CTC located apart from the rest of the RCH clinic, thereby forcing women to “walk with my status” to get services, or because services were integrated in an indiscrete manner within an RCH ward. In the latter case, women described how others in an RCH ward would know that a certain room was “the AIDS room” either from reputation or because its door was labeled “PMTCT.” Women also described how a particular waiting area or waiting bench was designated for HIV-positive women in the minds of community members. Privacy could also be violated by open windows, thin doors, walls that did not extend to a ceiling, and chain-link fencing (rather than opaque, privacy-enhancing fencing). As a 30-year-old woman who disengaged immediately after testing said, “The environment of that place is too exposed.” One woman questioned why those with HIV had to be treated in a separate building:

Why could the government not think of us like normal patients, like malaria patients? Why can’t we be treated like common people? We are set apart, walking the whole way over to the CTC so that all people can just see you and start to point
at you and say, ‘Ah! Look that’s an HIV person!’ – age 30, disengaged immediately after testing

Women shared accounts of providers being insensitive to their desire to keep their HIV status confidential. One woman described how she was waiting on a bench located a short distance from “the PMTCT room” so that if a relative or friend saw her at the facility she would not be “caught” near the stigmatized room. When the provider finished with a client, she called the woman’s name loudly across the courtyard, alerting all within earshot (and knowledgeable of the provider’s HIV-related professional role) of the woman’s status. “I turned and have never gone back,” the woman said. In another case, a woman described how she went to a pharmacy within a facility to access drugs for her baby. The dispenser apologized to her as she was handed her bag of drugs. “I said to her, ‘You have no need to apologize’ but then she did it again … she humiliated me,” the woman (age 37, disengaged during ANC) recounted. “She thought she was taking pity on me (due to my status). She embarrassed me in front of a room of people.”

**Competing demands in the context of limited time and scarce resources—**

Women described economic and logistic demands that served as barriers to remaining in PMTCT services. As one woman (age 30, disengaged during ANC) said, “I sat there almost a whole day… from a little after 7am until 1pm. A whole day! I have responsibilities at home. I have a chicken farm.” While several women described long waiting times at facilities, competing demands were more forcefully linked to the common fear of stigma. For example, women described preferring to travel long distances to clinics that were farther away from their homes in order to maintain anonymity, despite the additional cost and time. Women also described how their lives were in upheaval post-diagnosis, which made managing appointments problematic. Five women described how partners had abandoned them upon learning their status; one woman cried as she described her cancelled wedding, while another woman said her partner “told everyone in the street that I am a prostitute” before leaving her. These women were already operating within a context of limited financial resources, which was exacerbated by abandonment.

My problem is the transport costs and that the land is so dry. I have children who are going to school, one is in form one and the other is in standard six. They won’t be allowed in school if they have torn shoes, so I had to buy new ones for them so I couldn’t afford the transport costs. … I am not happy with staying home without going to the hospital but I have no choice because of these responsibilities. – age 35, disengaged immediately after delivery

**Category 2. ART as unnecessary or harmful**

**Disbelief of one’s HIV status or of the necessity for ART—**Some women felt PMTCT was not necessary for themselves or their newborns. The most frequently cited reason was a sense that they were healthy. Contrary to their impressions of those living with HIV as “very sick” or “in need of treatment,” women described feeling energetic, beautiful, strong, and capable; being capable of plowing fields and walking long distances; being able to conceive, carry a pregnancy, and give birth to healthy, plump babies; and finally being told that they have high CD4 counts. These descriptions were often coupled with an
assurance that at the onset of fever, headaches, or other symptoms indicative of HIV infection in themselves or their babies, women would return to facilities for medicines or treatments. Two women used the phrase “taking a rest” to describe their treatment hiatus.

Approximately half of the women in this study also described feeling unprepared for a positive HIV test result. These women recalled embarking from their homes on the day of their antenatal care visit flush with optimism about their pregnancy but later leaving the clinic bereft of the ability to breathe or walk, and finding themselves “crying all over on a bus while passengers watched” or wanting “to burn all of my possessions and kill myself.” One woman described repeatedly telling the doctor, “You must be wrong. I haven’t done anything wrong. I can’t have AIDS.” One woman described how her good health coupled with the lack of technical testing equipment fueled a sense of incredulity about her status.

It’s that I … some people don’t accept that they have this disease unless the tests are done with the big machines and they have some symptoms. You don’t want to use any medications when you feel that you are fine and when the tests were not done by the big machines, but by a little prick of your finger and very little blood on a very small white kit. … People just say, ‘I don’t want to use the medications, I was diagnosed since last year but I have no symptoms, so I don’t need treatment.’ – age 33, disengaged during ANC

Devising alternative treatment (or coping) strategies—A final reason for women sensing that they do not need PMTCT treatments was reliance on alternative treatment arrangements. This included purchasing co-trimoxazole tablets from a local dispensary (described by four women) or relying on prayers or religious ceremonies (described by eight women). While prayer was described by a minority of women, it was discussed with conviction and often linked to feelings of wellness and vitality that were enhanced once women ceased medical care in favor of prayer. Many of these women described feeling open to later resumption of medical treatment: “Personally it’s not that I don’t want (to continue in ART) but I do prioritize involving God, but if I’m having any problem at any time then I’ll go back to the facility without any difficulty” (age 35, disengaged immediately after testing).

One woman described being cured of HIV through prayer. Another woman described HIV as a devil – by denying treatment, she was denying a devil.

Side Effects—Antiretroviral side effects contributed to disengagement from care, especially as recommendations for initiating ART were expanded to include women with less severe HIV disease. Many women had heard of or seen side effects manifest in others, and seven women reported experiencing side effects themselves or, in two cases, in their babies. As one woman said, “Those medicines made my baby so sick, so I decided not to give it to him. I left the syrup and headed back to the mountains.” Side effects described by women included facial marks, abdominal pain, weight gain, nausea, general malaise, skin rashes, fatigue, darkening skin color, vertigo, loss of appetite and illusions. Women reported feeling more disturbed by the way that side effects can outwardly indicate an HIV-positive status, rather than bothered by the pain of side effects.
Despair—Approximately a quarter of women in this study described feelings of despair. One woman, who contracted HIV and became pregnant as a result of rape by her employer, used the phrase “I am empty” several times throughout her interview. Eight women described wanting to die either upon learning their status or more recently as they reflected on stigmatization. Three women reported ceasing PMTCT treatments because they felt they had no one who cared for them and they no longer wanted to live.

We are rotten, empty, like the pawpaw trees. There is an empty space in a pawpaw tree. Like the tree, we may look fine on the outside but we are rotten in the inside. – age 19, disengaged during PNC

Category 3. Not knowing or forgetting to use ART

Women in this study were often surprised or confused when asked about missed appointments. Women recalled taking their children to be registered, weighed, or vaccinated without any request from providers that their children be tested or given medicine. A minority of women described not knowing that they needed to return for PMTCT appointments during pregnancy or after delivery. One woman described returning to a CTC requesting a check-up after delivery, but coming home empty-handed: “I was taking those medications until they were finished and then I came here for a refill but they said, ‘Just go, you don’t need them now’” (age 22, disengaged during PNC). Several women reported being told by providers that their strong CD4 counts indicated that they had successfully completed PMTCT, that their babies were “safe,” and that they could stop using medications for up to two years. Three women expressed shock that they were considered (for purposes of this study) disengaged from care.

It’s the service providers’ problem! They didn’t tell me anything. They should have told me to go to some place for services. I would have followed their instructions! – age 29, disengaged immediately after testing

Another woman offered to return upon the interview completion to collect medicine for her baby, although she later declined due to a lack of privacy. Another woman described testing HIV-positive, but being told “the disease is on the way, but I’m not supposed to get medication because the disease is still en route” (age 45, disengaged following several visits during antenatal period).

Four women described forgetting to take their medications: three during pregnancy and one at delivery. Reasons for forgetting seemed largely linked to feeling healthy and making concerted efforts to dispel evidence or memories of being HIV-positive (by destroying a CTC card, for example).

Discussion

Women in this study highlighted several factors that compel them to disengage from PMTCT care. This paper sought to present the fullest breadth of responses by organizing them into three categories: (1) engagement as beneficial but inaccessible; (2) engagement as unnecessary or harmful; or (3) engagement as entailing complex, poorly conveyed, or easily forgotten routines (Table 2). We presented the findings in this manner as a means to keep the
results as close to the source data as possible. However, when placed within the context of existing literature, we recognize an alternative lens through which the findings could be viewed, which would entail grouping reasons into either primary or ancillary contributors to disengagement from care (Figure 1). When considered in this regard, we find that in our study, three barriers underpin all others: stigma, stressors or inadequacies associated with health facilities, and personal skepticism regarding status or treatment efficacy. At the points where barriers overlap or intersect, ancillary reasons for disengaging from care emerge.

In Figure 1, we drew the stigma circle to be symbolically larger than the two other barriers. Stigma was the most intense and pervasive barrier in this study, and its role in disrupting or preventing care is echoed in other reviews and studies (6, 39–41). Economic and social isolation resulting from stigma has been found to not only affect each step in the PMTCT care cascade, but also to be cumulative, thereby affecting rates of infant infection (39).

Stigma has been found – in our study and others – to be especially critical to pregnant women because they are often the first within a family to be tested for HIV, making them vulnerable to blame for “bringing the virus into the family,” (39) which has been described in settings across sub-Saharan Africa (40, 41). Women in this study, similar to women in other studies, also described trying to reconcile a gulf between how they view themselves (as healthy, strong, and capable) with their negative perceptions of PLHIV; struggles with integrating one’s diagnosis with one’s self-identity have also been described elsewhere (39, 42).

