

Safety & Dignity Freedom Study



Acknowledgments

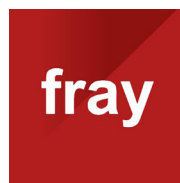
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Safety, Dignity and Freedom

A Narrative Study on the Experiences
of Lesbian, Gay, Bisexual, Transgender,
and Intersex (LGBTI+) People within
Mainstream Media in Botswana, Malawi,
Zimbabwe, South Africa and Namibia

Written and compiled by Letlhogonolo Mokgoroane & Lihle Ngcobozi
Edited by Gershwin Wanneburg
Designed by Edher Numbi

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Foreword

Society's freedom and dignity is reflected in how our journalists report on the most vulnerable, and state accountability. There are many indicators to consider when assessing media freedom – some of these are editorial independence that holds no fear or favour with the State, religious groups or with business.

Ordinary people rely on journalists to convey stories, news, and debates be it through radio, television or print. From far rural areas to large cities, people want to hear from journalists. Surely, we would believe a journalist before we would believe the story of a politician. Why so? Because we believe that journalists ensure that their stories are verified, checked, and that human interest and accountability comes before any propogandist agenda.

Unfortunately, within Africa, this has not always been the experiences of LGBTI+ persons, rather, we know that journalists have intentionally outed LGBTI+ persons merely to harm them, we have a record of a trans womxn that was killed in Tanzania after a tabloid published her photograph on the front page. Her family believed this brought shame to them and poisoned her. A trans man in Malawi was brutally attacked, his home and car destroyed after he had an interview on national television. So, even when media has good intentions we know that we have so much more to do when it comes to changing public mindset and this is often difficult when governments use media platforms to fuel hate against LGBTI+ persons.

Over the past two years, Iranti embarked on a courageous journey of bringing LGBTI+ organisations in five southern African countries together and pairing them with journalists within their countries to engage on how authentic, accurate and human-interest stories can help change hearts and minds in Botswana, South

Africa, Namibia, Malawi and Zimbabwe. No easy call to make as this project occurs over a period in which most of the countries embarked on their national elections. A time when the moral debate becomes the smoke screen for state accountability on non-service delivery and increased poverty. LGBTI+ persons become vigilant and safety plans were made to ensure safety in this time.

This amazing project, although small in terms of its reach made a significant difference to creating journalism language for reporting and creating collective empathy on bringing important stories back to the people.

We hope that this study and these stories will encourage journalists to be more sensitive in their telling and reporting of LGBTI+ stories.

Let us all fight to ensure that all people have safety, dignity and freedom.



Jabulani Chen Pereira
Executive Director.

Introduction

Safety, Dignity, and Freedom (SDF) is a campaign with partner organisations in five countries; namely, Lesbians, Gays, Bisexuals of Botswana (LEGABIBO); Lesbian, Intersex, Transgender, and Other Extensions (LITE) in Malawi; Wings to Transcend in Namibia; Intersex South Africa (ISSA), and Transgender Research, Education, Advocacy and Training (TREAT) in Zimbabwe.

The way that the mainstream media is currently reporting on LGBTI+ issues is essentialist, with phrasing and reporting that further alienates LGBTI+ persons. In light of this slow transformation of the media with regards to LGBTI+ inclusion, the purpose of the Safety, Dignity, Freedom campaign is to foster the use of transformative messaging within the mainstream media of these five countries; that is to say, content focused on the LGBTI+ community. The campaign aims to challenge homophobic and anti-queer mindsets and to change harmful behaviour that targets LGBTI+ people, including violence, stigma and discrimination.

The content strongly advocates the use of information that has the potential to counter misconceptions and engender empathy with LGBTI+ people. The messaging, at its core, entails a two-pronged approach, which integrates the head and the heart, and recognises the need for material that is both informative and has the power to shift perceptions.

SDF prioritises changing hearts and minds by collaborating with partner organisations and a variety of media practitioners. It recognises that perceptions are largely influenced by legislative practices and cultural conditions, and that the media may be emblematic of the societal and cultural fabric and its inherent biases. The research explores the varied socio-political contexts within each country.

Research and Methodology

The research consisted of a two-part methodology. The first being a baseline study, conducted via desktop that researched media sensitivity to LGBTI+ concerns. The second part of the research consisted of a series of focus groups hosted in each country and attended by media practitioners.

