LGBTI Human Rights in Southern Africa: A Contemporary Literature Review
Introduction and Context

- Same-sex acts remain outlawed in more than two thirds of African countries and evidence suggests that Africans are among the least accepting of homosexuality in the world (Dionne, Dulani & Chunga, 2014; Pew Research Center, 2013).

- There is increasing moral and political salience of LGBTI issues in the region, as well as an unprecedented increase in the visibility of LGBTI people in the region over the last several years (Makofane, 2013).
Approach & Methodology

- This literature review focuses on the state of LGBTI human rights in 10 Southern African countries: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe.
- Since this literature review builds on preceding documents of a similar nature, sources from 2012, 2013 and 2014 have been heavily prioritized.
- Wherever possible, information has been sourced from African publications, organizations and authors.
- Perspectives from LGBTI organizations and individuals in the region were prioritized as a primary source of data to emphasize the importance of voice and participation from LGBTI people themselves in demanding and claiming their human rights.

This review takes its point of departure in a position rooted in upholding human rights, equality, and freedom – particularly in support for the rights of LGBTI people and communities. Its intention is to analyze the current science through a frame which combines these principles, with respect and admiration for the strength and resilience of many Southern African people facing a daily struggle.
## Current Legal Environment

<table>
<thead>
<tr>
<th>Country</th>
<th>Same sex sexual conduct between men criminalized</th>
<th>Same sex sexual conduct between women criminalized</th>
<th>Laws prohibiting discrimination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Botswana</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Lesotho</td>
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<tr>
<td>Malawi</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Mozambique</td>
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<tr>
<td>Namibia</td>
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<td>No</td>
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<tr>
<td>South Africa</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Swaziland</td>
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<tr>
<td>Zambia</td>
<td>Yes</td>
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<tr>
<td>Zimbabwe</td>
<td>Yes</td>
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</table>

Source: ARASA (2014)

<table>
<thead>
<tr>
<th>country</th>
<th>fines, restrictions, or labour</th>
<th>Imprisonment of less than ten years</th>
<th>Imprisonment of ten years or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>Botswana</td>
<td>Malawi</td>
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<td>Mozambique</td>
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<td>Swaziland</td>
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</tbody>
</table>

Source: Han and O'Mahoney (2014)
Stigma and Access to Care

Lesego, 29 years old, Pretoria, South Africa:

“You go there and they tell you about condoms and that you have to use them […] you tell them “I don’t do men”. You get someone who is empty [not informed] and the topic for counselling changes. “How do you do it? [have sex with women]” You just get agitated when you are supposed to be dealing with the news that you are HIV-positive and the conversation has now changed because you are gay”

Matebeni et al. (2013, p. S39)

Young MSM from Swaziland:

“When they say ‘bring your partner’, and then you bring the same sex partner, they are like, ‘yah, this is why you are having this [HIV], this is why’, and they will be throwing words at you […] so then you get embarrassed, sometimes you’ll decide to leave without being treated, and where are you taking that sickness to?”

Kennedy et al. (2013, p. 3-4).
Partnerships and Sexual Behaviour

- McNamara (2014) highlights how in Malawi, homosexuality is commonly perceived as an act (a behaviour) rather than an identity, which shapes the way motivations for other partnerships are formed.
- In Lesotho, almost half of MSM reported future plans to marry a woman. The majority (64%) said they wanted to do so in order to please their families, while the others (36%) said that they wanted to marry in order to have children (Miller, 2014).
- The majority of MSM in Maputo, Mozambique (88.6%) reported that they had previously had sex with a woman (Nala et al., 2014).
- In Lesotho, 34% of MSM reported that they had had sex with a woman in the past year (Miller, 2014). Also in Lesotho, Poteat et al. (2014) found that 43% of WSW reported having a regular male sexual partner, such as a husband or boyfriend.
- Among the self-identifying lesbians from Namibia, South Africa and Zimbabwe in the Matebeni et al. (2013) study, the majority had children from previous relationships with men, and some had current male partners.
Gender Identity

- There is a growing body of evidence which highlight the disconnection between gender identity and sexual orientation in Southern Africa (Baral et al., 2013; Wirtz et al., 2013; Kennedy et al., 2013).
- Another study from Swaziland found that 15.7% of MSM reported identifying as female, and 1.8% said they were both male and female (Wolf et al., 2013).
- In Malawi, 17% of the MSM surveyed reported they identified as female, and a further 2.8% said they were transgender (Wirtz et al., 2013).
- Milani (2014) and Spurlin (2013) suggest that language which denotes fixed categories of being, may not be as applicable in the Southern African context.
- Further, issues around gender and gender identity are intricately interwoven with violence faced by LGBTI people in Southern Africa:

  “They are raped so they know they are not boys. [...] If she turns herself to a man, who is a real man between us? We have to show we are men.”

  (Sigamoney & Epprecht, 2013, p. 98).
HIV and MSM

• All countries in the region report HIV prevalence data in their Global AIDS Response Progress Reports, except for Mozambique, Zambia and Zimbabwe.