Second to stigma is the barrier of facility constraints, including a lack of privacy and poor patient-provider communication or misinformation. Facility-related limitations have been highlighted in reviews and studies from Tanzania and similar settings (5, 6, 10, 39, 43). Fears related to compromised privacy – particularly concerning how CTCs are situated in relation to maternal and child health clinics – have been less emphasized in the literature but emerged strongly in this study (6, 43). A poor patient-provider relationship – including unclear pre-test counseling, discriminatory or disrespectful treatment, and an absence of dialogue during routine visits – continues to emerge as a factor that merits greater attention in the PMTCT literature specifically and the maternal health care seeking literature generally (5, 6).

A third critical barrier was personal disbelief, including women who were skeptical about their HIV diagnosis and/or skeptical regarding the efficacy or utility of medicines, which this study found to be linked to a disconnect between what women expect to receive (routine advice regarding pregnancy care) and what they ultimately experience (being diagnosed with an incurable disease). Knowledge regarding HIV transmission and ART emerges strongly as a barrier to engagement across studies in Southern and East Africa (6). Women in this study understood HIV transmission and saw the relevance of ART, but their responses suggested that the risk of one’s status becoming known in the wider community (due to being seen at facilities, for example) outweighed the benefit of continued engagement within PMTCT programs. Furthermore, women in this study described feeling unprepared or in shock during the counseling session when they were advised on facets of care and treatment, which has been described in several other studies in similar settings (6). This challenge has also been described by providers who feel overwhelmed and inadequately trained for the
emotional and logistical challenges of sharing a positive diagnosis with a pregnant woman (6, 43).

We found that many other ancillary barriers to continued engagement in PMTCT appear to spring from the nexus of stigma, disbelief, or facility constraints. For instance, when stigma (observed, anticipated, enacted or internalized (39)) is coupled with facility limitations (including barriers in accessing care once at a facility), this has the ancillary effect of fostering a sense of despair among PLHIV. At the confluence of inadequate counseling and personal disbelief about one’s status, PLHIV express surprise regarding their need to continue treatment. Finally, at the nexus between stigma, personal disbelief and facility limitations, multiple ancillary reasons arise: women embrace alternative strategies; forget appointments or pill regimens; cite fears of side effects in themselves or their children; and sense heightened financial, logistical, or familial constraints. On this final point, we would add that financial constraints are a formidable barrier especially in the context of extreme poverty. However, if stigma were diminished, if facilities provided more discrete, reliable and comprehensive information, and/or if PLHIV felt that they needed medication, families would be more favorably positioned to draw upon economic, emotional, social, and material resources to address competing demands. Recent studies on disengagement from HIV care have described how missed visits are an “inevitable” reality over the course of lifetime HIV care, and efforts must be made to not only minimize initial disengagement, but also to minimize barriers to rejoining the health system (5, 44). In this study, women did not highlight concerns related to rejoining care. However, most women also discussed re-engagement as a distant (rather than immediate) or unnecessary consideration. Studies from across Tanzania and similar settings from the fields of HIV, PMTCT, and maternal health describe how harsh or abusive treatment by providers undermines care seeking (5, 45). In this study, harsh or unsupportive quality of care did not emerge as a critical barrier. However, this study was nested in four facilities that may be subjectively different from other Tanzanian health facilities; all CTCs were relatively high-functioning (in terms of having an organized filing system and active HBC network) and were staffed by clinicians who were amenable to engaging with the study team over a prolonged period.

Several novel interventions have been undertaken in recent years to encourage engagement in care among PLHIV in sub-Saharan Africa. In the context of our findings, we urge that promising interventions be adapted, piloted (and/or implemented), and evaluated within the Tanzanian setting including: self-forming groups of patients to pick up medications (46), use of electronic medical records with same-day patient tracing (47), and task shifting of ART care to PLHIV with the support of mobile technology (48). Unfortunately, a recent review determined that “the evidence base for interventions to link and retain people living with HIV in care remains scarce” (49). The review also highlighted a dearth of evidence on how to best identify and engage individuals who are asymptomatic with relatively high CD4 counts (49). One intervention that appears promising among women engaged in PMTCT is a peer support network, or “mother-2-mother” groups (6, 50). Efforts to foster privacy within facilities and reduce confidentiality concerns related to facility layouts also merits more consideration in Tanzania.
This study is among the first to examine reasons for disengagement in PMTCT among women who had actually disengaged from care. However, our findings must be seen in light of several limitations. Although we tried to sample a wide range of women from facility records, we were ultimately only able to enroll women who could be located through tracking within CTC registers (Table 1). This approach excludes women who sought care from a provider who did not test a woman at her ANC visit and diligently record and transfer medical records from an RCH to a CTC. It was difficult to determine reasons for missed visits among individuals who chose not to participate in this study; however, we suspect that social desirability bias impeded participation. This study is further limited in that it drew on perspectives from women only, rather than triangulating with insights from partners and others who influence women’s decisions. We hope that future research could further examine facets of our study that did not reach saturation but could affect disengagement such as age, parity, marital status, socio-economic status, and educational attainment. Finally, this study would have been strengthened if we had known whether women learned their status during the current pregnancy or previously; however, these data were not collected.

As pregnant women are increasingly enrolled on ART for life, investigations into why they disengage from care and what can be done to support their continued engagement or re-engagement will become increasingly important. In this setting specifically, policies and interventions to retain women must be sensitive to a national pattern wherein women – regardless of serostatus – prematurely exit the health system at childbirth and in the postnatal period. This study found that stigma, facility constraints, and personal disbelief regarding one’s serostatus form the basis for PMTCT disengagement, and that many barriers spring from the overlap or nexus of these reasons. Until these issues are addressed, gains related to the expansion of treatment will continue to be undermined.

Acknowledgments

For fieldwork support, we thank the clinicians and home-based care providers working within facilities, our data collection manager (Joy Chebet) and the data collection team (Zeswida Ahmedi, Santiel Mmbaga, and Zaina Sheweji). For their expert review during the drafting of this manuscript, we thank Neal Brandes, Rachel P. Chase, Virginia Fonner, Troy Jacobs, Andrea Ruff, Raz Stevenson, and the 2014 Formative Research course of JHSPH. We also thank colleagues at the Ministry of Health and Social Welfare (Neema Rusibamayila, Georgina Msemo, Helen Senu and Koheleth Winani); Muhimbili University (Idda Mosha, Rose Mpembeni, Aisha Omary, and David Urassa); Jhpiego (Eva Bazant, Giuliia Besana, Dunstan Bishanga, Chelsea Cooper, Maryjane Lacoste, Chrisostom Lipingu, and Marya Plotkin); Johns Hopkins (Jennifer Applegate, Abdullah Baqui (PI), Carla Blauvelt, Jennifer Callaghan, Asha George, Shivism Gupta, Amnesty LeFevre, and Diwakar Mohan). For translation of our abstract into Spanish, we thank Maria Cecilia Barreix. For editorial support and reference verification, we thank Ping Teresa Yeh.

Funding

This research was funded by USAID through the Health Research Challenge for Impact (HRCI) Cooperative Agreement (#GHS-A-00-09-00004-00). The National Institute of Mental Health of the National Institutes of Health supported co-author Shannon A. McMahon (Award F31MH095653). The content is the responsibility of the authors and does not necessarily represent the official views of USAID, the National Institutes of Health, or the United States Government.
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Figure 1.
Primary and Ancillary Reasons for Desisting from PMTCT.
Table 1

Loss to follow up at points along the PMTCT care-seeking continuum

<table>
<thead>
<tr>
<th></th>
<th>One visit during pregnancy</th>
<th>More than one visit during pregnancy</th>
<th>One visit at or soon after delivery</th>
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### Table 2
Reasons for disengaging from PMTCT care and services

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<th>Category</th>
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<tr>
<td>ART as beneficial but inaccessible</td>
<td>Fear of social and economic isolation from being identified as HIV positive (stigma)</td>
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<tr>
<td></td>
<td>Lack of confidentiality due to design and delivery of health services in facilities</td>
</tr>
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<td></td>
<td>Competing economic and logistic demands</td>
</tr>
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<td>ART as unnecessary or harmful</td>
<td>Disbelief in positive test due to feelings of health, vitality (absence of symptoms)</td>
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<td></td>
<td>Preference for alternative treatments or strategies</td>
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<td></td>
<td>Concerns about ART side effects</td>
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<td></td>
<td>Depression; feelings of hopelessness and desire to die</td>
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<td>Not knowing about or forgetting to access ART</td>
<td>Misinformation or confusion regarding treatment regimen, provider messaging</td>
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<td></td>
<td>Forgetting appointments, pills</td>
</tr>
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</table>
Tab 25
Intimate partner violence and challenges facing women living with HIV/AIDS in accessing antiretroviral treatment at Singida Regional Hospital, central Tanzania

Agnes Kosia, Deodatus Kakoko, Ave Maria Emilius Semakafu, Tumaini Nyamhanga & Gasto Frumence

To cite this article: Agnes Kosia, Deodatus Kakoko, Ave Maria Emilius Semakafu, Tumaini Nyamhanga & Gasto Frumence (2016) Intimate partner violence and challenges facing women living with HIV/AIDS in accessing antiretroviral treatment at Singida Regional Hospital, central Tanzania, Global Health Action, 9:1, 32307

To link to this article: https://doi.org/10.3402/gha.v9.32307

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Published online: 15 Dec 2016.