Irantzi conducted a baseline study in 2018 to investigate existing mainstream media coverage of LGBTI+ issues and identify key thematic areas, trends, and the responses of various media consumers within the identified countries. In addition, the baseline study informed the approach the campaign would take, i.e., the areas for correction, identifiable gaps and inconsistencies in media coverage related to LGBTI+ individuals, the scope of existing content and potential remedies. The baseline study provided a contextual overview of the partner countries, considering the social, political, economic, religious and other social structures that implicitly and explicitly inform messaging within these countries in relation to LGBTI+ individuals.

“When it comes to covering anything related to lesbian, gay, bisexual, transgender, (LGBTI+) matters, the media — particularly African-based publications — are known for being unsupportive to the point of cruelty.”

Carl Collison,
'Africa needs to hear queer stories'

Key Findings

The baseline study was conducted through desktop research from January 2016 to December 2017. The key findings were as follows:

- Mainstream media outlets report disproportionately on gay men in relation to the rest of the LGBTI+ community, possibly attributable to the prevalence of sodomy laws that explicitly target men, as well as the social norms geared primarily around this group.
- All countries displayed minimal coverage in mainstream media of bisexual people. This absence could be explained by these individuals falling either into gay- or lesbian-specific media coverage.
- In all countries, intersex coverage was related to cultural taboos, customs, and traditional perspectives on gender variations found in infants.
- General news coverage related to legislative changes, legislative challenges, announcements, lobbying efforts, and LGBTI+ events (Pride, discussions, protests, etc) were prevalent across all countries.
- In Malawi and Zimbabwe, in particular, coverage related to the utterances made by government officials and religious or traditional authorities, against or in support of LGBTI+ persons.
- Coverage included responses made by the international community to human rights violations related to discriminatory common or codified laws.
- Reporting on transgender issues in the media focussed on bureaucratic challenges to gender-affirming identification, and ongoing cases related to the recognition of gender markers.
- There was little to no engagement with the varied ways in which transgender people interact with the state, except in Zimbabwe.
- High levels of coverage related to transgender womxn.
- Media coverage spiked in the event of murder, rape, and cases of mob justice (Zimbabwe, Malawi, South Africa) especially related to lesbian womxn.

In addition, the baseline study found outlying indicators that are important to note:

- In Malawi, sex workers were closely linked to the LGBTI+ community, especially relating to transgender womxn.

'We use the term 'womxn' to denote gender fluidity and inclusivity. We also use it as a rejection of heteropatriarchal conception of womanhood

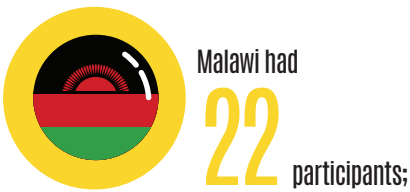
- Mainstream media coverage is minimal in countries with high levels of state repression; however, alternative media sources fill the gap. In other words, there is a direct correlation between repressive governments and LGBTI+ media turnover. This link is important to note as it signals the limitations of desktop research related to mainstream media and the LGBTI+ community.
- LGBTI+ persons prefer to make use of their own media platforms or alternative media outlets that are LGBTI+-friendly and socially aware.

Although useful, the baseline study did have a few limitations:

- It is difficult to provide a full and exact representation of ALL mainstream media as desktop research limits the data scope: countries with higher levels of online presence may appear to produce more content as opposed to those that rely more on traditional media outputs (most specifically print).
- The limits of the data pool are a strong determinant factor in which countries are seen as more inclined to report on LGBTI+ issues (positive or negative).
- Linguistic barriers: Local news outlets that use indigenous languages are more difficult to capture, e.g., Namibia, Zimbabwe, Malawi. This barrier is not a reflection of content scarcity, but rather the limitations of the researcher.
- The privileging of English creates barriers to data.
- The baseline study provided the groundwork for the second component of evidence-based research and reporting for the project.

In-Country Focus Group Discussions

The in-country focus groups were the secondary component of the research. The focus groups comprised the following research participants:



The participants came from different racial, cultural and socio-economic backgrounds.

The rationale was to qualitatively gain insight into the experiences of LGBTI+ individuals with mainstream media; to identify emergent areas that required education through messaging; the extent to which public perceptions inform stigma, discrimination, and human rights violations, and how, if possible, these assumptions and perceptions can be challenged, and ultimately changed.