• Among MSM 30 years and older, HIV prevalence has been found to be 31.4% in Namibia, 35.3% in Malawi and 46.7% in Botswana (Baral et al., 2009). More recent studies have found similarly high results. Wirtz et al. (2013) found HIV prevalence to be 28.1% among Malawian MSM (age 26 and older).

• Recent research from South Africa shows that HIV prevalence among MSM 25 years and older is 27.8% in Cape Town, 36.7% in Johannesburg and 71.1% in Durban (Cloete et al., 2014).

• In Lesotho, Miller (2014) found that more than 20% of MSM believe HIV can be cured, and that only 37% can list three ways of preventing HIV.

• A recent study in Angola found that MSM who had suffered episodes of homophobia had a significantly increased the chance of being HIV positive (Kendall et al., 2014).
HIV and WSW

- Recent studies show that WSW in Southern Africa are at greater risk for HIV infection than was previously believed (Cloete, Sanger & Simbayi, 2011; Matebeni et al., 2013; Poteat et al., 2014; Sandfort et al., 2013).

- **13.3%** of WSW self-reported being HIV positive in Namibia, **10.9%** in South Africa and **5.8%** in Zimbabwe (Sandfort et al., 2013).

- Lesotho is the only country in the region to report HIV data for WSW. The Government reports prevalence to be **7.1%** (Government of Lesotho, 2012).

- **31.1%** of WSW in Botswana, Namibia, South Africa and Zimbabwe, report experiencing rape. This was the biggest HIV risk factor (Sandfort et al., 2013).

- **21%** of HIV positive lesbians surveyed in South Africa, Zimbabwe and Namibia report that they acquired HIV from their female partners (Matebeni et al., 2013).

- Among WSW in Lesotho, the majority (**74%**) have some knowledge about preventing HIV/STIs during sex with men, but only **38%** had received any information about prevention during sex with other women (Poteat et al., 2014).
HIV among Trans & Intersex People

- There is scant data on HIV among transgender and intersex people in Southern Africa.
- Botswana and South Africa indicate that transgender people are included as key populations in their National Composite Policy Index (2012).
- South Africa is the only country which includes transgender people in its National HIV/AIDS/STI/TB Strategic Plan (2012-2016).
- The Provincial Strategic Plans (PSPs) from three provinces in South Africa (Eastern Cape, Mpumalanga and Kwazulu-Natal) explicitly mentioned intersex people as a priority population.
The Public Health vs. Human Rights Approach

- There is emerging evidence that strategies which foreground health concerns and tone down sexual rights are having some successes in challenging legal and policy contexts in Southern Africa (Epprecht, 2012; Oberth, 2012).

**Permanemnt Secretary, Ministry of Gender, Zambia:**

“In Zambia, it’s illegal. Traditionally, it’s taboo, so we don’t even want to talk about it. From a religious point of view, this is a country that has got Zambia being a Christian nation embedded in its constitution, so again that is a no-go area. So for us that position is very clear. However, when it comes to HIV and AIDS, we can talk about it.”


- However, there are also challenges associated with the public health approach:

“How can a stigmatized population avoid further stigmatization if publicity focuses on the health dangers they pose to the general population?”

(Epprecht, 2012, p. 233)
Funding for LGBTI Programmes

- Outreach and service provision is led primarily by civil society organizations, which often struggle to adequately finance their programs (UNAIDS, 2014).
- Botswana recently reported that more than 75% of services for MSM and transgender populations are provided by civil society (Government of Botswana, 2014).
- A recent analysis of proposals from Southern African countries to PEPFAR and The Global Fund, it was found that only 3/27 Global Fund proposals, and only 12/35 PEPFAR, targeted MSM (Ryan & Moses-Eisenstein, 2012).
- Batist et al. (2013) and Wolf et al. (2013) both contend that the current coverage of quality HIV/AIDS services for MSM are not sufficient to reverse the epidemic’s trend.
Knowledge Gaps & Future Research Needs

- Further explore the debate around publish health vs. human rights approaches.
- There is a need to rethink what ‘African sexuality’ means and how those meanings have been constructed.
- A regional Integrated Biological and Behavioural Survey (IBBS) on WSW is needed.
- Information on suicide and self-harm remains a significant knowledge gap.
- Trans and intersex research is significantly marginalized.
- There needs to be a shift in focus away from advocacy for policy and law reform at the top and towards changing people’s attitudes on the ground, so that democracy is not undermined.
- Research into strategies for avoiding or disrupting the problem of “Queer Imperialism” via-a-vis funding for LGBTI programming from the West needs better understanding.
- Improved data and improved data quality on the size, identities, behaviours, health needs and organizational capacities of LGBTI populations will be critical. As one key informant from Zimbabwe points out, “Without data, it’s not well understood, and it’s easy to dismiss something you don’t understand” (Oberth, 2012, p. 29).
References


References cont.


Thank You!