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Intimate partner violence and challenges facing women living with HIV/AIDS in accessing antiretroviral treatment at Singida Regional Hospital, central Tanzania

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Background: Human immunodeficiency virus (HIV) remains a global public health problem. Sub-Saharan Africa is the region most affected by HIV/AIDS in the world. Globally, and in Tanzania in particular, women are more affected by HIV/AIDS than men. Tanzania has been reported to be among the countries with the highest burden of intimate partner violence (IPV). This study explored the challenges facing women living with HIV/AIDS (LWHA) attending the care and treatment clinic (CTC) in Singida Regional Hospital in Tanzania.

Design: A qualitative study was performed in which data were collected through in-depth interviews with 35 women LWHA who also experienced IPV. Content analysis was used to analyse the data.

Results: The study findings showed that women LWHA experienced challenges from their male partners in the form of lack of fare to attend CTC, delayed attendance to CTC, verbal threats and intimidation, mistrust partner resulting in changed antiretroviral (ARV) dosing time. Also, systemic challenges such as malfunction of CD4 count testing apparatus contributed to mistrust from their male partners which led to IPV.

Conclusion: In this study, women LWHA experienced IPV challenges that resulted in poor adherence to ARV medication and CTC attendance, as well as insufficient time to collect ARV medication. It is recommended that the government address systemic challenges faced by women LWHA, introduce multiple approaches to address the needs of women LWHA experiencing IPV, and develop strong policies to prevent IPV against women in Tanzania, regardless of their HIV status.

Keywords: IPV; HIV/AIDS; challenges; women living with HIV/AIDS; antiretroviral drugs

Responsible Editor: Carmen Vives Cases, Alicante University, Spain.

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This paper is part of the Special Issue: Gender and Health Inequality - intersections with other relevant axes of oppression. More papers from this issue can be found at www.globalhealthaction.net

Received: 18 May 2016; Revised: 10 November 2016; Accepted: 18 November 2016; Published: 15 December 2016

Introduction

Human immunodeficiency virus (HIV) remains a global public health problem (1). At the end of 2013, there were 35 million people living with HIV (PLHIV). This number is rising, because the use of antiretroviral (ARV) treatment means that more people with HIV are living longer (2). Sub-Saharan Africa (SSA) remains the region most affected by the HIV epidemic, according to the 2014 UNAIDS Gap report (2–4).

It is estimated that 86% of PLHIV in SSA know their disease status and are receiving ARV treatment (2, 5, 6). Since 1995, ARV treatment has prevented 7.6 million deaths globally, including 4.8 million deaths in SSA. These life-saving medicines have gained approximately 40.2 million life years and increased quality of life since the HIV epidemic started (1, 2). Women bear the burden of the HIV epidemic because of increased vulnerability and risk of HIV infection among adolescent girls and young women (2, 4).

The cycle of intimate partner violence (IPV) and HIV infection

Studies show that there is an association between violence against women and the risk of HIV infection. Women in
violent relationships have four times the risk of contracting sexually transmitted infections (STIs), including HIV, than women in relationships without violence. HIV serostatus disclosure may be an initiating or contributing factor for partner violence. HIV-positive women may experience abuse that is more frequent and more severe (6).

**IPV in Tanzania**

In Tanzania, many types of violence are reported, and all have a negative impact on individuals and society, especially on women and children. IPV is perpetrated against women by their husbands or intimate partners (7, 8). Violence against HIV-positive women plays a crucial and devastating role in preventing access to ARV treatment (7). IPV against HIV-positive women has been reported to represent a significant obstacle to HIV prevention and treatment (8). Women living with HIV/AIDS (LWHA) are 10 times more likely to experience IPV than HIV-negative women. Furthermore, HIV-positive women are frequently blamed for transmitting HIV infection to their male partners (8). Maman et al. conducted a study in Dar-es Salaam and showed that violence and threats of violence are emerging factors in the increasing HIV epidemic among women. Violence increases a woman’s risk of becoming infected through forced or coercive sexual intercourse, thereby limiting her ability to negotiate HIV-preventive behaviours (9).

**HIV/AIDS situation in Tanzania**

Tanzania has reported some success in controlling the HIV epidemic over the past decade. Scaling up access to ARV treatment has allowed the national impact of HIV to be minimised. Between 2010 and 2013, the country contributed 5% to the global total number of people newly accessing treatment. As a result, between 2005 and 2013, the number of people dying from AIDS-related illness decreased by 44%, and the total number of PLHIV in Tanzania declined from 7 to 5.1% from 2003/04 to 2011/12 (2, 10). According to the National AIDS Control Program Care and Treatment report, it is estimated that 21–30% of PLHIV in Tanzania have registered at care and treatment clinics (CTCs), and that 63–83% of those eligible for treatment are receiving ARV medication. The availability of ARV treatment has a significant impact on prolonging the lives of HIV-infected people (11,12). Little is known about the challenges facing women LWHA as victims of IPV in Tanzania. This study examined the challenges facing women LWHA attending CTC clinics in the Singida Regional Hospital in Tanzania.

**Methods**

**Study area**

We conducted a study at the CTC and prevention of mother to child transmission (PMTCT) of the HIV/AIDS unit under the reproductive and child health (RCH) unit at Singida Regional Hospital. According to the 2012 Tanzania HIV/AIDS and Malaria Indicator Survey (THMIS), the prevalence of HIV in Singida is 3.3%. Similarly, according to Tanzania DHS 2010, the Singida region has been reported to have a high prevalence of IPV. Physical violence was 50.7%, sexual violence was 21.8% and emotional violence was 50.7% (13). The Singida region is among the eight regions in Tanzania that have reported an increase in the prevalence of HIV/AIDS; women are more affected than men, with 6.6% prevalence versus 2.8%, respectively (14).

**Study design**

This was a qualitative study in which data were collected through in-depth interviews (IDIs). The use of IDIs enabled the researcher to gain an in-depth experience of victims of IPV who are HIV-positive. Due to the nature of the study, the researcher opted for the ‘snowballing’ method in order to easily identify eligible participants who were difficult to locate.

The inclusion criteria/eligibility for participation was defined as being a woman LWHA who had ever had a male partner and experienced IPV. Widows were included in order to get their retrospective experience on the impact of IPV on ARV use. The risk/implication of using snowballing techniques is that they work by chain referral, meaning that people are more likely to identify those with similar issues of interest.

**Selection of study participants**

Purposive sampling was used to get a sample of women LWHA who experienced IPV.

The CTC and PMTCT clinics were used as an entry point where women LWHA were identified. The counselors introduced the researcher to the first few respondents, who were known to have experienced IPV. Through the snowballing technique, the initial respondents were requested to identify others who had similar experiences. The snowballing method was initiated by interviewing one woman. The interviewed woman was then asked to identify other women who were HIV-positive and experiencing IPV from their male partners. Widows were asked to give their retrospective accounts of what happened when their partners were alive. Among widowed and separated women, some were living with new partners while others had decided to live alone with their children. The majority of HIV-positive women knew each other through the use of CTC services and attendance at support groups, which met once a month to provide psychosocial support.

**Data collection**

IDIs were used to collect data; this involved conducting intensive individual interviews to explore the challenges facing victims of IPV. The interviews were conducted by the first author (AK) between February and March of 2014. The supervisors took part in the analysis process, in
which they constructively reviewed categories and themes that merged from the data. A total of 35 interviews were conducted. Interviews were conducted in the Kiswahili language and transcripts were later translated into English for the purpose of quoting the participants. Each interview lasted between 45 and 60 min. Prior to the interviews, the interviewer introduced herself to each participant, explained the purpose and importance of the study, and assured her that all of the information provided would be handled carefully and that confidentiality would be maintained throughout. Permission for note-taking and audio recording was requested and granted by the participants.

Data analysis
The audio-recorded interviews were transcribed by the first author and translated from Kiswahili into English. A sample of translated interviews was back-translated to Kiswahili to ensure that the translation had been done correctly and accurately. The transcriptions were verbatim in Kiswahili. So the verbatim transcriptions were only translated into English to help the researcher during writing. The meaning of the participants’ experience was maintained because the translation was done by two people, and comparison was made to ensure that the original meaning was maintained. The transcripts and field notes were analysed manually by reading and re-reading the text to ensure familiarity with the data. Similarities and differences were examined to determine the relationship between the codes and the meaning. Content analysis was used in a wide range of analytical approaches to analyse the data, and jargon was avoided. Back-and-forth review of the text ensured that appropriate units, codes, and themes were generated to interpret the latent content and thereby respond to specific research questions.

Ethical considerations
Ethical clearance was granted by the Muhimbili University of Health and Allied Sciences (MUHAS). Permission to conduct the study in the region was obtained from the Singida Regional Authorities, including the regional administrative secretary, regional medical officer, and the Singida Regional Hospital managers. All interviewees provided written informed consent to participate in the study.

Results
Socio-demographic characteristics of the study participants
The participants in this study were women LWHA attending CTC in the Singida region, and from the Nyaturu and Nyiramba tribes only. Participants were aged between 20 and 79, and the majority were widows as their husbands had died from HIV/AIDS. Among the remainder, most were married, although a few had separated from their male partners due to violence. Few women interviewed were cohabiting. The majority of participants had undergone formal education, although few had primary or secondary school education. Economically, the majority of study participants were engaged in small businesses such as selling local brew or fruits and tailoring, whereas others were peasants (Table 1).

The analysis of the IPV challenges generated six themes: lack of fare to attend CTC, delayed attendance at CTC, verbal threats and intimidation from male partner, mistrust by a male partner, malfunction of CD4 count testing apparatus, and changed ARV dosing time.