The emerging themes within the focus groups would be used to inform media pieces within each country and address key issues in an impactful, innovative, and empathetic way. These objectives are important in informing the messaging as it tailors the media production process to key thematic areas within each country. This qualitative approach centres the experiences and lived realities of LGBTI+ people as the critical source of content geared at changing hearts and minds. The focus groups included media practitioners,

who discussed the challenges of LGBTI+ reporting. The focus groups gave media practitioners insight into the stigma, discrimination and violence that LGBTI+ people face, as a result of inadequate media coverage. This input will prove invaluable in the media production process. We were unable to gauge the views of non-LGBTI+ members, due to several factors, such as fear of being targeted, not having enough access to a diverse group of non-LGBTI+ individuals, safety and security concerns of LGBTI+ participants (media practitioners, LGBTI+ and non-LGBTI+ persons) who could be accused of endorsing LGBTI+ activities. The objective shifted to a narrative analysis of LGBTI+ experiences, challenges, and critical issues.

However, the research maintained the intention of the overall campaign related to changing perceptions within the media and society more broadly.

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1. Out in the Media? Knowledge, Attitudes and Practices of the Media towards Lesbian, Gay, Bisexual, Transgender and Intersex Issues and Stories, compiled by Community Media for Development/ CMFD Productions for Gay and Lesbian Archives (GALA) of South Africa, published in 2006 (accessed on <https://www.gala.co.za/resources/docs/OutInTheMediaFinalReport.pdf>).
 2. Id at 3.
 3. A snapshot of LGBT media coverage in East, West and Southern Africa compiled by Gender Links, published in 2015 (accessed on <https://genderlinks.org.za/programme-web-menu/a-snapshot-of-lgbt-media-coverage-in-east-west-and-southern-africa-2015-12-18/>).
 4. Id at 1.

Media

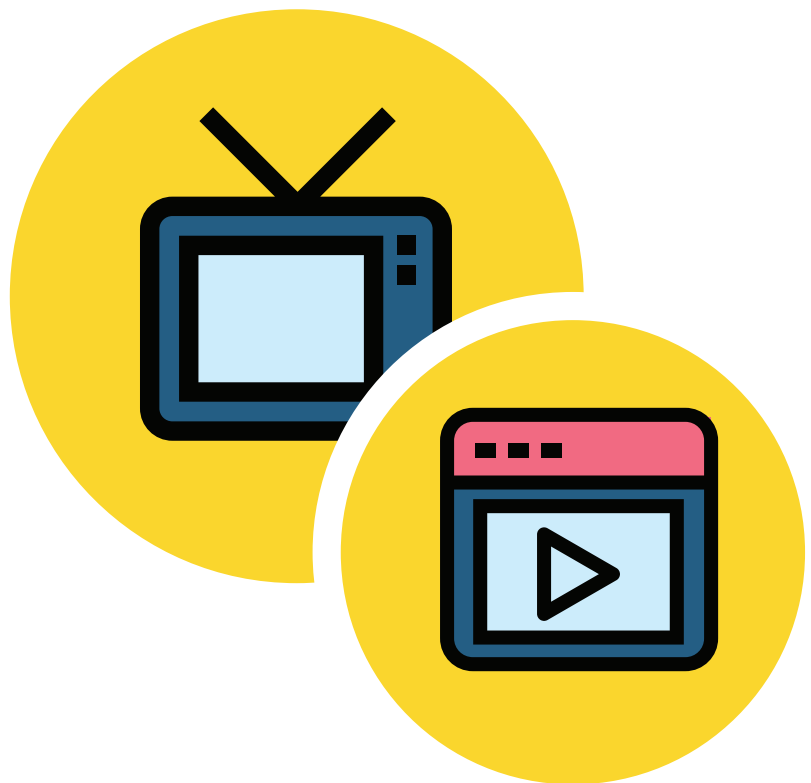
The objective of the focus groups was to discuss reporting trends, as outlined by the baseline study completed by Iranti. The discussions included certain print publications that may not have been included in the baseline study. Furthermore, these engagements addressed the role of the media in shaping news about the LGBTI+ community. It was widely agreed that the socio-economic conditions, budgetary constraints, freedom of press rules and socio-political situation in each location affected the perceptions of audiences. Participants conceded that these constraints led to under-reporting and allowed sensationalist and negative coverage of the LGBTI+ community to proliferate.

