

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	535
Land:	Den Demokratiske Republik Congo
Kilde:	ILGA
Titel:	State-Sponsored Homophobia 2019
Udgivet:	20. marts 2019
Optaget på baggrundsmaterialet:	02. april 2019

GLOBAL PERSPECTIVES

AFRICA

STATE-SPONSORED HOMOPHOBIA 2019



AFRICA

Courage and Resilience amidst Oppression

Various authors.

Mechanisms of Adaptation and Resistance to Repression in North Africa

By Naoufal Bouzid¹ and Khadija Rouggany.

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.² 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).³ 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,⁴ 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.⁵

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 2018.⁶

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 organisations and helps to maintain a sense of closeness within the

¹ Nao Bouzid is a gay African feminist and an LGBTQI+ activist from Morocco. He is the co-founder and the Executive Director of Equality Morocco, an LGBTQI+ organization in Morocco. Nao has over 10 years of experience working with local and international LGBTQI+ 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 LGBTQI+ 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 #HomophobiasACrime 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 LGBTIQ+ 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 LGBTIQ+ 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 LGBTIQ+ people and are working on the issue through two main strategies. The first is to prepare reports to monitor violations of the rights of LGBTIQ+ 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 LGBTIQ+ 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 LGBTIQ 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 LGBTIQ 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 LGBTIQ person and communities in the East Africa region.

For example, Tanzania has banned provision of condoms and lubricants to LGBTIQ health clinics and has since 2018, upscaled the use of forced anal examination against suspected LGBTIQ persons including cramping down on organizations that support their rights.¹⁰

⁷ "Transat", Website.

⁸ Global Philanthropy Project (GPP), *The 2015-2016 Global Resources Report: Philanthropic & Government Support for Lesbian, Gay, Bisexual, Transgender, and Intersex Communities* (2018).

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 Ndoeye¹² 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

¹¹ For more information, see the entry on Burundi in the "Criminalisation" section of this report.

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¹³ Emma Onekekou is a blogger (@EmmallInfos) 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.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.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.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.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.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).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 flagrante 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 Godpeul arrested them as they were reported for committing "unnatural acts" and having gone against the moral order.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".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

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).

¹⁶ "La Couple Akwaba", Facebook Page.

¹⁷ Ababacar Sadikh Ndoeye, *Rapport de terrain : Documentation des cas de violence sur les LGBTQI du Mali*, 4, 2018.

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".

¹⁹ See the following: "Justice : première condamnation pour pratique homosexuelle en Côte d'Ivoire", Abidjan Net, 14 November 2016; "Pour la première fois, la Côte 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.

²⁰ This information was obtained by the Courage and Plural Vision Organisation (individual interview).

²¹ "Sicap: Une bande d'homo arrêtée pour vidéos obscènes", *Seneweb.com*, 17 September 2018.

²² "Poverty responsible for rise in homosexuality", *Graphic Online*, 3 November 2018.

and murder.²³ 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.²⁴ In some areas of Ghana, homophobic gangs lynch LGBT persons, later terrorising their partners and families.²⁵ 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.²⁶ Even in Benin where consensual same-sex sexual relations are not criminalised, LGBT persons are forced to live in hiding.²⁷

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.²⁸ 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".²⁹

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.³⁰

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.³¹ 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.³²

²³ "Scandale: Un homosexuel a été battu puis déshabillé en pleine rue à Abidjan", *Net Afrique*, 25 April 2018; "Bamako (Mali): lynchage sordide d'un homosexuel dans la rue", *Fdesouche*, 20 February 2018; "Vidéo - Déchaînement de violence contre une personne transsexuelle à Bamako", *Net Afrique*, 11 October 2018.

²⁴ "Mali : des homosexuels tabassés par une foule à Bamako", *Infowakat*, 17 January 2019.

²⁵ "Family of lynched gay man's partner demand maximum security", *Ghana Web*, 31 March 2018; "Police save suspected lesbians from lynching", 13 February 2018; "Angry Youth In Kyebi Zongo Lynched Gay Man, Still Hunting His Partner", *Daily Guide Network*, 3 August 2015.

²⁶ See, for example: "In Sierra Leone, human rights defenders stay silent on LGBTQ+ discrimination", *Politico SL*, 16 January 2018.