Lack of fare to attend CTC
Participants in this study reported that lack of bus fare due to poor economic status made them miss their CTC clinic appointments. Married participants reported that their male partners did not provide them with the money required to take a bus to attend CTCs, so that they ended up missing their CTC appointments. According to participants, male partners were able to afford the fare, which was only one dollar (2,000 Tanzanian shillings) for a return trip. In these situations, some participants received financial assistance from their relatives but had to attend the CTC on a different day to their appointment date. As a result, they had to queue for a long time to wait for those who had appointments to be seen first, as those who came without an appointment were seen last. This was narrated by one participant, who said:

I went to the CTC on a day which was not my clinic because I missed my appointment day due to lacking the fare for the bus. (Married woman, aged 32)

Furthermore, in our study, widowed women LWHA reported that, during their relationship with their late husbands, they lacked the money needed to buy food to

<table>
<thead>
<tr>
<th>Category</th>
<th>HIV-positive women</th>
<th>Number (n = 35)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20–39</td>
<td>16</td>
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<tr>
<td>40–59</td>
<td>18</td>
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<td>60–79</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Marital status</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Widowed</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Separated</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Cohabiting</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Level of education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No education</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Primary school</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Secondary school</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Source of income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small business</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Peasant</td>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>

Table 1. Basic characteristics of study participants
sustain their health and had to engage in small business to ensure financial assistance. When they requested money from their husbands to buy food, they received insults from their male partners, as described by one participant:

There was a time I was very sick and I laid down for sometimes because of my sickness. I didn’t have any money to buy food for my children and myself and even the fare to attend my clinic. I asked my late husband if he could help me with that, but my husband never gave me money to attend the HIV clinic. (Widowed woman, aged 45)

**Delayed attendance at CTC**

In our study, married women LWHA reported that they had to request permission in advance to attend CTC appointments. The majority reported that, on the day of the appointment, their male partners were violent as they associated the appointment with a lack of care/abandonment by their female partners. Therefore, to ensure that they did not suffer on the day of the CTC appointment, male partners provided a long list of domestic activities for women to perform prior to attending their appointment. Such activities included washing their husbands’ clothes, fetching enough water for domestic use, picking up children from school, and preparing meals on time. They therefore missed morning CTC sessions, including information on adherence to ARV medications and clinic appointments, the side effects of ARV medication, and the importance of nutrition for women LWHA. This was described by one participant:

On the day of my clinic, it happens that I was late attending the CTC because my husband gave me a long list of activities that I had to do before I attended. If I don’t do these, he will not allow me to attend the clinic and I don’t want to miss it. I arrived at the CTC late and missed all of the morning sessions. (Woman, aged 44)

**Verbal threats and intimidation from male partner**

In our study, married women LWHA reported that they experienced verbal abuse from their male partners. They were insulted with rude words; they were told that they are dead, walking useless people who would die soon. They were shouted at when they were seen their health become worse. Male partners were not happy to see participants with tins of ARV medications in their bedrooms, and some got angry and threw the medications into pit latrine toilets so that they could no longer be accessed. Therefore, participants ran short of ARV medications and poor adherence to treatment. This was described by one of the participants:

My man doesn’t want to see me taking my ARV medication in our bedroom. He took my pills and threw them into the toilet so that I can’t access them anymore. I ran short of my medication and I was scared to go back to the hospital to get another dose. (Married woman, aged 32)

**Mistrust by a male partner**

Findings revealed that widowed women LWHA experienced IPV during their relationship with their late husband or partners as they faced suspicion from their male partners. The mistrust arose as a result of the systemic challenges that they faced at the CTC, such as an absence of ARV stock out, long waiting times, and limited functionality of CD4 count testing apparatus. With regard to ARV medication, it was reported that CTCs had frequent shortages of these drugs, resulted into supply of 2-weeks instead of a 4-week supply. As a result of this shortage, patients were required to return for the remaining medication after 2 weeks which caused mistrust by male partner among women LWHA. This was described by one participant:

I told my late husband that I was late arriving home because the clinic was full of patients, so we had to wait a long time to see the Dr, collect our medication, and receive our CD4 results. He didn’t believe me and thought I was having an affair with another man. (Widowed woman, aged 42)

**Malfunction of CD4 count testing apparatus**

Malfunctioning apparatus for testing CD4 counts at the CTC meant that women LWHA were unable to have routine checks of their CD4 counts. CD4 apparatus functionality was typically sporadic, and machines took 1–2 months to get fixed. As a result, women LWHA had to request permission and money from their male partners to test their CD4 counts at the nearest hospital, which was 25 km away from the CTC. These situations resulted in IPV and separation for women LWHA, as expressed by one participant:

At the CTC, the CD4 machine was not working most of the time. Every single visit I went I was always told that it was not working or was under maintenance. To me, it was very cumbersome because when I think about requesting permission to test my CD4 at another hospital, which far away and costs money, it caused misunderstandings between me and my husband. (Separated woman, aged 28)

**Changed ARV dosing time**

Women reported that, regardless of the challenges they were facing from their male partners in relation to adherence to ARV treatment, they did not stop taking their medication as they understood the importance of good adherence to CTC attendance and ARV treatment. They reported hiding their ARV medications in places where their male partners could not access them. Others reported changing their ARV medication dosing times to a time when they knew that their male partners would not be able to see them taking their medication. In this way,
they managed to adhere to ARV treatment. These actions allowed participants to improve their health, thereby increasing their productivity.

I have never missed my dose. I found a different time when I can take my medication, without missing my doses. Now I never miss a single dose of drugs because those medicines help me a lot. They keep me healthy and I can do my daily activities, which helps me to maintain my family life, such as paying rent and school fees for my children and buying food for my kids. (Separated woman, aged 32)

Discussion
The study examined IPV and challenges facing women LWHA in accessing ARVs at Singida Regional Hospital in central Tanzania, as a perception of women LWHA experiencing IPV in Tanzania is not yet well documented. We hope that the information in our study will contribute to improving systemic and social challenges facing women LWHA experiencing IPV in accessing their ARVs at CTCs. This section is organised into six subsections. The first section discusses the lack of fare to attend CTC, the second delayed attendance at CTC, the third verbal threats from male partners, the fourth mistrust by a male partner, the fifth changed ARV dosing time, and the sixth malfunction of CD4 testing apparatus.

In our study, we found that women LWHA could not attend CTC and PMTCT appointments on time because of a lack of bus fare. This financial limitation could be attributed to low socio-economic status, less profitable small-scale businesses such as tailoring, selling local brews, and domestic activities. Some reported that their husbands denied them financial support. Our findings are in line with a study done in Malaysia, which reported that social barriers to adherence, such as difficulty in paying for transport, were among the challenges to ART treatment adherence among women LWHA (10). This implies that a lack of financial independence, which is compounded by the experience of IPV, hinders women’s access to ARV treatment. Similar studies done in Dar-es Salaam (11) and Botswana (12) found that women LWHA fail to attend CTC due to a lack of fare for transport. Thus, they run short of ARVs, which is associated with poor adherence to ARV treatment, which results in treatment failure due to a lack of fare to attend CTC.

Those who obtained financial support from their relatives to attend their appointment had to queue at CTC for a long time and were served last because they attended the CTC on different days which resulted in long waiting times/led to IPV from their male partners. Also, a long distance and unaffordable travel cost were associated with challenges in accessing ARVs among women LWHA in Uganda (12).

In our study, the majority of women reported that, on the day of the appointment, their male partners were violent, as they associated the appointment day with a lack of care/abandonment by their female partners. Our study is similar to a study done in eastern Uganda on IPV against women and implications for HIV prevention, which reported that men complained that their female partners who attend CTC neglected house work, went out without permission and returned home late.

Our study is in line with studies done in Mozambique (15) and Zambia, which showed that men’s fear and denial of HIV have interfered with women’s adherence to ARV treatment (16). Furthermore, the study done in Tanzania showed that women LWHA are at high risk of violence because of the behaviours of their male partners, which are associated with cultural and norms issues (9).

Mistrust from their male partner was interpreted as the belief that women attending CTC take the opportunity to have extramarital relationships, which resulted in mistrust from their male partners. We also found that women LWHA’s lack of trust was caused by challenges at the treatment clinic, such as lack of ARV medication stocks, too many patients at the CTC, and shortage of health care workers, leading to slow service and excessive waiting times and, subsequently, exacerbated IPV among women LWHA. Our findings correlate with those from Uganda, which showed that a long waiting time at the CTC was associated with wastage of earnings (17).

In our study, women LWHA reported that their male partners were not happy seeing them taking ARVs in front of them, as it was associated with travel to the CTC for ARV refill and adherence. To avoid conflict with their male partners, the women had to change their ARV dosing time. Our finding are in line with a study done in Zambia, which found that a lack of decision-making among HIV-positive women experiencing IPV has been attributed to a lack of constant refill of ARVs, which is associated with travel and other potential expenses, which have been reported to be barriers among HIV-positive women who lack knowledge, permission, and support from their male partners (18).

Malfunctioning of CD4 testing apparatus was also reported as a challenge in our study. Women LWHA reported that CD4 machines were not working most of the time and could take a long time to be fixed; as a result, they were unable to test their CD4 counts, a measure which is very important for patient monitoring. This observation is in accordance with a systematic review in Malaysia, which showed that a lack of CD4 testing and delays in receiving CD4 results were contributing factors to HIV-positive patients becoming lost to care in SSA (19, 20).