The media plays a prominent role in shaping the national conscience, and public discourse, and opinion. In *Out in the Media? Knowledge, Attitudes and Practices of the Media towards Lesbian, Gay, Bisexual, Transgender and Intersex Issues and Stories*, compiled by Community Media for Development, it was noted that:

- Media reflects society, but also plays a part in shaping how society views certain topics or communities. Media is very influential. How media portrays groups such as the lesbian, gay, bisexual, transgender and intersex (LGBTI) sector influences what society thinks. Coverage that is negative, stereotypical or non-existent impacts on how these communities are viewed. Media has the ability to increase understanding or the power to re-enforce negative perceptions that contribute to discrimination.

A study conducted by Gender Links, which provided a mapping of the media coverage of LGBTI+ news in East, West, and Southern Africa found that:

- LGBT people continue to be underrepresented and misrepresented in African media. This research also found that a majority of stories analysed about LGBT issues fail to incorporate the voices of those affected. In addition, many stories use only secondary sources – or no sources – and feature discriminatory or stereotypical language. The sample also presents a reliance on international news about this topic; only a handful of articles presented insightful background or analysis of this complex topic area as it pertains to the African context.



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Botswana

Legal Background

Botswana, like several countries in southern Africa, and the continent at large, grapples with colonial legacies and legislative frameworks which prohibit same-sex intercourse. The prevalence of penal codes creates an environment for the stigmatisation, persecution, and discrimination against LGBTI+ persons. The legislative framework, in conjunction with national, traditional, and religious conservatism, plays a significant role in the way LGBTI+ individuals experience basic rights, such as dignity, freedom of association, safety and security as well as the right to adequate healthcare, to name a few.

The constitution of Botswana includes a Bill of Rights, which guarantees the protection of fundamental human rights and freedoms and the equal protection of these before the law. In addition, Botswana is a signatory to varied regional and 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. However, the current penal codes in Botswana contradict these human rights treaties and conventions.

The overarching penal code (subsequently referred to as the Code) prescribes the many ways in which people may choose to interact sexually and otherwise. The code, under section 164, asserts that an "unnatural offence" includes any person who

"(a) has carnal knowledge of any person against the order of nature;" or...

(c) "permits any other person to have carnal knowledge of him or her against the order of nature."

The Code further asserts, in sections 165 and 167, respectively:

"Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment for a term not exceeding five years."

"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."

Although vague, social mores, customs, traditions, and religious influences have imposed these sections of the Code on the LGBTI+ community in Botswana and have allowed various arms of the state to be the arbiter of whom they deem to be in contravention of the Code. This legislative dominion has had a detrimental effect on the LGBTI+ community in Botswana as it has increased and justified the stigma, violence, and discrimination they face under the state, as well as at the hands of the greater society. Despite this, Botswana has an effective and impactful LGBTI+ activist base, which has penetrated public discourse and pursued greater recognition of the rights and protections of the LGBTI+ community.

In 2003, *The State vs Kanane* saw a gay man being tried under Botswana's sodomy laws⁵. The case reached the Botswana Court of Appeal, which concluded that the people of Botswana were not ready to embrace homosexuality.

Following this, two seminal court judgments have had a significant impact in the move to protect the rights and dignity of the LGBTI+ community; the first being the legal recognition and registration of Lesbians, Gays, Bisexuals, of Botswana (LEGABIBO) as an organisation that advocates for the rights, protections, and dignity of the LGBTI+ community. In *Attorney General of Botswana v. Thuto Rammoge & 19 Others*⁶, the High Court and Court of Appeal affirmed that LGBTI+ people formed part of the rich diversity of any nation and are fully entitled in Botswana, as in any other progressive state, to the constitutional protection of their dignity. Consequently, the refusal of the Ministry of Labour and Home Affairs to allow the registration of LEGABIBO was unconstitutional as it infringed on the respondents' right to freedom of assembly and association.

The Southern African Litigation Centre remarked that this ground-breaking case created an important precedent on the right to freedom of association, and the right of LGBTI+ persons to advocate for law reform. The court confirmed that human rights were universal and that the rights in the constitution applied to every person. The court further held that it was not a crime to be gay⁷.

ND v Attorney General of Botswana involved the case of a transgender man who wanted to have his gender marker changed, thus claiming his right to the expression and legal recognition of his gender identity. The court held that:

the non-recognition of gender identity exposes transgender persons to wide-spread discrimination, stigma and harassment. Judge Nthomiwa observed: 'Recognition of the applicant's gender identity lies at the heart of his fundamental right to dignity. Gender identity constitutes the core of one's sense of being and is an integral [part] of a person's identity. Legal recognition of the applicant's gender identity is therefore part of the right to dignity and freedom to express himself in a manner [the applicant] feels ...comfortable with⁸.'