²⁷ "Être adolescent et gay au Bénin, c'est vivre caché dans un monde libre", *Le Monde*, 25 December 2018.

²⁸ "Gays in Mali are hunted and humiliated online", *The Observers*, 18 September 2017.

²⁹ For more information see: Ababacar Sadikh Ndoeye, *Rapport de terrain : Documentation des cas de violence sur les LGBTQI du Mali*, 4, 2018; "Chasse aux homosexuels au Mali : les accusations s'organisent sur Internet", *Les Observateurs*, 15 September 2017.

³⁰ See, for example: "Côte d'Ivoire : des homosexuels condamnés à 18 mois de prison", *Afrique sur 7*, 16 November 2016; "Homosexualité : Un haut cadre d'une entreprise privée chassait sur Facebook les...", *Seneweb*, 30 May 2018; "Homosexualité : Sur les pas de la communauté LGBT de Bobo-Dioulasso", *Le Faso*, 30 May 2016.

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).

³² "Les femmes transgenres africaines discriminées au travail", *Blog : Tous Pour Un Monde Meilleur*, 21 August 2018.

An Overview of Some Central African countries

By Julie Makuala Di Baku³³ and Jean Paul Enama.³⁴

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 penalizes same-sex relationships were unfortunately kept intact.³⁵ In the international arena, Cameroon has rejected all recommendations on issues of sexual orientation and gender identity.³⁶ 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.³⁷ 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).³⁸ 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,³⁹ with arrests for “moral attacks” based only on the form of dressing “translating sexual orientation”.⁴⁰ 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.⁴¹ 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”,⁴² 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 LBT 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).

stigmatization. While same-sex sexual relations between consenting adults are not expressly criminalized,⁴³ Article 176 of the Criminal Code—which criminalizes activities against public decency—is used in practice as the legal basis to criminalize LGBT persons.⁴⁴

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

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.

Small Victories Add Up in Southern Africa

The author wishes to remain anonymous.

It could be argued that in a few countries in Southern Africa some advancements in legislative protections and guarantees of equality often outpace changes in public sentiment. Even South Africa, the first country with a constitutional protection from discrimination based on sexual orientation, has and continues to struggle with a lack of societal acceptance of sexual and gender minorities, and reports of anti-LGBT violence seem to regularly cycle through the news.

Yet the past two years have seen a number of legislative and court victories for LGBTI people across the sub-region, proving that progress is possible in the face of resistance. Importantly, the governments of non-criminalizing countries have signalled support for SOGI issues in a number of areas, including ending discrimination in education and supporting LGBTI asylum-seekers.

Homophobia, discrimination, and hate incidents

In terms of marriage equality, constitutional rights, and legal protections from discrimination for LGBTI people, South Africa is undoubtedly a regional leader. At the same, South Africa’s high rates of rape and homophobic crime, perpetrated disproportionately against lesbians of colour in poorer townships,⁴⁸ demonstrate that robust legislation does not necessarily translate to societal acceptance. A 2017 report on violence faced by the LGBT community in South Africa found that a shocking four out of ten LGBT South Africans know of someone who has been murdered for their sexual orientation or gender identity; that number rises to 49% for black LGBT people in the country.⁴⁹

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”.

⁴⁵ The East African Sexual Health and Rights Initiative, *Landscape Analysis of the Human Rights Situation of Lesbians, Gay, Bisexual, Transgender, Intersex People and Sex Workers in the Democratic Republic of Congo* (2017), 12; Mouvement pour la promotion du respect et égalité des droits et santé (MOPREDS) et al., *Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in the Democratic Republic of the Congo (DRC): Submitted for consideration at the 121st Session of the Human Rights Committee* (2017), 4.

⁴⁶ Human Rights Committee, *Concluding observations on the fourth periodic report of the Democratic Republic of the Congo*, CCPR/C/COD/CO/4, 30 November 2017, para. 14.

⁴⁷ *Loi n° 08/011 du 14 juillet 2008* portant protection des droits des personnes vivant avec le VIH/SIDA et des personnes affectées.

⁴⁸ James Fletcher, “Born free, killed by hate - the price of being gay in South Africa” *BBC News*. 7 April 2016.

⁴⁹ Michael Morris, “LGBT community still faces high levels of violence - report” *News24*. 4 December 2017.