

WE ARE FACING EXTINCTION

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



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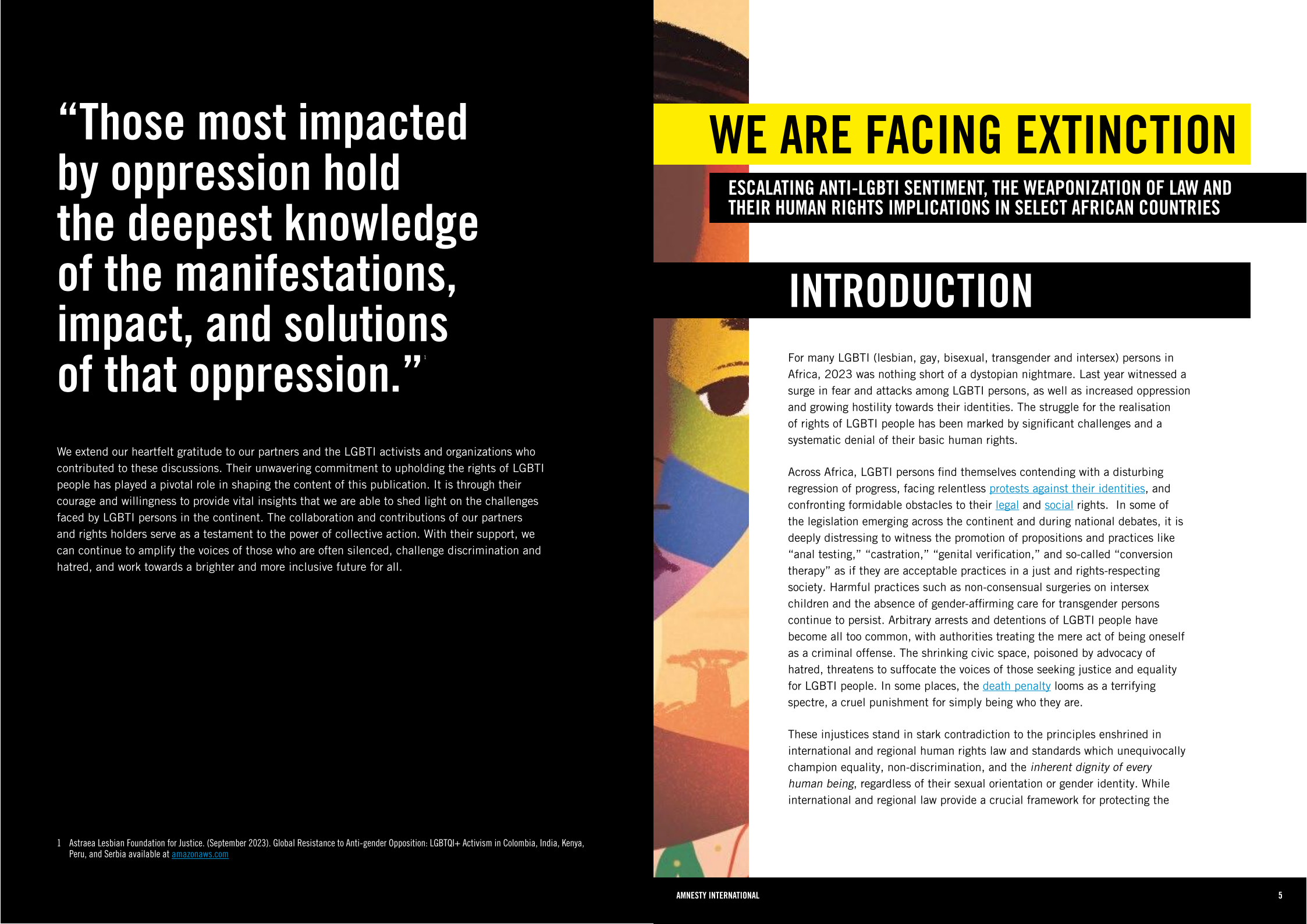
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“Those most impacted by oppression hold the deepest knowledge of the manifestations, impact, and solutions of that oppression.”¹

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

¹ Astraea Lesbian Foundation for Justice. (September 2023). Global Resistance to Anti-gender Opposition: LGBTIQ+ Activism in Colombia, India, Kenya, Peru, and Serbia available at amazonaws.com

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INTRODUCTION

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

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

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



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

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

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

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

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

METHODOLOGY

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

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

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



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NAMIBIA

Legislation banning same sex marriage passed in parliament

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

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

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

28 Interview with Amnesty International on 6 September 2023

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁹ Interview with Amnesty International on 5 September 2023

³⁰ Text Correspondence with Amnesty International on 10 November 2023

³¹ Interview with Amnesty International on 5 September 2023