In 2019, the Botswana High Court issued a ground-breaking judgment, decriminalising same-sex sexual conduct between consenting adults. In a unanimous decision, Justices A.B. Tafa, M. Leburu and J. Dube found that sections 164(a), 164(c), 165 and 167 of the Code violated the constitutional rights of lesbian, gay, bisexual and transgender persons to dignity, liberty, privacy and equality. The High Court declared sections 164(a), 164(c) and 165 of the Code unconstitutional¹⁰. The Botswana government gave notice to appeal the decision to the Botswana High Court and the Botswana Court of Appeal.

(5) 2003 (2) BLR 67 (CA).

(6) [2016] CACGB-128-14.

(7) A victory for the Right to Freedom of Association: THE LEGABIBO CASE compiled by Southern African Litigation Centre (accessed on <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/SALC-Legabibo-Booklet-1.pdf>).

(8) MAHGB-00049-15, 29 September 2017.

(9) See <https://www.southernafricalitigationcentre.org/2017/12/05/news-release-botswana-registrar-agrees-to-change-gender-marker-from-female-to-male/>

(10) See <https://www.southernafricalitigationcentre.org/2019/06/11/news-release-botswana-high-court-decriminalises-consensual-same-sex-sexual-conduct/>.

For the full judgment, please see the following link <https://africanlii.org/sites/default/files/legabibo.pdf>.

See https://afrobarometer.org/sites/default/files/publications/Dispatch/ab_r6_dispatchno8.pdf.

'Canaries in the coal mines: An analysis of spaces for LGBTI activism in Botswana' - compiled by the Other Foundation, published in 2017 (accessed at http://theotherfoundation.org/wp-content/uploads/2017/06/Canaries_Botswana_epub_Draft2_CB2.pdf).

Social Context: The varied social mores at play in Botswana

An Afrobarometer survey (2016) indicated that the Botswana people enjoy a high degree of liberties, such as freedom of expression and association. However, the survey concluded that, despite this social context, low levels of acceptance of LGBTI+ individuals persisted. A majority of those surveyed (56%) expressed dislike for the LGBTI+ community. The same proportion objected to having LGBTI+ individuals as neighbours in their communities; around 60% felt the same way about sharing a religious community and or work environment¹¹.

A report by the Other Foundation titled 'Canaries in the Coal Mines: An analysis of spaces for LGBTI activism in Botswana' found that cultural norms and tradition, national identity and patriotism played a role in the perception of LGBTI+ people¹². Although these different social mores have varied foundational ideologies, they do share a conservatism that disproportionately affects the lives of LGBTI+ individuals in Botswana.

These social mores provide the justification for the violations committed against LGBTI+ people and are often the base from which people assert their power, dominance, and varied acts of violence.

In Botswana, like a clear majority of African countries, religion, most specifically Christianity, is the dominant belief system, which permeates varied sectors. The dominance of Christianity extends into the fabric of the Botswana's norms and is the arbiter of what is "good" and socially acceptable.

Public utterances and biblical pronouncements have been prominent in Botswana in relation to the validity of LGBTI+ people's experiences and identities. A well-documented display of Christian-inspired hate speech was from a member of the Evangelical Fellowship of Botswana (EFB) who made great strides in discrediting various social justice issues that he believed conflicted with Christian doctrine; these included the condemnation of homosexuality, sex work and sex workers, and the introduction of condoms

in prisons.¹³ In addition, he publicly discredited LGBTI+-specific organising. He remarked:

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 ungodliness¹⁴.

On the other hand, counter narratives from religious leaders have shown support for the LGBTI+ community in Botswana, even though this has not evolved into the transformation of the religious sector. Churches such as the

Roman Catholic Church, Trinity and the United Congregational Church of Southern Africa and the Methodist Church have opened their doors to LGBTI+ groups with empathy towards "God's mistakes". These religious institutions have taken an active role in that they have opened their doors to LGBTI+ persons but they have not been vocal enough in supporting and advocating for the rights of LGBTI people¹⁵.

