

canaries in the coal mines

An analysis of spaces for LGBTI activism in Botswana

COUNTRY REPORT



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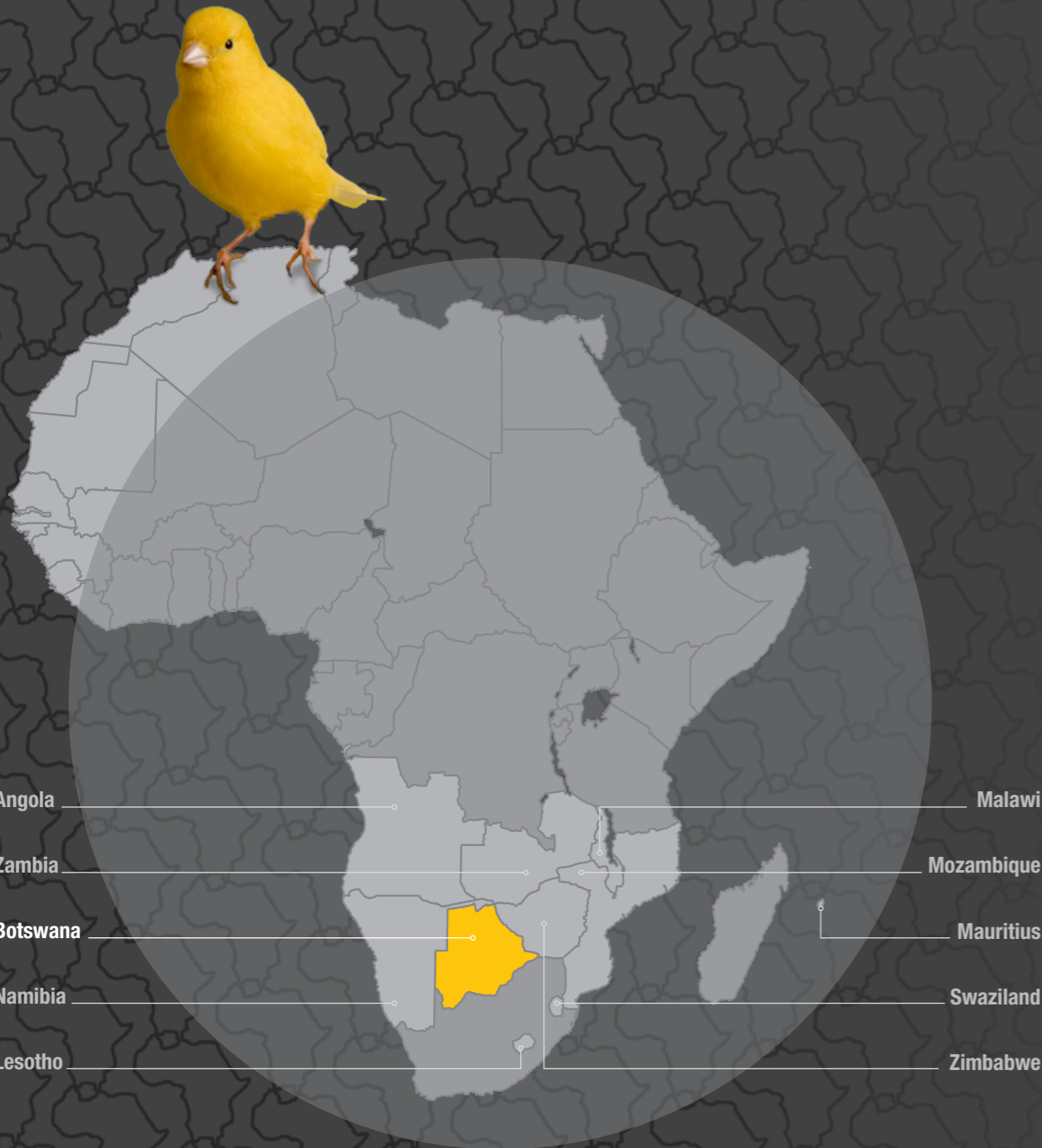
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summary



Botswana is no exception to dominant narratives against LGBTI human rights in Africa. The 2016 Afrobarometer report on Tolerance in Africa confirmed these views.¹ Of citizens surveyed, only 43% said they would like, or would not mind, having a homosexual neighbour. Notwithstanding data showing current attitudes to LGBTI human rights as largely negative, the percentage of those not opposed to having homosexuals as neighbours, also points to a relatively high degree of acceptance by citizens in a country where same-sex sexual conduct is criminalized based on colonial-era British laws. The original law applied only to male persons, but in 1998 the government extended the ambit of the law to include women.



ABOUT THE AUTHOR

This country report was written for the Other Foundation by Glenda Muzenda informed by engagement with individuals and organizations in Botswana. Glenda's rich experience as a gender, development, and HIV/AIDS research consultant is particular to sexual minorities and vulnerable populations. She has been a strong supporter of the Other Foundation since its inception. The production of the report was supported by George Murumba and benefited from editorial contributions given by Mark Gevisser. The final text of the report was edited by Sarita Ranchod and Sonja Boezak from Under the Rainbow.

¹ Dulani B, Sambo G, and DionneK.Y, Dispatch No. 74. March 2016



The Kanane case, in which a Motswana man was arrested under colonial-era sodomy laws in 1994, is the most high-profile case, drawing public attention, locally and globally, to LGBTI human rights and homophobia in Botswana.