Strengths and limitations of the study
Trustworthiness was enhanced by ensuring credibility, transferability, dependability, and confirmability of the study (21). Credibility was ensured in four main ways: firstly, the researchers requested respondents to be honest
Women LWHA experienced IPV chaos from their male partners which was characterised by a state of total confusion with no order, disruption, unpredictable behaviour, and unorganized life. Lack of male support led to poor adherence to ARV medication, and CTC systemic challenges, such as the absence of ARV medication stocks and inadequate functionality of CD4 testing apparatus, led to exacerbated IPV. We strongly recommend that the government of Tanzania address the systemic challenges faced by women LWHA experiencing IPV so that they can access the appropriate CTC services to prevent IPV. The government should introduce policies to provide multiple approaches to address the needs of women LWHA experiencing IPV such as a supportive environment, involving women LWHA as peer educators to reach more women with support and a network. IPV against women LWHA should be incorporated into various programmes to address the overlapping of the HIV epidemic and violence against all women in Tanzania, regardless of their HIV status.

Authors’ contributions
AK was involved in the design of the study, data collection, transcription, analysis, and drafting of the manuscript. DK and AS were involved in the design of the study, data collection, analysis, and drafting of the manuscript. TN and GF participated in the design of the study, transcription, analysis, and drafting of the manuscript. All authors read and approved the final manuscript.

Acknowledgements
The authors acknowledge the Singida regional administrative secretary, the Singida Regional Hospital administration, all healthcare workers at the CTC and PMTCT, the field assistant, and the study participants, who provided useful information for this study.

Conflict of interest and funding
The authors declare that they have no competing interest. This study was conducted with support from the Swedish Agency for Research Cooperation (SIDA) under Capacity Building.

Paper context
Intimate partner violence (IPV) against HIV-positive women has been reported to be a significant obstacle to HIV prevention and treatment. This paper focuses on challenges facing women living with HIV/AIDS (LWHA) as victims of IPV. The paper provides lived experiences of interplay between IPV and utilisation of ARVs among HIV-positive women in Singida. We recommend to the government of Tanzania to address systemic challenges faced by women LWHA in accessing HIV care and treatment.

References


Tab 26
FIELD NOTES

From businesswoman to banana vendor: mental health implications of HIV stigma in Tanzania

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AIDS 2016, 30:N33–N35

Keywords: AIDS, HIV, mental health, people living with HIV/AIDS, stigma, Tanzania

HIV-related stigma can be broadly classified into physical, social, verbal, and institutional discrimination (Fig. 1). It has been shown to have a negative impact on medication adherence, mental health, and disclosure of HIV status [2–4]. In Tanzania, 4.7% of the population ages 15–49 are living with HIV/AIDS [5]. Approximately 63–83% of people living with HIV/AIDS (PLWA) are receiving antiretroviral therapy (ART) – there is a significant opportunity to improve access and adherence [6]. During a recent field visit to Mwanza, Tanzania for research and teaching projects, our team met Anne, a 54-year-old Tanzanian woman with HIV, whose life experiences reinforce the impact of HIV-related stigma in the developing world. An interview was conducted in Swahili and then translated into English, forming the basis for this field note (A pseudonym is used to protect privacy).

Prior to her diagnosis in 1990 at the age of 28, Anne owned a local restaurant that provided financial support for her husband and three children. She tested positive in 1990 after her husband died of HIV, but she refused to disclose her HIV status to her children until 1993. She feared that stigma would negatively influence her family dynamic causing a rift between her and her children. Delaying the disclosure of HIV status is common, and it can propagate a vicious cycle of new infections and poor health practices such as unprotected sex [4]. Family cohesiveness, which can influence social and emotional support, is higher among families whose parents disclose their HIV status to their child (ren) compared with those who do not [7]. Further, parents who disclose their status to their children are more likely to attend clinic appointments [8] and have less anxiety and depression [9]. The fear of parental disclosure to children is a barrier that should be addressed to promote healthy family dynamics. Indeed, parental disclosure may be critical to develop culturally appropriate interventions in sub-Saharan Africa and other areas where HIV/AIDS is prevalent [10]. In certain regions of South Africa where such interventions have already been piloted, disclosure rates have improved [11,12].

Shortly after community members became aware of her HIV status, Anne was forced to close her restaurant because of declining business. She attributed her restaurant’s decline to public fear of HIV transmission via food and utensils. This irrational fear resulted in institutional stigmatization, or treatment in an institutional setting that identifies a person as having HIV and results in negative outcomes for the person such as loss of livelihood and damaging depiction in the media [1]. Today, Anne earns a minimal income selling bananas part-time in local markets to make a living.

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Received: 9 August 2016; revised: 24 August 2016; accepted: 25 August 2016.

DOI:10.1097/QAD.0000000000001246
Anne’s initial loss of livelihood and HIV-positive status resulted in depression. She reported that she was suicidal and felt that her life had no meaning. It is estimated that approximately 10–20% of HIV-infected individuals in sub-Saharan Africa suffer from clinical depression [13–15], with another 20–40% having depressive symptoms [16]. Further, according to a report from WHO and Denmark’s development cooperation under the Ministry of Foreign Affairs of Denmark (DANIDA), out of the 10,000 severely mentally ill patients in Tanzania, barely one-fifth are able to follow-up with their psychologists for a year [17], indicating that access to mental healthcare in Tanzania is lacking. Depression can negatively impact HIV management because of its negative influence on PLWA self-efficacy and motivation for medication adherence [18]. By not adhering to their medications, PLWA are at greater risk for developing lower immune function, higher viral load, poor response to ART, and greater mortality [19–24]. Hence, the alleviation of depression may improve ART adherence and clinic attendance, because of increased self-efficacy and motivation in PLWA [18]. Although not much is known about HIV and mental health in sub-Saharan Africa [25], more research and investment in this area is needed to improve health outcomes in developing nations.

Beliefs that lead to HIV-related stigma are not limited to developing countries like Tanzania. Public health interviews and surveys carried out in the United States in 2016 found that many HIV-infected African-American women in the south felt stigmatized by friends and family members [26]. Like Anne, many of these women experienced workplace or institutional discrimination; even if the discrimination was identified as a human rights violation, they often would not take legal action because of their disempowerment and financial instability [26]. Similarly, our study participant could not recover her business after it failed and had no legal recourse to fight discrimination. Instead, she sought out a new support system on her own, through educational HIV seminars, counseling, and her faith.

After she was able to manage her depression, Anne was inspired to become a home-based HIV counselor. She visits patients in her local region to provide them with HIV education, advice, and emotional support. She reports that about one in five of her clients experience significant stress because of their HIV status and attributes much of this HIV stigma–related stress to financial hardship. This was certainly the case for Anne in the initial years of her diagnosis. Anne believes that societal discrimination has reduced dramatically since her time of diagnosis. She advocates for widespread HIV education via media in the form of printed materials, in addition to training more home-based counselors to reduce HIV-related stigma. The outcomes and cost-effectiveness of such an intervention, which included counseling and access to HIV testing, was recently studied in rural South Africa [27]. In a comparison between a clinic-based versus home-based HIV counseling and testing, home-based counseling and testing was more effective in both measured outcomes and cost-effectiveness [27]. Home-based HIV counseling and testing may be an efficient option for developing countries such as Tanzania that have rural populations and healthcare personnel shortages [27]. Furthermore, reducing HIV-related stigma at its core potentially could be accomplished through a group-based behavioral intervention, which was piloted with some success in 2014 with HIV-infected youth in various US locations [28].

HIV/AIDS takes a physical, financial, and emotional toll on patients, communities, healthcare providers, and counselors. These stressors can compound and worsen a patient’s situation [26]. Anne’s story reveals the sociocultural beliefs that can lead to the discrimination of HIV/AIDS patients and the severity of depression and financial hardship that can result. In light of the relationship between HIV-related stigma and mental health and financial well-being, we conclude that it is

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**Fig. 1. Causes, manifestations, and effects of HIV stigma.** Adapted with permission from [1].
critical for PLWA in Tanzania and around the world to have access to biomedical and psychological therapeutic treatments for mental health disorders. We recommend the provision of additional HIV educational materials, expanded home-based counselor training, and increased availability of mental health resources for PLWA in Tanzania and the developing world.

Acknowledgements

S.K.R., S.A., and K.R.R. met the study participant, created interview questions, carried out the interview, and drafted the early manuscript. M.L., P.A.P., M.E.B., A.O.F., and R.T.H.F. edited the early manuscript. S.K.R., W.B.M., and C.A.D. completed the final revisions. All contributing authors reviewed and approved this manuscript for publication. We are additionally grateful to Anne, our interviewee who made this field report possible; and John Shadrack Mandago and Daudi Amon Zimulinda, our liaisons and translators.

This work was supported by the Infectious Disease Society of America Medical Scholars Program; University of California, Irvine School of Medicine Global Initiative; and Pendulum Global.

Conflicts of interest

There are no conflicts of interest.

References

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Tab 27
Background. The impact of stigma on adherence to antiretroviral therapy (ART) has been less studied in Tanzania. Recent studies indicate that people on ART still experience stigma. Qualitative information on the subject matter is especially insufficient. This paper reports on the dimensions of stigma and discrimination and their impact on adherence to ART as experienced by people living with HIV (PLHIV). A phenomenological approach was used to gather information on the lived experiences of stigma and discrimination. The sample size was determined according to the saturation principle. Results. Respondents experienced different forms of HIV-related stigma such as verbal, social, and perceived stigma. Various forms of discrimination were experienced, including relational discrimination, mistreatment by health care workers, blame and rejection by spouses, and workplace discrimination. HIV-related stigma and discrimination compromised ART adherence by reinforcing concealment of HIV status and undermining social support. Conclusion. After nearly a decade of increasing the provision of ART in Tanzania, PLHIV still experience stigma and discrimination; these experiences still appear to have a negative impact on treatment adherence. Efforts to reduce stigma and discrimination remain relevant in the ART period and should be given more impetus in order to maximize positive treatment outcomes.