Reverend Thabo Otukile of the Botswana Council of Churches pronounced that "the church wants to stand and support LGBTI because if we do not, we judge them against the wishes of God too." He added that "training and sensitization on Sexual Orientation and Gender Identity (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 minorities¹⁶".

(11) See https://afrobarometer.org/sites/default/files/publications/Dispatch/ab_r6_dispatchno8.pdf.

(12) 'Canaries in the coal mines: An analysis of spaces for LGBTI activism in Botswana' - compiled by the Other Foundation, published in 2017 (accessed at http://theotherfoundation.org/wp-content/uploads/2017/06/Canaries_Botswana_epub_Draft2_CB2.pdf)

(13) Id at 11.

(14) Id at 11.

(15) Id at 11.

(16) Id at 11.

Media Coverage and its Impact on LGBTI+ Individuals in Botswana

In the baseline study conducted by Iranti in 2018, data showed that LGBTI+ reporting in Botswana increased in the following instances:

- litigation matters, such as the registration of LEGABIBO, the ND gender marker case, and the case of the transgender womxn seeking legal recognition of her gender marker;
- LGBTI+ events such as Pride, a gathering of LGBTI+ individuals, where prominent leaders, pastors, and international figures have delivered speeches;
- human rights violations of LGBTI+ individuals which gain local or national traction. Prominent news outlets such as The Voice and The Sunday Standard have published content that highlighted the homophobic views of a high-profile politician.

Although the media terrain in Botswana seems fertile and open to publishing and creating LGBTI+ content, the narratives communicated and language employed contribute to largely sensationalist, misleading, inaccurate, and detrimental coverage.

In a focus group discussion hosted by Iranti in 2018, with twenty participants who were LGBTI+ identifying, one participant expressed how

the everyday experiences [of LGBTI+ people] are not necessarily captured by mainstream media, unless it's a gay parade or something that's got to do with dance and stuff, but in terms of really thinking about what it means to be an LGBTI person living in Botswana, there's no narrative, or strong narratives that are shaped by the LGBTI community, that is able to translate to mainstream media. [We need to] find a way that will bring those narratives together to create awareness, and as I have said, [for media to be] more informative and educational in order to then change perceptions of the general society and the general community. So, trying to no longer, sort of, have the LGBTI experience being more on the fringes, but, sort of, bring it into mainstream national discourse as part of just the everyday experience of any other human beings. So, whether that's related to health, and health is a national issue, but it affects people in particular ways, so how does the national health crisis, for example impact on LGBTI people, how do jobs or unemployment affect LGBTI people? How do they do this and, sort of, fit it within the national conversation that's happening?

Another participant said:

So how do you/we create content that owns the narrative, firstly, and, secondly, is truthful to the LGBTI experience, but also mindful of the issues that come with having people on a public platform and how do we mitigate those things?

“We’re Not a Gay Identity”: Language and Misrepresentation in Media

An entry point into the discussion on LGBTI+ people's experiences with the media, was the issue of uninformed journalists using the incorrect categories, pronouns, and language when reporting

on LGBTI+ issues. Many participants expressed how this was a contentious issue in their interaction with the media. One participant expressed how

one of my things has always been a problem with lesbians being categorised as gay women, as opposed to lesbians. I find that that becomes the erasure of lesbian fem queerness...The media calls it gay coverage, gay pride. It cuts everyone else out. It's still always about the masculine space. This is a conversation that's been going on for years, well especially in terms of LEGABIBO's way of trying to do [things]; to create a narrative that isn't very biased to one identity. I know we've had these conversations [about] that, but a lot of the time we're not a gay identity, it's about every other identity that LEGABIBO represents. Even when we've had media trainings, training mainstream journalists on how to report, especially when it comes to people's identities, we've explained this. Not only is it about the erasure of lesbian identities, but it's also the erasure of bisexual identities, erasure of trans-identifying identities, because what we found is that there's still a misrepresentation of who is a trans woman and who is a trans man, and these are some of the things that the media needs to get right.

Another participant said the dominant focus on gay men featured heavily in media reporting on the legal proceedings of LEGABIBO's registration.

When we did the registration case, there was a spike in media reporting of the LEGABIBO registration case, despite some misconceptions of the case being about legalising homosexuality. However, when it came, towards the end of it, when we did a lot of monitoring on how media was reporting, there was great accuracy in what exactly the court case was about and the judgment that came thereafter. The only problem that came up, though, was the use of gay, you know, over and over.