In 2003 the Botswana Court of Appeal ruled in *Kanane vs the State*² that Botswana society was not ready to accept homosexuality, saying: “from moving towards liberalization of sexual conduct by regarding homosexual practices as acceptable conduct, such indications as there are, show a hardening of a contrary attitude” (BLR 2003). This

ruling effectively shut down the argument that Penal provisions criminalizing same-sex sexual conduct between consenting adults violated their fundamental human rights enshrined in the Constitution’s Bill of Rights.

The case dragged on for ten years, requiring significant investment of resources and energy for litigation, advocacy and awareness raising. The case increased the public profile of Sexual Orientation and Gender Identity (SOGI) issues and the criminalization of non-normative sexual and gender expressions of LGBTI people.

² *Kanane vs The State 2003 (2) BLR 67 (CA)*



It also galvanized LeGaBiBo and its supporters into action, ensuring the emergence of a more organized and more visible movement. In 2007 LeGaBiBo made its first unsuccessful application to register as an organization. LeGaBiBo and its members then resorted

to litigation to compel the state to register the organization. After several rounds of judgements and appeals, LeGaBiBo was finally able to register successfully in 2014.

In 2003 the Botswana Court of Appeal ruled in *Kanane vs the State*³ that Botswana society was not ready to accept homosexuality



³ *Kanane vs The State 2003 (2) BLR 67 (CA)*

country context



1



The Republic of Botswana gained its independence from Britain in 1966. With a population of just over 2 million, Botswana is one of the most sparsely populated countries globally, with ten percent of the population living in the capital city, Gaborone. Despite its size, Botswana boasts a high gross national income, with HIV/AIDS prevalence among the highest in the world.

Botswana society is patriarchal, maintaining traditional values and a conservative culture where a union between a man and a woman is the only natural and acceptable sexual behaviour of a reproductive society. Anything outside of this norm is considered anti-social, deviant, disorderly and unacceptable. Same-sex conduct or homosexuality is not discussed openly and the discourse promoting same-sexuality as a western affliction, that it is ungodly, and unAfrican, continues.

In recent times, however, there has been a shift in attitude among some religious leaders with increased levels of tolerance noted, although no public declaration in support of LGBTI human rights has been made. The Botswana Council of Churches has participated in family dialogues of transgender and intersex persons as well as dialogues in churches on sexuality and mental health.

This shift has been influenced by both the work of LGBTI organizations and the parents of LGBTI people who sought assistance from their local churches to teach congregants tolerance in communities as discrimination and exclusion have, in some cases, led to suicide.

In recent times, however, there has been a shift in attitude among some religious leaders with increased levels of tolerance noted, although no public declaration in support of LGBTI human rights has been made.



legislative and policy environment

2



The Constitution of Botswana includes a Bill of Rights guaranteeing fundamental human rights and freedoms to all persons in Botswana. In addition to the Constitution, Botswana has ratified international human rights treaties such as the Universal Declaration of Human Rights, the African Charter on Human and People's Rights, the International Convention on Civil and Political Rights and the Yogyakarta Principles.

Penal Code and Other Discriminatory Laws

The Constitution provides equal protection before the law for all persons (section 3) and further protects them from discrimination (Section 15) on any basis whatsoever. Against this backdrop, the Penal Code (CAP 08:01) criminalizes same-sex sexual conduct deemed "against the order of nature" (section 164,167). Although undefined, "acts against the order of nature" have been interpreted to include same-sex sexual acts between consenting adults, criminalized by up to 7 years in prison.

The Botswana Penal Code criminalizes same-sex sexual conduct between consenting male and female adults in private, contravening Articles 2(1), 17, and 26 of the International Covenant on Civil and Political Rights (ICCPR). International human rights mechanisms and frameworks are violated where human rights have been disregarded because of sexual orientation and gender identity or expression. The ICCPR asserts non-discrimination of any kind, including based on sexual orientation. The realities of discrimination and outright exclusion from health care services has meant gender and sexual minorities continue to lack access to health services.

⁴ ICCPR ratified in September 2000

⁵ Tabengwa et al. 2014

The Constitution of Botswana includes a Bill of Rights guaranteeing fundamental human rights and freedoms to all persons in Botswana



The Botswana Penal Code criminalizes same-sex sexual conduct between consenting male and female adults in private.

Section 164 states:

Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (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.

Section 167 of the Penal Code Act, Chapter 8 states:

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.

The Penal Code does not provide a definition of “the order of nature”. In 1994 an adult male, Utjiwa Kanane and

his partner⁶ were arrested and charged under section 164 of the Penal Code. The Botswana Centre for Human Rights, Ditshwanelo, led the Kanane case litigation and advocacy to challenge the constitutionality of the Penal Code.

Kanane challenged the charges asserting that he was an adult having sexual relations with another consenting adult in private, where the right to privacy and non-discrimination is protected by the Constitution. The High Court upheld the constitutionality of the Penal Code⁷ provisions, saying that the freedoms of association, expression and assembly, and the right to privacy are not absolute. The Court concluded that such rights and freedoms can be limited by many factors, including public morality and public interest. An application for appeal was made by Ditshwanelo to the Court of Appeal over the misinterpretation of provisions allowing constitutional limitations of fundamental human rights.