1. Introduction

HIV/AIDS is a major public health concern in sub-Saharan Africa where 69% of all PLHIV are found [1, 2]. Furthermore, the region accounts for three-quarters of AIDS deaths. In response to this ugly situation, a number of countries in the region, including Tanzania, have embarked on the provision of antiretroviral therapy [3].

Tanzania started to increase the provision of antiretroviral therapy in 2004 [4]. It is estimated that between 150,000 and 200,000 people are currently receiving ART, which represents between 63% and 83% of those needing it [4]. The long term success of this care and treatment programme depends on understanding the factors influencing adherence to the treatment [5]. The global literature shows that optimal adherence to treatment has been found to be influenced by a number of factors which are summarised into four main groups: (1) patient factors, (2) medication factors, (3) the patient-health care provider relationship, and (4) the system of care [5–8].

The impact of stigma on adherence has been less studied, particularly in Tanzania. Recent studies indicate that people on ART still experience stigma [9–16]. Qualitative information on the subject matter is especially insufficient. This paper, therefore, reports on the dimensions of stigma and discrimination and their impact on adherence to antiretroviral therapy (ART) as experienced by people living with HIV (PLHIV).

Conceptual Framework. In this paper, HIV/AIDS-related stigma is defined as an attribute or quality which “significantly discredits” PLHIV who are on ART in the eyes of their family, community, and health care providers [17].
HIV/AIDS-related discrimination implies denying PLHIV the necessary social support for the consistent uptake of antiretroviral drugs.

Deacon [18] argues that there are different types of stigma associated with HIV/AIDS, namely, self-stigma, anticipated stigma, and enacted stigma. Self-stigma occurs when an individual internalizes feelings of shame or blame due to his/her negative social judgment of the HIV positive status. Anticipated stigma is a negative response PLHIV expect to receive from their family and community if their HIV positive status was made known. Enacted stigma is discrimination which involves actual acts or omissions that disadvantage a person on ART.

There are several social forces that determine stigma, including gender, poverty, and other social inequalities [19]. For instance, gender inequality determines the extent to which sexism will mark the course of the HIV disease; for example, in a highly patriarchal society, the disclosure of HIV positive status is more likely to provoke stigma and the threat of domestic violence, than in settings where women enjoy gender equity. Poverty, which by itself is an undesirable attribute, could be the primary cause of greater stigma among PLHIV. Unfortunately, gender inequality and poverty exacerbate one another, thereby synergistically increasing the risk of AIDS-related stigma. It follows that fear of stigma and discrimination results in nondisclosure of an HIV positive status which, in turn, affects adherence to treatment. Likewise, HIV-related stigma and discrimination diminish social support for PLHIV, thereby increasing the risk of poor adherence to antiretroviral therapy.

2. Method

2.1. Study Site. The study took place at the Mnazi Mmoja Care and Treatment Clinic (CTC) which is situated in Ilala Municipality, Dar es Salaam. The Dar es Salaam region was chosen because it was the first to implement the provision of free ART in June, 2004, with a pilot programme at Muhimbili National Hospital, after which the programme of care and treatment started in Tanzania [4]. Since then, care and treatment have expanded to cover the entire country.

2.2. Study Design. This was a qualitative study which used a phenomenological approach to gather information on the lived experiences of stigma and discrimination. The phenomenological approach seeks to describe the meanings embedded in the human experience so as to understand the essence of the phenomena being investigated [20].

2.3. Study Population. The population studied included everyone living with HIV and AIDS, 18 years and above, attending the CTC clinic at Mnazi Mmoja, and on ART.

2.4. Sample Size. The sample size was determined according to the saturation principle; that is, data collection stopped at the point when new data no longer brought additional insights into the research questions [21]. A total of 26 PLHIV who were on ART participated in this study. Characteristics of respondents are shown in Table 1.

2.5. Sampling Procedure. A nonprobability purposive sampling method was used to select the study respondents. HIV positive people who had been on ART for more than two months were purposively selected, because they had experience of the situation and were able to give more information concerning stigma and its impact on adherence to antiretroviral therapy. The clinic in charge was briefed about the study and asked to identify potential respondents.

2.6. Data Collection Procedures. Data were collected by means of in-depth interviews (IDIs). These were unstructured and guided by open ended questions. Through this guide, an attempt was made to explore respondents’ experiences on various dimensions of stigma and how they impacted on treatment adherence. It is worth noting that the

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Number of participants</th>
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<tbody>
<tr>
<td>Age (years)</td>
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<tr>
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<tr>
<td>Level of education</td>
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<td>Marital status</td>
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<td>Married</td>
<td>17</td>
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<td>Total</td>
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</tr>
<tr>
<td>Occupation</td>
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<td>Unemployed</td>
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<td>Housewife</td>
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<td>Government-employed</td>
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<tr>
<td>Others</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
</tr>
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</table>
questioning did not necessarily follow a sequential order [22]. That is, the order in which the questions were asked varied in response to interaction with the informants. The language for the interviews was Kiswahili. The interviews were audio-recorded, transcribed, and then translated into English. The IDIs took place in a private and quiet place to maximise privacy and lasted for 30 to 45 minutes.

2.7. Ethical Approval. Ethical approval was sought from the Institutional Review Board of Muhimbili University of Health and Allied Sciences. After the study received ethical clearance, permission to conduct the study was also sought and received from the Ilala Municipal Authority. Each potential respondent was informed about the main objective of the study and about his or her right to decline participation outright, or to withdraw consent at any stage of the research, without undesirable consequences. If the potential respondent agreed to participate in the study, he or she was asked to sign a consent form. Data were gathered without the researcher knowing the names of respondents or being made aware of any unique identifiers attached to the data.

2.8. Data Analysis. A thematic analysis approach was used to analyze the data; the use of this approach implies that data were analyzed through the examination and categorization of respondents’ comments. The analysis was carried out in three stages: firstly, by line-by-line coding of field notes and transcripts; secondly, by in-depth examination and interpretation of the resultant codes and their categorization into descriptive and analytical themes; and, thirdly, by development of an overarching theme [23, 24]. The coding involved the development of concepts; that is, the data were pierced into discrete elements in order to expose underlying thoughts and meanings.

3. Results

3.1. Sociodemographic Characteristics of the Respondents. As summarised in Table 1, most respondents (16 out of 26) were females and belonged to the age group of 31–40 years. About half (12 out 26) of the respondents had a primary level of education or had never gone to school. Most (14 out 26) had a low level of income, of whom 11 engaged in small scale business and three were not employed at all.

3.2. Themes. The themes for this study emerged out of the thematic network analysis process (see Table 2). The process generated 23 codes covering nine basic themes. These basic themes were further clustered into eight organising themes, generated 23 codes covering nine basic themes. These basic thematic network analysis process (see Table 2). The process

3.3. Dimensions of the Stigma Experience among People on ART. Different forms of HIV-related stigma among people on ART were experienced by respondents, including verbal stigma, social stigma, and perceived stigma (the fear of stigma associated with disclosing the HIV status).

3.3.1. Verbal Stigma. Participants reported that if one is suspected of being HIV positive and on ART, he/she is given names that imply that his/her days of staying alive are numbered. The stigmatising names included phrases such as “keys to mortuary.” This is what one of the respondents said:

Sometimes it is not the disease that kills… it is the bad words and remarks from people. One day I heard one person telling a patient who was on ART that she was key to mortuary because he believed that, once you are on ART you are about to die. (Female respondent, 34 years old)

This tendency of labelling people living with HIV, or name calling, is part of gossip and accounts for most of the stigmatising behaviours from the community. The participants argued that labelling is conceptualised as society’s symbolic punishment for those who are considered to have violated sexual moralities.

3.3.2. Social Stigma. The respondents expressed fear of being morally judged for being HIV positive and on ART. Their fear was based on the observation that community members tend to associate HIV positive status with engagement in immoral behaviours, as expressed by one of the respondents:

I was scared because I was worried about the response of my partner and other people close to me. I was concerned that they would want to know how I got infected. So I asked myself, how will my husband regard me? Will he understand me? But I believe I got infected with HIV when I had a blood transfusion. I have never been a prostitute. (Female respondent, 35 years old)

A similar concern was expressed by another respondent:

It really pained me and I cried a lot. I asked myself, where did I get this disease? But then I realised that I got it from my parents. One day I went to visit my aunt and I saw my young brother (who was taken in by my aunt after the death of our mother) using antiretroviral drugs. I asked my aunt and then I knew I also got HIV from our parents. I noticed I’m HIV positive in 2006 but I did not let anybody know because I feared how they would regard the circumstances that made me get infected. (Female respondent, 23 years old)
<table>
<thead>
<tr>
<th>Text Codes</th>
<th>Basic themes</th>
<th>Organising themes</th>
<th>Global themes</th>
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</table>
| **Sometimes it is not the disease that kills... it is the bad words and remarks from people. One day I heard one person telling a patient who was on ART that she was “key to mortuary” because he believed that, once you are on ART you are about to die. I was scared because I was worried about the response of my partner and other people close to me. I was concerned that they would want to know how I got infected. So I asked myself how will my husband regard me? Will he understand me? How will he judge me? But I believe I got infected with HIV when I had a blood transfusion. I have never been a prostitute.** | (i) Gossip  
(ii) Bad words | (i) Name calling against PLHIV | Verbal stigma |
| | (i) Worry  
(ii) Fear of how they contacted HIV | Concern about perception by significant others | Social stigma |
| **I did not take my medication on two occasions when relatives and neighbours were in my house and have never disclosed my status to them. I did not get time to take out medicine from my drawer. I frequently face this problem of trying to hide my medicine from others because I am living in a rented single room and I feared if they see my ARVs they will tell others I am infected.** | (i) Judgement  
(ii) Feeling too insecure to take medicine openly  
(iii) Fear of disclosing status  
(iv) Fear of being seen taking ART  
(v) Hiding medicine  
(vi) Fear of telling others about infection | Afraid of being stigmatised | Perceived stigma |
| **One of my neighbours told my son to give the medicines to her and she went to the pharmacy to confirm if they were truly ARVs or not. After confirming, she brought them back to my son and from that day our friendship changed, because at first we used to cook and eat together but nowadays [sic] she is no longer interested in sharing anything with me. I was told I have HIV and I had to start treatment. I told my husband, but suddenly he left and came back after a week and divorced me. He told me to go to my relatives so that they can take care of me when I fall sick because he blamed me as the source of the problem.** | (i) Change in relationship  
(ii) Isolation (including physical and social exclusion)  
(iii) Blame  
(ii) Harassment  
(iii) Desertion | (i) Fear of being morally judged for being HIV positive and the fact that one is on ART  
(i) Blame  
(ii) Harassment  
(iii) Desertion | Relational discrimination  
Blame and rejection of the spouse  
Spousal discrimination | Dimensions of discrimination experience among people on ART |
<table>
<thead>
<tr>
<th>Text</th>
<th>Codes</th>
<th>Basic themes</th>
<th>Organising themes</th>
<th>Global themes</th>
</tr>
</thead>
</table>
| I have not taken my medication at the right time on two occasions because relatives and neighbours were in my house and I didn’t disclose my status to them. | (i) Not taking pills at the right time  
(ii) Concealment | (i) Stigma reinforces concealment of HIV status  
(ii) Lack of freedom to take ARVs | Failure to disclose for fear of being discriminated against | HIV-related stigma and discrimination compel PLHIV not to adhere to antiretroviral therapy |
| I am living in Morogoro but I usually refill my ART here at Mnazi Mmoja CTC. So, sometimes my ART might be finished but I don’t have the bus fare to come to refill in Dar es Salaam. | (i) Lack of bus fare  
(ii) Failure to refill ARVs | | | |
| I pray to God everytime [sic] I take my medicine and I believe one day Jesus Christ will cure me. My conscience [sic] has agreed to the problem so I regard it as just [sic] any other common disease. We discuss with my fellow patients different HIV issues and give comfort to each other. We meet weekly in our support group. Also, my wife comforts me. She is a hospital employee so she knows these things well. . . I didn’t tell. And my close relatives, I fear they would tell others and let the information spread and it could result in discrimination. | (i) Religious belief  
(i) Spiritual healing  
(i) HIV is like any other disease  
(ii) Psychosocial support  
(i) Comfort  
(ii) Relatives tell others about HIV status | (i) Role of spiritual healing | Social support groups serve as forum for learning and exchange of information | Role of social capital | Coping strategies adopted to deal with HIV/AIDS stigma and discrimination |
The participants, particularly women, attributed social stigma to community members’ perceptions that all HIV positive people were prostitutes or engaged in sex carelessly and that being on medication means one is about to die.

3.3.3. Perceived Stigma. Respondents expressed a fear of being stigmatised; that is, they felt that they might be treated negatively by family and community members, as expressed by one of the respondents:

I have not taken my medication on two occasions when relatives and neighbours were in my house and have never disclosed my status to them. I did not have time to take out the medicine from my drawer. I frequently face this problem of trying to hide my medicine from others because I am living in a rented single room and I feared if they see my ARVs they will tell others I am infected. (Male respondent, 42 years old)

Respondents feared negative consequences if their HIV status became known to their close relatives. They had experienced friends and relatives gossiping and ostracising people living with HIV. Indeed, it was reported that the fear of stigma prevented some users of antiretroviral drugs (ARVs) from seeking support, even when they were seriously sick, and this also may affect their adherence to ARVs:

The society does not know my HIV status because I have not told them and will not, since they have a negative attitude towards people on ARVs. One day, when I came to clinic, there was a woman who was very sick who stays in Temeke but she had come alone [to a clinic in a neighbouring district of Ilala] because she did not want anyone to know where she was going. People are still isolating us. (Female respondent, 42 years old)

3.4. Dimensions of Discrimination Experience among People on ART. The respondents experienced various forms of discrimination, including relational discrimination, mistreatment by health care workers, blame and rejection by spouses, and workplace discrimination.

3.4.1. Relational Discrimination. Respondents experienced changes in relationships when spouses, family members, friends, and neighbours discovered that a particular person was on ART. This was well narrated by one of the respondents:

One day when I came back from work I saw something unusual from my neighbours. I thought about the situation for sometime but didn’t get an answer. Later, one of the neighbours came and told me what happened a few hours ago. She told me that my son came out with my ARV container thinking that it was children’s play device [locally-manyanga] because when the ARVs are in a tin and shaken, they produce a certain sound. That day, I forgot the keys of the drawer where I usually keep my medicines. One of my neighbours told my son to give the medicines to her and she went to the pharmacy to confirm if they were truly ARVs or not. After confirming, she brought them back to my son and from that day our friendship changed, because previously we used to cook and eat together, but nowadays [sic] she is no longer interested in sharing anything with me…. She told other neighbours about it and caused me to be very unhappy. (Female respondent, 36 years old)

3.4.2. Spousal Discrimination. Respondents complained of blame and less support from their partners once diagnosed with HIV and because of the fact that they were on ART. In spite of a reduction of internalised stigma, some respondents experienced blame-related stigma from their spouses and their communities. This was well narrated by one of the respondents:

I was told I have HIV and I had to start treatment. I told my husband, but suddenly he left and came back after a week and divorced me. He told me to go to my relatives so that they could take care of me when I fall sick because he blamed me as the source of the problem [she spoke with grief]. (A female respondent, 39 years old)

A similar concern was expressed by a male respondent:

My wife is the one who brought the disease. I warned her many times about infidelity but she did not care. When I told her that I’m HIV positive she deserted me and went to her parent’s home. She left me with a 3 year old child. (Male respondent, 49 years old)

When stigma was experienced within the family, its consequences could be harder to overcome and even resulted in treatment interruption.

3.4.3. Mistreatment by Health Care Workers. Respondents reported that sometimes they experienced discrimination from health care providers, manifested by neglect, verbal abuse, overusing protective materials such as gloves, and paying little attention to their concerns. The following quote is illustrative:

Sometimes, if you ask health care providers something, they do not respond to your question. They pretend to be busy, though most of the time it is not true that they are busy, they just neglect us. Sometimes they use abusive language against us and they delay giving services. They don’t value people on ART anymore in this world. When you arrive late to the clinic you are told that you will be moved closer to where you live. They use it as a way to threaten us because they know most of us are going away to avoid discrimination. (Male respondent, 43 years old)

Four respondents complained about the care they were given at Mwananyamala CTC (the clinic they used to attend before...
moving to Mnazi Mmoja CTC). Nurses at Mwananyamala CTC were accused of doing inhuman things that influenced respondents’ decisions to move to Mnazi Mmoja. For instance, one of the respondents claimed the following:

At Mwananyamala CTC some nurses delay in attending to patients and use offensive statements. One day, a nurse told me “take your ‘bomb’” - meaning my file - and she continued, saying ‘I am not the one who gave you HIV’. Whenever I see that nurse or remember those words - it hurts a lot [the participant cried after narrating that painful experience]. (Female respondent, 49 years old)

3.5. Impacts of Stigma and Discrimination on Adherence to Antiretroviral Therapy. The fear of stigma experienced by people on ART resulted in nonadherence to medication through a number of ways. Firstly, because of stigma, a substantial number of respondents revealed that they attend a care and treatment clinic that is far away from their homes. They fear being identified by people who know them, including health staff at a nearby CTC, as pointed out by one of the participants:

No. I do not like the nearby clinic, because many people know me well and can see me. And even healthcare provider sat the hospital near to where I live have a tendency to break patient confidentiality. A good example is one of my friends who was declared publicly at a bar to be HIV positive and she is now on medication [ARVs]. (Female respondent, 37 years old)

Consequently, a patient may feel compelled to go to a different district, or even region. For instance, a person living in Mbagala in the Temekete District would prefer to go to Mnazimmoja CTC, which is in a neighbouring district of Ilala. Indeed, one of the respondents in this study lived in the Morogoro region. She decided to come all the way (193Km) to Dar es Salaam in an attempt to conceal her HIV status from her neighbours:

I live in Morogoro but I usually refill my ARVs here at Mnazi Mmoja CTC. So, sometimes I run short of ARVs because of inability to come to refill in Dar es Salaam. (Female respondent, 23 years old)

A similar concern was expressed by another respondent:

I sometimes worried about meeting my neighbours in hospital for ARV refills. What I am doing nowadays [sic] is to attend a far away clinic and wear a hijab and sun-glasses which will not be easy for whoever knows me to recognise who I am. I am not a muslim and am not wearing this in my community. I always carry them in my bag and once I see an ATM machine I wear them there, then I go to the clinic, and I do the same once I want to go back home/to work. All the time I worry. One day I did not refill my ARVs due to bumping into relatives. (Female respondent, 35 years old)

Consequently, because of preferring a distant CTC, some ART clients may fail to attend regularly, partly due to lack of the fare for transport, and thereby run short of ARVs.