One participant, who is a journalist, said:

I have to be very honest with you. It's not easy reporting on gay, I mean, on LGBTI persons, because, like you said earlier, people think LGBTI is being gay. Gay is like the general, you know, descriptive word.

As seen by the above comments made by the participants, misrepresentation is a major source of distress for LGBTI+ people. The use of “gay” as an umbrella term erases the varied and complex identities that LGBTI+ individuals straddle. This misrepresentation has fuelled the state's fascination with men who sleep with men (MSM) as the main demographic they consider in awareness programmes, specifically in the healthcare sector. Furthermore, this misrepresentation erases the identities of transgender men, transgender womxn, lesbian womxn, gender non-conforming people, and non-binary people. The omission sustains and further replicates the ignorance in the societies in which media exists. The media is not only obligated to be the watchdog of the state and to ensure that citizens are aware of issues related to the state; the media is also there to

educate, inform, and to create a space for new conversations and inspire a citizenry to grapple with matters that are prevalent in their country. In the absence of a media that informs and educates, the public consumes and shares inaccurate information, which is often detrimental to marginalised groups such as the LGBTI+ community.

The dominance of masculine understandings or gay-specific references could be attributed to laws and penal codes that explicitly spoke to men and criminalised same-sex relations related to men. The idea of gayness as a masculine phenomenon in the media, further alienates other identities and does not provide the space for media houses and journalists to educate the public on different identities, sexual orientations, and gender expressions.

In the baseline study conducted by Iranti, one of the key findings suggested that transgender womxn were disproportionately misrepresented, especially those who expressed their gender identity in feminine ways, prevalent in the reporting of human rights violations targeted at transgender womxn. This inaccurate depiction affects how these violations are documented within the criminal justice system. This, in conjunction with journalists' inability to provide accurate information on transgender womxn's identities, makes it difficult to provide accurate statistical data on the number of violations committed against transgender womxn. It is important to note that, for many people, the media is the first point of access for information. Therefore, it is crucial for journalists to be knowledgeable about different identities and how these are experienced in the public domain.

“When it Bleeds, it Leads”: Sensationalism and the Newsroom

A dominant point of discussion was the politics and methodologies of the newsroom in Botswana in relation to LGBTI+ media coverage. Here is the point of view of one journalist.

I'm a senior reporter and, without really blowing my own horn, I think I'm the most passionate journalist when it comes to LGBTIQ issues. This past week I wrote an article, on the person who was attacked in the club. Let me tell you something, it was a hassle

because my sub editor just wanted the article to be twisted, you know? Because, as we say in the newsroom, “When it bleeds, it leads.” So, the general thing is that it has to be sensational! You have to structure the story in a way which asks questions that make it seem as if the person had no business doing what she was doing. Like, what was she doing there, why was she wearing a wig? Why does she want to be addressed as a she? While she has an important story to tell, I must talk about the penis and all of those things that are not important. I also did a lot of stories which I know are quite sensitive and I tried very hard to make it a good story, but the editing room is about money, and good stories do not sell. It must bleed, like for real, not just a little, but a lot... It's not easy in the newsroom. Apart from the politics, it is also the issue of language. Language and how you say or write things is important to the editor because your headline must attract the reader and make them want to buy it [the newspaper]. So, for example, in the story I mentioned, I respected that way they identified, but I had to fight for it. Even if you are a journalist that knows how to write about the issues, you must write the way you are expected to, you have to twist it and make it sensational. So that it sells, to catch readers.

Another person in the media and communications industry said:

That becomes part of the problem in the storytelling...that the interest point is the person's sexual orientation or what's in their pants, without it really affecting the story being told in any way. So, similarly, when we look at how we communicate or portray stories within the context of Botswana, especially headlines which use terminology that is not then fleshed out within the content, it becomes part of the problem, You're not teaching people, so what are you expecting your audience to do, to take on the labour of teaching themselves something you haven't bothered to teach them? And that's, I guess, something that needs to be done. Media is there to educate, so we must do that. This sensationalism thing is problematic.

The journalists' contributions are important as they speak to the heart of barriers to good, fair, and ethical reporting on LGBTI+ issues. In Out in the

Media? Knowledge, Attitudes and Practices of the Media towards Lesbian, Gay, Bisexual, Transgender and Intersex Issues and Stories, it was noted that there was an

overwhelming indication from organisations and journalists that the media poorly and inaccurately represents the LGBTI sector, tending to highlight sensational from negative angles. Coverage is often mainly about scandals and, negative stereotyping around sex, often creating an impression that the LGBTI sector is outside of normal society. Some feel that some media displays are overtly homophobic¹⁷.