⁶ Kanane v. State 1995 BLR 94 (High Court)



Legal Recognition for Transgender and Intersex Persons

There is no official or legal way for intersex and transgender individuals to change their gender markers on identity documents to be congruent with their gender identity. This creates an oppressive and threatening environment in spaces where documents need to be presented. The lack of legal recognition

and protection places transgender and intersex people at higher risk of discrimination, violence and abuse. It also creates difficulty in finding stable employment when gender expressions are different to official identity documents.

Effects of Criminalization on Development

“In a democratic society, asking for a particular law to be changed is not a crime, neither is it incompatible with peace, welfare and good order.”

High Court Justice Rannowane

The effects of criminalization are many, including making intolerance and homophobia acceptable. Access to health, education and the benefits of social development⁸ are affected by laws that create fear, especially in a context where the justice system has denied the human rights of LGBTI people.

Members of Rainbow Identity Botswana (RIA), LeGaBiBo and other LGBTI-affiliated organizations that advocate on the frontline, representing the concerns of affected communities. There has been a strong connection with other human rights organizations in support of LGBTI

human rights and LGBTI organizing in Botswana. LeGaBiBo was born out of existing human rights organizations.

While criminal laws have not been applied since Kanane, their presence in the statutes, together with the lack of SOGI-specific protections create increased vulnerability to abuse, discrimination and stigma.

LGBTI people will remain on the margins of society until societal attitudes change, and discriminatory laws, policies and practices are prohibited. The cost of exclusion is borne by the lives of LGBTI

“Every time I present my identity documents, people shut down and stare. Once I was accused of impersonation and fraud. So, I had to explain to them my sex characteristics. Even then, they still did not employ me.”

Tebogo unemployed accountant

⁷ Ibid.

⁸ BONELA, LeGaBiBo with Global Rights and International Gay and Lesbian Human Rights Commission (2008) ‘The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Botswana: A Shadow Report, March 2008’



The cost of exclusion is borne by the lives of LGBTI people, including those disproportionately impacted by HIV/AIDS, whose developmental opportunities are lost because of family rejection, discrimination and bullying in schools, and workplaces; and a lack of support from their government.

people, including those disproportionately impacted by HIV/AIDS, whose developmental opportunities are lost because of family rejection, discrimination and bullying in schools, and workplaces; and a lack of support from their government.

Other than a 1998 amendment⁹ to extend the law's application to women engaging in same-sex sexual relations, the provisions have remained in place. They were applied in 1993 to arrest Unitjwa Kanane, charged with allowing a male person to have *"carnal knowledge of him against the order of nature"*.

Kanane's prosecution resulted in a constitutional challenge seeking to declare the Penal Code sections 164 & 167 unconstitutional. The court ruled against this assertion, agreeing that laws prohibiting same-sex sexual conduct under the labels of *"unnatural carnal knowledge"* and *"gross indecency"* do not violate constitutional rights. The Court further held that the State may enact legislation that overrides freedom of association and conscience, and the right of privacy, to defend 'public morality'.

The most widely discussed impact of criminalization was the drawn-out refusal to register LeGaBiBo as an independent organization. An application to register as a society was rejected in March 2012, because the Botswana Constitution "does not recognize homosexuals," and that the

⁹ Penal Code Amendment No. 10 of 1998

application would violate section 7(2)(a) of the Botswana Societies Act that entitles the Registrar to deny an application for registration if "it appears ... that any of the objects of the society is, or is likely to be used for any unlawful purpose prejudicial to or incompatible with peace, welfare or good order in Botswana".

The High Court's Justice Rannowane, in his verdict of November 2014, said the application by LeGaBiBo to register as a society was not about same-sex sexual relationships, but about agitating for legislative reforms to decriminalize same sex relationships. He noted that *"in a democratic society, asking for a particular law to be changed is not a crime, neither is it incompatible with peace, welfare and good order."*

The drawn out process included a series of court rulings and appeals. This continued into 2016 when LeGaBiBo was finally registered as a society following a High Court decision ordering the state to register the organization.

Registering LeGaBiBo is not only a milestone for LGBTI human rights in Botswana. It is also reflective of effective strategies employed by LeGaBiBo. The case having dragged on for many years created space for advocating for the recognition of LGBTI people's human rights – through public awareness and education – foster a more inclusive society.



Media

Media houses in Botswana have made a significant shift in how they report LGBTI human rights issues in recent years, with shifts from homophobic stereotypes as the norm, to increased acceptance of LGBTI human rights in some quarters.

With drawn-out litigation marking both the Kanane case and efforts to register LeGaBiBo, media coverage has been extensive in print, online, and state owned media¹⁰ and social media platforms.

Organizations such as the Botswana Network on Ethics, Law and HIV/AIDS (Bonela) has used media platforms to advance the rights of vulnerable populations especially on issues such as gender based violence, the human rights of sexual minorities and access to HIV treatment for prisoners.¹¹

¹⁰ Botswana television interviews with LGBTI activists

¹¹ <http://www.osisa.org/law/botswana/botswana-must-provide-hiv-treatment-all-prisoners>

public discourse

3



Public Narrative

Politicians have used public platforms to popularize the rhetoric that homosexuality is a ‘Western disease’, ‘un-African’ and ‘un-Godly’. It is important to note that there are shifts in the negative narrative that is being countered by among others, the parents of LGBTI people who have argued that “*only God has the right to judge any human for their sexual orientation*”.¹²

It is not possible to attribute this gradual change in attitudes to one organization. It is invariably a combination of things such as the length of time since the Kanane case; and the sustained visibility of LGBTI people doing intersectional work with mainstream human rights organizations like Ditshwanelo, Bonela and the Botswana Council of NGOs. Collaboration and partnership with human rights champions and eminent persons such as Unity Dow¹³ and Festus Mogae¹⁴ have added credibility to the case for upholding and protecting the human rights of LGBTI people.