Secondly, stigma reinforces the concealment of HIV status and consequently one may not feel at ease to take ARVs in the presence of family members or work colleagues, thereby delaying ingesting the drugs. The following remark made by one of the respondents is illustrative:

I have not taken my medication for two occasions when relatives and neighbours were in my house and I have never disclosed my status to them. I did not get time to take out medicine from my drawer. I frequently face this problem of trying to hide my medicine from others because I am living in a rented single room and I feared if they see my ARVs they will tell others I am infected. (Male respondent, 42 years old)

Another participant added the following:

I am not free because I have not told people that I am sick. I have a single room. As a result, sometimes I delay taking my dose of ARVs as I have to wait for people to leave so that I remain alone. Similarly, at work I tend to go to the toilet to take medications because I do not want them to know or suspect anything about my HIV status. (Male respondent, 24 years old)

Thirdly, HIV-related stigma and discrimination undermine social support which often culminates in food insecurity and attendant fears to take ARVs on an empty stomach. One of the respondents remarked the following:

ART helps me. But what makes me deteriorate nowadays is the inconsistent availability of food. I don’t get enough food and fruits as I was advised. I am not capable of buying food. I am worried about the side effects of taking medicine on an empty stomach. (Male respondent, 49 years old)

3.6. Coping Strategies Adopted to Deal with HIV/AIDS Stigma and Discrimination. Key coping mechanisms that emerged from respondents’ narrations included spiritual devotion, acceptance of the illness, seeking information and/or exchanging views about the illness, preemptive disclosure, putting ART in an unlabelled envelope, and swallowing ARVs in the wash room [toilet].

3.6.1. Spiritual Devotion. The majority of respondents indicated that their faith in God gave them courage to adhere to medication. They received spiritual and psychological support from the religious leaders. Spiritual devotion appeared to be a strong coping strategy among study respondents:

I pray to God everytime [sic] I take my medicine and I believe one day Jesus Christ will cure me. (Female respondent, 30 years old)

The study revealed that respondents’ belief in the healing power of God had better health outcomes as their belief
reduced their self-stigma. Indeed, their level of faith in the healing power of God was so high that some thought that, even if they died, it would not be because of HIV; it would be God's will. The following quote is illustrative:

I get comfort from my religion because God is the one who enables us to live. In general, I perceive AIDS as a common disease and death is not necessarily caused by AIDS. You can sleep without being sick and still die. So I believe if I die, then it is God's will and not AIDS. (Male respondent, 41 years old)

3.6.2. Acceptance of the Illness. The study respondents accepted the condition of being HIV positive and considered HIV/AIDS as no longer fatal, particularly after they started ART and experienced a remarkable improvement in health. One of the respondents shared his feelings as follows:

I see HIV as any other disease and I do not think that I will die because of it. When I die, I will know it is God's will, not because of AIDS. If I were to die, I could have died when I was very sick those days. (Male respondent, 57 years old)

A similar concern was expressed by another respondent:

My conscience has agreed to the problem so I regard it as just any other common disease. (Female respondent, 30 years old)

The notion of regarding HIV/AIDS as an ordinary disease has been internalised mainly by the respondents who were on ART for three years or more. Some respondents spoke of the support they received from their families as having contributed to the peace of mind they were experiencing.

3.6.3. Concealing the Identity of ARVs. Respondents stated that, in the face of stigma and discrimination, they are compelled to conceal the identity of ARVs by putting them in an unlabelled envelope, or one bearing a drug name that is unfamiliar to most lay people. This measure was well expressed by one of the respondents:

I remove ARVs from their original container and put them in a plain envelope from where I take them, even in the presence of other people. (Female respondent, 28 years old)

3.6.4. Sharing Experiences about Taking ARVs in Support Groups. Social support groups seemed to play an important role in handling stigma and discrimination. Such groups constitute a forum for learning about challenges related to living with HIV and taking ARVs.

The following quote is illustrative:

We discuss with my fellow support group members different challenges related to taking ARVs and how to cope. In this way, we comfort each other. We meet weekly in our support group. Also, my wife comforts me. She is a hospital employee so she knows these things well. (Male respondent, 52 years old)

3.6.5. Preemptive Disclosure. Some people on ART disclose their HIV status to family members, neighbours, and/or work colleagues and talk very freely about it and the challenges they face, so preempting gossip. This coping mechanism was well narrated by one of the respondents:

I have disclosed my status to almost everybody because I am sometimes seen on the television or heard on the radio revealing that I am HIV positive (I am an AIDS activist). At my workplace (school) everybody knows I am infected. It helped me a lot to disclose my status because I sometimes feel unable to work and I just tell my boss by phone that I am sick. He always understand the situation and my colleagues say jokingly "mmmmh! today viruses have woken up and are harassing her (in local language - virusi vimekolokocha)" that's why she was not able to report to work. One day, one of my colleagues told me that some of teachers were saying that I didn't come yesterday because viruses were harassing me, but I just told her, I don't care (she laughs). (Female respondent, 46 years old)

People of this kind, who disclose and talk freely about their HIV+ status, can strengthen others living with HIV by helping them overcome internalised stigma, cope with stigma, rebuild their self-esteem, and develop skills to take leadership roles in antistigma education and action.

4. Discussion

A range of ways in which stigma and discrimination affect ART adherence were found in this study. Many were consistent with those found in other studies, and others were new and unique to this setting. This section is organised into three subsections. The first section discusses dimensions of stigma and discrimination among people on ART. The second concerns the impact of stigma and discrimination on ART adherence. The third discusses coping mechanisms.

4.1. Dimensions of Stigma and Discrimination among People on ART. The findings of this study indicate that the respondents experienced different forms of HIV-related stigma, including verbal, social, and perceived stigma (the fear of stigma associated with disclosing HIV status). This suggests that both intrapersonal and interpersonal fears still exist, despite nearly a decade of increasing the provision of ARV. The study respondents experienced loss of dignity and friendship. Similar findings have been reported in other countries [25]. The respondents experienced various forms of discrimination, including relational discrimination, blame and rejection by their spouses, workplace discrimination, and mistreatment by health care workers. This suggests that, despite improvements in health status as a result of being on ART, PLHIV are denied services or entitlements as
a result of deliberate actions or omissions by spouses, family members, friends, and/or health care workers. These findings are supported by several other studies [16, 26–30].

4.2. The Impact on ART Adherence of Stigma and Discrimination. The study found that the fear of stigma experienced by people on ART results in nonadherence to medication through a number of ways. Firstly, it was noted that patients prefer a distant CTC to the extent of avoiding CTC(s) available near to their homes, thereby risking irregular replenishment of their ARVs. This is because they fear being seen by people who know them as friends and neighbours. Similar findings have been reported in other African countries, where many respondents were unwilling to seek treatment at the nearest health facility [31–33]. Secondly, the study has shown that stigma reinforced the concealment of HIV status. Not wanting to tell others about an HIV positive status has been found to be a major impediment to the optimal uptake of ARVs. These results are in agreement with those reported by other scholars [34–36]. Likewise, Nyamhanga [37] found that nondisclosure of HIV+ status to the spouse was due to fear of violence and divorce/separation and it affected some women's attendance of CTCs, as they lacked the fare and were unable to justify their absence from home on the clinic day. Thirdly, this study found that stigma and discrimination undermined social support which, in turn, makes the person on ART vulnerable to food insecurity. The relationship between food insecurity and suboptimal adherence has been reported in Kenya [38] where respondents had a fear of taking ARVs on an empty stomach, because they were considered to be highly toxic drugs.

4.2.1. Coping Strategies Adopted to Deal with HIV/AIDS Stigma and Discrimination. Key coping mechanisms that emerged from the respondents’ narrations included becoming secretive, spiritual devotion, acceptance of the illness, seeking information and/or exchanging views about the illness through support groups, and preemptive disclosure. These coping mechanisms can be placed into two categories, namely, adaptive and maladaptive strategies. Spiritual devotion, acceptance of the illness, seeking information and/or exchanging views about the illness, and preemptive disclosure can be considered as adaptive mechanisms because they foster positive living. These findings are consistent with those reported by Makoea et al. [39] who examined how PLHIV cope with HIV-related stigma in the five Southern African countries of Lesotho, Malawi, South Africa, Swaziland, and Tanzania. However, choosing to be secretive is maladaptive [unproductive], as it may result in an impediment to effective access and adherence to ART, as reported by Lekganyane and du Plessis [25].

4.3. Study Limitation. Since the study was qualitative in nature and therefore involved the purposive selection of the study sample, its findings cannot be generalised. However, being a qualitative study, its goal was not to generalise but rather to provide rich information on the dimensions of stigma and discrimination experienced by PLHIV on ART.

4.4. Conclusion and Recommendations. After nearly a decade of increasing the provision of ART in Tanzania, PLHIV still experience verbal and social stigma, relational discrimination, blame and rejection by spouses, and/or mistreatment by health care workers, albeit to a smaller extent compared to the pre-ART era. These unhealthy experiences have a negative impact on treatment adherence. Efforts to reduce stigma and discrimination that started earlier (in the pre-ART period) with the purpose of encouraging HIV testing are still relevant now and should be given more impetus so as to maximise positive treatment outcomes. Such efforts should contribute to helping ART clients apply adaptive coping strategies, such as those identified in this study that include accepting the illness, seeking information and/or exchanging views about the illness through support groups, and preemptive disclosure.

Competing Interests

The authors declare that they have no competing interests.

Authors’ Contributions

Both authors were responsible for the study concept, design, and interpretation of data. Maisara Mhode collected the data and performed the analysis. Maisara Mhode and Tumaini Nyamhanga drafted and reviewed the paper, respectively.

Acknowledgments

The authors would like to extend their sincere gratitude to the International Clinical Operations Health Research in Tanzania for their sponsorship. The authors would also like to thank all staff of Mnazi Mmoja Care and Treatment Clinic for their support that enabled data collection and the patients for their willingness to participate in this study.

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