It should also be noted that penal laws remain in place and that the results of the Afrobarometer study illustrate that there is both acceptance and resistance to LGBTI human rights in Botswana society.

In a focus group meeting held with parents of LGBTI children¹⁵ attending

a support group for transgender and intersex persons, organized by RIA, parents noted that transgender and intersex gender identity was clear: “our children have no choice of being born that way.” But parents also noted that they found the language of LGBTI to be difficult to understand in their own contexts.

An annual LGBTI film festival, organized by LeGaBiBo, and supported by several human rights organizations, showcases films and documentaries depicting the lives of LGBTI persons. Prior to this, human rights organizations hosted annual film festivals where LGBTI films were always included.

Sharing stories that honour LGBTI people’s rights and realities, and hosting related panel discussions, have increased dialogue on SOGI issues. It also provides an opportunity to share and distribute information on issues pertinent to the wellbeing of LGBTI lives in Botswana.

Another important event that has promoted public discourse of issues of discrimination, violence and abuse based on sexual orientation, gender expression or identity and sex characteristics, is the International Day Against Homophobia, Transphobia, Biphobia (IDAHOT) and related intolerances. This is an

Parents also noted that they found the language of LGBTI to be difficult to understand in their own contexts.

¹² Parents of LGBTI children at focus group discussion in Botswana, 15 April, 2016

¹³ Unity Dow, human rights lawyer, former justice of the High Court, Minister of Education

¹⁴ Festus Mogae, Former president of Botswana 1998-2008

¹⁵ The group comprised of 10 people: 2 men (1 pastor and 1 parent); 8 women (all mothers and one a pastor)



Former President Mogae has for many years publicly declared his support for repealing laws and customs that disempower marginalized groups, especially in efforts to curb the spread of HIV/AIDS.

international event that is celebrated globally. LeGaBiBo has for many years been hosting events such as cabaret shows, peaceful marches through the streets, holding out slogans and banners that promote inclusiveness, tolerance, peace and compassion – all-important pillars of Botswana’s Vision 2016. The publicity and visibility brought about by the public march, and accompanying media coverage makes it increasingly difficult to ignore LGBTI human rights issues.

Former President Mogae has for many years publicly declared his support for repealing laws and customs that disempower marginalized groups, especially in efforts to curb the spread of HIV/AIDS. He is outspoken about the need to repeal anti-gay laws that hinder the fight against HIV/AIDS. His public involvement as a key figure in the country encourages others to champion LGBTI equality.

Media Narrative

A Gender Links¹⁶ (GL) study on LGBTI media coverage suggests most stories (81%) fall into the ‘incomplete’ category where they are neither explicitly biased nor discriminatory, but portray popular stereotypes of how same-sex sexual conduct is perceived by opponents to LGBTI human rights, suggesting immorality without factual consideration to the lived realities of LGBTI people. The GL study noted that most stories did not provide a diversity of sources, historical context or voices of LGBTI communities.

Despite evidence of negative coverage, including by *The Voice* and *The Sunday Standard*¹⁷ newspapers who published an interview of a prominent, homophobic politician, the impression of local activists is that for the most part, media houses have been open to giving positive airtime to LGBTI human rights, and that this is a stride forward.

Activists themselves also have platforms, including social media platforms, where they write to counter the negative narratives about LGBTI lives.

16 http://genderlinks.org.za/wp-content/uploads/imported/articles/attachments/21577_analysis_of_media_coverage_of_lgbti_for_the_one_month_in_April_2015j.pdf

17 <http://www.sundaystandard.info/it-wrong-kill-homosexuals>



Religious Narrative

Botswana’s Constitution recognizes the right to freedom of religion. While most religious institutions have chosen silence on LGBTI human rights issues, some have gone to great effort to vilify the existence of LGBTI communities in Botswana.

The Evangelical Fellowship of Botswana (EFB) has led efforts to discredit organizations that work on LGBTI issues, by condemning, homosexuality, sex work and even the introduction of condoms in prisons.

From calling LGBTI individuals criminals, and perverts, the EFB¹⁸ are clear that they do not want any association or accommodation of sexual minorities. The EFB has tirelessly pushed the boundaries of hate and used online platforms to victimize homosexuals. EFB leader, Pastor Biggie Butale, has maintained the rhetoric and said:

“We must resist any suggestions that would lead to homosexual marriages in our nation; actions which would encourage prison homosexual conduct and practices, by introducing condoms in our prisons. Sanity must prevail. God’s standards are not relative, but absolute. The EFB will be monitoring developments on this subject and will do all it can together with its partners to ensure that the legalisation of homosexuality and prostitution never becomes a reality in

*our republic. The EFB also appeals to all its affiliates and believers to pray for the restoration of the nation’s highest ideals so that the country does not degenerate any further into ungodliness.*¹⁹”

Other churches in Botswana, such as the Roman Catholic, Methodist, Trinity and the United Congregational Church of Southern Africa have opened their doors to LGBTI groups with empathy towards ‘God’s mistakes’²⁰. These religious institutions have taken an active but silent role in supporting and advocating for the rights of LGBTI people.

Acceptance of LGBTI persons as ‘God’s children’ is clear, but locates Transgender and Intersex groups as ‘God’s mistake’, to be embraced and nurtured, as God intended.

Reverend Thabo Otukile Mampane²¹ of the Botswana Council of Churches, together with LGBTI organizations said: “The church wants to stand and support LGBTI because if we do not, we judge them against the wishes of God too.” The Reverend who has been snubbed in public for being a homosexual added that: “training and sensitization on SOGI is critical to all denominations, to understand how discrimination by the church affects LGBTI people, and not to fear association with gender and sexual minorities.”

“Training and sensitization on SOGI is critical to all denominations, to understand how discrimination by the church affects LGBTI people, and not to fear association with gender and sexual minorities.”

Reverend Thabo Otukile Mampane

18 <https://legabibo.wordpress.com/2016/02/04/the-war-on-homosexuality-a-look-to-botswana>

19 <http://www.nmegi.bw/index.php?sid=2&aid=616&dir=2011/February/Wednesday2#sthash.owsJ01i.dpuf> Statement made in 2010

20 Comment made by informant about Transgender and Intersex people during FDG 15 April, 2016.

21 Reverend Mampane was interviewed in his personal capacity during field study 15-16 July and telephonically between 1-16 June, 2016



Lack of recognition in policy, law and practice has been counterproductive, posing challenges to providing effective HIV/AIDS prevention and treatment programs for sexual minorities.

RIA identified an opportunity with parents who accessed their offices seeking information on how to help their children. “We have a window open in our churches, our priests must see it

Public Health

Discrimination and stigma in public health is rife, especially for services related to men who have sex with men (MSM), transgender and intersex people. Health policy guidelines are silent and in addition public policing of LGBTI communities make it difficult to access services freely, without fear of discrimination, rejection and stigma.

The emergence of LGBTI communities going public, and the visibility of the movement in the last decade, has seen a drive towards approaching LGBTI people’s difficulty accessing quality healthcare as a human rights violation and a form of social exclusion.

In the context of Southern Africa’s HIV/AIDS pandemic, LGBTI access to healthcare has received increased attention. As in other countries, this focus has largely been on MSM, with some attention to female transgender persons.

differently and support us. Why should we look elsewhere for support?” said a mother attending a support group and focus group discussions.

This has been within the context of ‘key populations’.

HIV organizations have conducted studies on MSM access to HIV/AIDS resources²² and have used these studies to advocate for a more holistic approach to HIV programming that includes all key populations. It has been a long walk to the realization that all members of the LGBTI community are disproportionately affected by HIV, and government’s health departments have been slow to respond. Lack of recognition in policy, law and practice has been counterproductive, posing challenges to providing effective HIV/AIDS prevention and treatment programs for sexual minorities.

International funding interventions for MSM and HIV/AIDS has driven most public health campaigns. Botswana’s key populations are hardest hit by the HIV epidemic. Punitive and legal barriers

impact MSM access to health services without fear of discrimination or stigma. Studies show high levels of infection and only 44.9%²³ of the key affected populations – MSM, injecting drug users, sex workers and prisoners – have been reached. HIV/AIDS programs such as the second National Strategic Framework for HIV/AIDS 2010-2016 (NSF II) have started

Government and Political narratives on SOGI

During his tenure as President, Mogae was silent on this issue, and when challenged, said: “I was not willing to lose an election on behalf of gays. The majority of the people are still opposed so I must convince them first before changing the law unilaterally.”²⁴

He added: “While I admit that the West often push their agendas on Africa, which we must be wary of, I also believe that we must, as Africans, admit that the world is changing, and we must move with the times. This means often abandoning some of our long-held convictions about life, if the need arises.”



“In my long interaction with LGBT groups and extensive research, I have come to the realization that we are limited in our knowledge and must be open to new discoveries. I have been converted. I used to hold the same beliefs as my counterparts. Leadership is not always about you, it is about people, and often circumstances. I call upon African leaders to open up to second generation rights.”

Former President of Botswana
Festus Mogae, 2016²⁵

reaching out to most at risk populations (MARPS). HIV policy remains silent on transgender, intersex people and women who have sex with women (WSW).

Former President Festus Mogae has led the appeal to decriminalize homosexuality, as a strategy to combat the spread of HIV.

Current President, Ian Khama, has remained silent about LGBTI human rights. The assistant Minister of Local Government and Rural Development, Bothlogile Tshireletso openly supported LeGiBiBo, declaring her intentions to lobby the Ministry of Health (MoH) and other politicians, and to dialogue with the Minister of Labour and Homes Affairs (MoLHA) who refused to register LeGaBiBo until the court order of 2016.²⁷

The final judgment ordering LeGaBiBo’s registration is a sign of progress for Botswana, despite the Head of State’s silence and the fact of criminalizing laws maintaining the status quo.

22 Baral, et al. 2009

23 <http://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/botswana>

24 <http://www.un.org/africarenewal/web-features/good-leadership-about-people---festus-mogae>

25 <http://www.un.org/africarenewal/web-features/good-leadership-about-people---festus-mogae>

26 World Debate BBC 2016.

27 <http://www.sundaystandard.info/tshireletso-mobilise-other-ministers-gay-rights>

the LGBTI movement:

organizations advancing the human rights of LGBTI people

4



Botswana's human rights organizations have been at the forefront of anchoring the HIV pandemic in a human rights framework.²⁸ Organizations that championed human rights from the beginning have grown together with other organizations that have also been established on a needs basis, such as transgender and intersex groups.

In Botswana, the human rights of gender and sexual minorities remain outside of social, economic, political and cultural participation. Living conditions of sexual minorities are precarious because of vulnerability, stigma and discrimination that impacts on safety.

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Ditshwanelo

Ditshwanelo, founded by a group of lawyers in 1993, exists to advocate for legal and policy reform and to ensure equality before the law for all people in Botswana with specific concern for the rights of minority groups.

As mainstream human rights organization, Ditshwanelo started LeGaBiBo

as a support group with a view to mainstreaming LGBTI issues into national human rights debates. The organization provided mentorship to LeGaBiBo and through its association with Botswana's legal fraternity could garner support from prominent lawyers who provided legal services to LeGaBiBo.

Bonela

Bonela was founded in 2001 by a group of human rights defenders to promote a just and inclusive environment to prevent HIV infection, a greater quality of life for people affected by HIV/AIDS.

LeGaBiBo, a project within Ditshwanelo, started as support group of a few friends

to meet and share ideas. The Kanane case brought this group and LGBTI human rights into the limelight. After the Kanane case, Ditshwanelo continued to support LeGaBiBo, but lack of funding prevented it from growing until much later.

²⁸ The case of Kanane vs. the State in 1994



LeGaBiBo

Lesbians, Gays, Bisexuals of Botswana (LeGaBiBo) was later fostered by Bonela, along with other organizations working on key populations, and continues to provide strategic guidance and coordination.

Bonela provided a safe space as well as fiscal support and mentorship. Post the Kanane judgement, the tightening of laws, and increased tension over the 'homosexual is unAfrican' debate, a war of words began.

Amidst this verbal furore LeGaBiBo made an application to register as an association under the Societies Act (CAP 18:01) that was refused. As visibility increased, and hostility and backlash heightened, the registration matter was withdrawn before final arguments were heard, to re-strategize²⁹. With support

nationally, regionally and globally³⁰, LeGaBiBo used strategies that pushed the LGBTI human rights agenda forward in intelligent and innovative ways.

After several more refusals by the Registrar of Societies, LeGaBiBo in 2012, made an application to the High Court through 20 of its members challenging the refusal to register. They deliberately did not challenge the Penal Code provisions. In their application, the applicants alleged that the refusal to register their organization was an unjustified limitation of their constitutional rights to non-discrimination, freedom of association, assembly, and expression. LeGaBiBo was officially registered on April 2016 and is now able to act independently.

RIA

The Rainbow Identity Association (RIA) and Men's Health Forum were borne out of the need to address the gaps on rights of transgender and intersex person as well as MSM. The movement's strategy

has encouraged a rethinking about advocacy opportunities in traditional structures, acknowledging the power vested in them.

²⁹ "One step back in lawsuit against Botswana sodomy law", Botswana Gazette, Reported by Isaac Pheko. Reprinted by LGBT Asylum News. August 26, 2011.

³⁰ Human Rights Commission work with LGBT via ICCPR to observe rights of 'any kind'

strategies

used by LGBTI groups and allies

5



“Many a times in LGBTI movements, we forget to assess where we are coming from and appreciate, among other things, the extent of our work in moving the agenda forward and the simple things, such as the power of thought.”

Mosweu, 2013³¹

Engaging Traditional Leadership

LeGaBiBo realized an important avenue for engaging society, working with the revered concept of 'botho' that commits to creating a fair, just and compassionate society. This links to the recognition that traditional and community leaders, custodians of the principle, could be engaged in dialogue, leading to the LGBTI 'pitsô'.³²

The deployment of indigenous Southern African philosophy weighed in on the responsibilities of chiefs to communities. The pitsô provided the significance of a higher order and authority. Engaging LGBTI activists helped cast issues in a different light, towards removing taboos of sexuality, bringing humanity to the pitsô and its representation of authority.

The approach was risky, and could have turned out differently, but its success creates space for replication. In April, 2016 following the court order to register LeGaBiBo, the City Council of Gaborone, Botswana's capital, passed a motion to decriminalize same-sex conduct to reduce the impact of HIV/AIDS.³³

LeGaBiBo's litigation success created space for awareness raising and dialogue. LeGaBiBo and Bonela took a leap, addressing traditional and community leadership on issues of human sexuality, human rights and reproductive and health

rights. In 2013, LeGaBiBo and Bonela took members and activists to meet with dikgosi – traditional chiefs – at a pitsô: a traditional consultation called publicly by village leadership. Using this platform was strategic as “in a pitsô, every person can speak and every person's opinion is respected...”³⁴

In the past, perceptions about traditional leaders as conservative and homophobic meant they were not engaged in dialogue due to assumptions.

Chiefs acknowledged homosexuality, known to them as 'matonyala' in Setswana. Discussions centred on the experiences and needs of sexual minorities in the community. A clear and simple agenda was laid out to address the rights of the LGBTI community in Botswana.

Leaders were attentive and respectful despite some appearing visibly 'uncomfortable'. It was expected that there may be tension, resistance and backlash, “perceiving traditional leaders as reservoirs of culture and tradition. Activists detailed their experiences of discrimination and rejection, making the case for fair treatment. Dikgosi were visibly touched and wanted to hear more” (Ndadi, 2013).³⁵

³¹ http://www.iranti-org.co.za/content/Profiles/Ratanang_Mosweu.html

³² Although it may seem a small point, simply calling the meetings dipsô is a not unimportant part of this strategy. Labels invoke values and conventions; a meeting is just a meeting, but, in Setswana, a pitsô is something more. Traditionally, it is convened by a kgosi or some other authority figure—the term derives from go bitsa, meaning to call or summon—and therefore implies a certain duty to attend and pay attention (Bolaane, 2014 in McAllister, 2015).



Research and Knowledge Production

LeGaBiBo and its allies have over the last decade promoted the production and availability of accurate and sensitive information addressing all aspects of the lived realities of LGBTI persons.

As a result, several studies have been produced on MSM and HIV, gender based violence, maternal health and HIV, and homosexuality. The visibility created by LGBTI groups has seen an increased interest in documenting LGBTI issues. The denial of LeGaBiBo's registration and the ensuing litigation strategy provided opportunities for knowledge production.

The involvement of traditional leaders in the discourse has provided further insight

into the history of Botswana and how issues of sexualities have been managed. Various documents have been produced in collaboration with Ditshwanelo, RIA, Bonela, and the University of Botswana in their areas of focus.

There remains a gap in the documentation of issues of transgender and intersex persons. Newly formed organizations like RIA, working on transgender, intersex, lesbian and bisexual women's issues have joined LeGaBiBo to develop information on health and HIV/AIDS and other issues such drug abuse and the mental health of gender and sexual minorities.

Psychosocial Support

LeGabiBo is aware of the need for psychosocial support, not only for the LGBTI community, but also for families, friends and allies. Outreach programmes targeting traditional leaders and families of LGBTI persons form part of an effort to engage society in dialogue. Smaller organizations are reportedly supporting

LGBTI clients, providing free psychosocial support. Training is ongoing with local service providers in communities. RIA has started a WhatsApp group of 15 parents to support each other in understanding transgender and intersex issues, and how to support their children.

The involvement of traditional leaders in the discourse has provided further insight into the history of Botswana and how issues of sexualities have been managed.

³³ “GCC overstepped its powers in adopting a motion on Homosexuality” Article by Phaladi Letswamotse Sunday Standard News 07 Apr 2016

³⁴ Mosweu, 2013 in McAllister, J. (2015) LGBTI activism and traditional values: Promoting dialogue through indigenous cultural values in Botswana

³⁵ Ndadi, 2013 in Ibid



Families are also engaging churches to advocate for support for recognition of LGBTI people’s human rights.

Families Championing LGBTI Rights

Families of LGBTI people have been working with organizations like LeGaBiBo and RIA to access mutual support and information on gender and sexual minorities. A WhatsApp group for parents to engage with each other has been created following anxieties expressed by parents when LGBTI children face depression, lack of support and discrimination.

Families are also engaging churches to advocate for support for recognition of LGBTI people’s human rights. Pastors have required training to understand LGBTI human rights issues to support parents and their children.

Networks and Alliances

Human rights organizations work closely with LGBTI organizations. The advocacy and support on the registration of LeGaBiBo illustrates how partnership and alliances could create change using multiple strategies and networks.

LeGaBiBo has used the International Day Against Homophobia Transphobia (IDAHOT) to publicly acknowledge diversity. Other local organizations participate in support of human rights for all.

What has come out of this process are stronger networks using a human rights-based approach, but also considering traditional structures to engage and find

allies to support the cause for LGBTI rights.

Sporting and pride events are also popular with LGBTI individuals participating and interacting with mainstream communities.

RIA, focusing on transgender and intersex issues, raises awareness through remembrance and commemoration of transgender people killed because of transphobia and those facing discrimination because of being transgender and gender non-conforming. These events take place in partnership with organizations such as LeGaBiBo.



Social Media

Social media has become central to disseminating information. LeGaBiBo maintains a Facebook page which is regularly updated with information on current events and education materials, allowing feedback from members.



the needs and experiences

of LGBTI people: social in/exclusion

6



Although there has been progress in including key populations in HIV programming and prevention strategies many LGBTI communities still feel a sense of social exclusion based on policies, laws and practices that discriminate or violate their human rights based on SOGI.

Socially, intolerance and ignorance stigmatize LGBTI people and their organizations. Most progress has come about due to the key populations focus on curbing HIV/AIDS. This focuses on medical and health issues but does not engage with broader human rights issues facing LGBTI people.

Members of RIA noted that for them, social inclusion means being able to change their gender markers in identity documents. In the absence of this possibility, it is difficult for transgender and intersex people to secure gainful employment.

Leadership and Capacity Building

Capacity needs are most urgent in developing transgender and intersex leadership by supporting their development and to gain knowledge and

skills that can be translated locally for communities to understand transgender and intersex gender expressions and identities.

Research and Knowledge Production on Transgender and Intersex Issues

There is a lack of literature and training in medical schools on transgender health services. The general perception of transsexual and transgender people as having mental health issues is prevalent amongst medical professionals. There are no official records of children born with intersex characteristics. There are also no records of forced surgeries performed to 'fix' children. The medical and health

fraternity needs training geared towards the anatomical complexities of intersex and transgender people for targeted health access, services and planning.

Incidents of HIV/AIDS is high in the transgender community and research in this area is scarce.

The general perception of transsexual and transgender people as having mental health issues is prevalent amongst medical professionals.

key potential non-LGBTI allies/

strategic entry points

7



Family of LGBTI individuals RIA, LeGaBiBo

Family members of LGBTI people need access to information and support. It is also clear that they have the potential to become agents of change in their

communities, including in schools and churches. Existing parent support groups is a new development.

Religious Institutions

Facilitating dialogues with religious institutions towards acceptance rather than hate is an ongoing matter. Progress has been made with some churches while others are unlikely to change.

Clergy have the potential to become

advocates for inclusivity of LGBTI people in religious spaces and leadership positions in religious spaces. Exchange programmes with inclusive church institutions in the region could present a valuable learning opportunity.

Ministry of Education

As with every country in the region, school curricula and educational institutions are not known for tolerance. Schools can be key spaces of trauma for LGBTI people. They can also be spaces for fostering and normalizing inclusion.

Exploring existing resources on increasing social inclusion regarding SOGI should be explored.

Schools can be key spaces of trauma for LGBTI people. They can also be spaces for fostering and normalizing inclusion.



Accessible, documented information on pre-colonial histories of homosexuality in Africa would be a useful tool in challenging existing arguments claiming homosexuality is unAfrican.

National Media

While some media are allies, and are tolerant, others demonstrate conservative views that encourage negative

stereotypes. Sensitization training for journalists and editors to understand SOGI issues should be explored.

Traditional Leaders

There is much potential for traditional leaders to become allies. Aside from securing their influence for changing attitudes and mindsets, accessible, documented information on pre-colonial histories of homosexuality in Africa would

be a useful tool in challenging existing arguments claiming homosexuality is unAfrican. Accessible multi-media platforms should be explored for this kind of work.

ways forward

8



For Funders and Partners

- > Provide funding based on specific needs of each group in the case of LGB and TI. Funding must seek to address specific needs of each group.
- > Be innovative in considering the role of traditional leaders for advocacy and influencing opinions and values.
- > Consider funding psychosocial support for activists (counselling and trauma support) as well as for families.

For In-country Organizations

- > Prioritize engagement with families, traditional and religious leaders in advocacy and community building work.
- > Mentor groups to ensure capacity is built.
- > Decentralize programmes into rural areas
- > Explore intersectional approaches to integration of LGBTI issues in mainstream human rights programmes
- > Use media to disseminate correct information and encourage dialogue, learning and exchange.

For Allies and Potential Allies

- > Include SOGI issues in human rights work.
- > Research the value of LGBTI money to the business community;
- > Propose inclusive policies for employment of LGBTI people.
- > Invest in safe spaces as a long-term investment in inclusion.
- > Schools, universities and workplaces should have clear policies protecting and including LGBTI individuals.

references



Addo, M. K. (2010). Practice of United Nations human rights treaty bodies in the reconciliation of cultural diversity with universal respect for human rights. *Human Rights Quarterly*, 32(3), 601-664.

Bolaane, M. (2014). San cross-border cultural heritage and identity in Botswana, Namibia and South Africa.

Epprecht, M. (2008). *Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS*. Columbus OH: Ohio University Press.

Epprecht, M. (2013). *Sexuality and Social Justice in Africa*. London: Zed Books

Kang'ethe, S. M. (2014). *Exploring the Panacea and Perfidy of Modern Media and Other Indigenous Forms of Communication in Gender Empowerment and Advancement in Selected African Countries*

McAllister, J. (2013). Tswanarising global gayness: the 'unAfrican' argument, Western gay media imagery, local responses and gay culture in Botswana. *Culture, health & sexuality*, 15(sup1), 88-101.

McAllister, J. (2015) LGBTI activism and traditional values': Promoting dialogue through indigenous cultural values in Botswana

Mosweu, R. (2013). Human rights pitsô – dialogue with dikgosi. Unpublished report. Gaborone: LeGaBiBo/BONELA.

Ndadi, U. (2013): https://web.facebook.com/MmegiOnline/posts/10151578898011824?_rdr

Reygan and Mosime, (2015) *Regional Study on Addressing Gender, Diversity and Violence in Schools in Southern Africa*

Online

<http://www.mmegi.bw/index.php?sid=2&aid=616&dir=2011/February/Wednesday2#sthash.owslJ01i.dpuf>

<https://legabibo.wordpress.com/2016/02/04/the-war-on-homosexuality-a-look-to-botswana>

<http://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/botswana>

<http://www.un.org/africarenewal/web-features/good-leadership-about-people-%E2%80%93festus-mogae#sthash.0A366907.dpuf>

<http://www.un.org/africarenewal/web-features/good-leadership-about-people—festus-mogae>

Date unknown on <https://legabibo.wordpress.com/in-context/official-comments/>

http://www.iranti-org.co.za/content/Profiles/Ratanang_Mosweu.html

<https://legabibo.wordpress.com/tag/margaret-nasha/>

<http://www.mmegi.bw/index.php?sid=7&aid=944&dir=2013/february/Monday11>

<http://www.mmegi.bw/index.php?sid=2&aid=475&dir=2010/February/Friday26/>

<http://www.sundaystandard.info/it-wrong-kill-homosexuals>

http://sasspace.sas.ac.uk/4824/10/12TabengwaNicol_SexualRightsBotswana.pdf

36 Reports

BONELA, LeGaBiBo with Global Rights and International Gay and Lesbian Human Rights Commission (2008) 'The Violations of the Rights of Lesbian,

Gay, Bisexual and Transgender Persons in Botswana: A Shadow Report, March 2008'



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