Although the above sentiments were expressed in relation to a South African study, what the data shows is similar to the experiences of the journalists and LGBTI+ individuals in Botswana who have interacted with the media. This remains one of the main barriers to broadening the coverage of LGBTI+ stories in Botswana. From the response of the journalist, it is evident that the media industry is geared particularly to ensuring high profit margins; therefore, it is critical to create content that attracts an audience. Specifically, for LGBTI+ content, which already exists in hostile contexts, media output oftentimes reflects the beliefs and values of that environment. Therefore, it is socially acceptable to consume homophobic and sensationalist stories. These are mutually constituted spheres, the media and the general public; they inform and influence each other and reflect shared norms and values. It is, then, imperative for media to create alternative narratives and to shape a public discourse that is LGBTI+-aware and less hostile.

Unfortunately, this is often left to the personal convictions of the journalist.

One journalist added:

I'd say editors have a problem with reporting on LGBTI issues. I mean, they call me the gay reporter, and I am the one who is sent to all of the gay events, as if they are insignificant issues. Even when I write a story, I have to be there watching it from day one, till it goes to bed. I try to be there so that they don't change things, and to just minimise harm, you know?! I have to ensure that

the right pronouns are used, the right quotes are there. There are times we have to exchange words, you know, because at the end of the day, if this story is carrying my by-line, I am responsible for what is out there. I must know that if it is wrong, so-and-so will be angry with me or LEGABIBO is going to be angry at me. The problem is that the editors are super ignorant, and I still humbly request that next time you should invite them, or even if we can just have an editors' forum with LEGABIBO or with maybe Rainbow, so that you can teach them. I don't think they get it. They don't get the full ethics when it comes to LGBTI persons' issues and how to go about it.

In response to this, one of the participants added:

I've had encounters with reporters and some of them, as much as we will like to put all the blame on the editors, there is still a lot of ignorance with journalists as well. I remember the Rikki Nathanson case. I had to shout at a lot of journalists that called me to seek comments. I would give them the facts, but I would keep correcting them on the right pronouns. I had to shout, she is a woman; SHE, SHE, SHE!

Another journalist added:

This issue not only speaks about journalists and editors which need to be trained, but what does this reporting say about the general public? It doesn't shine a good light on us because what kind of people are, we that we only get papers to read about stuff that is sensational? Are you saying that we are not open enough to want to learn and understand issues that we have, that LGBTI people continually face on a daily basis? Are we saying that, as parents, we do not care enough about our kids to understand their lives? Are we saying we are going to throw them away? Are we okay with paying money to read about bad things? The general public must also look at itself. What kind of people are we?

These are important notes and comments made by journalists and participants in the discussion. Sensationalism is still dominant in the media and communications industry. In addition to training

(17) See above note 1 at 9.

and educating journalists and editors, the broader ethical question is: what are the transformational tools required to reimagine the nature of media reporting on LGBTI+ issues? What are the critical measures needed to shift media and communication practices to ensure empathy and transformative justice? These considerations require a collaborative approach with both media practitioners and LGBTI+ people and organisations in Botswana

“We are quiet. We’ve come back to being private entities”: The Social Cost of Telling our Stories

A 2009 Human Rights Watch report indicated that there were social implications for the visibility of LGBTI+ individuals in the media. The report added that the varied political climates in Africa posed several threats to LGBTI+ individuals.

This is a crucial point being made by the participant on the extractive nature of media reporting related to LGBTI+ people. It also speaks to media houses not being able to read and pre-empt the nature of the social cost of visibility for LGBTI+ people and the implications for issues such as job security, the vulnerability of the families of LGBTI+ people, and social relations.

The participant asked an important question about how LGBTI+ people are able to retreat to normalcy in the aftermath of being profiled in the media. This is crucial in that it addresses the ethical considerations that need to be made by media houses invested in telling the stories of vulnerable and marginalised groups.

The participant added that visibility had implications for the livelihoods of LGBTI+ people in Botswana.

One of the things that’s constantly being spoken about is employability. So, you end up in the newspaper [because of] this wonderful phenomenon in Botswana, of just telling people’s names just for just. I’m like, well, can’t you just tell the story without saying my name? Essentially, I don’t know who’s reading it and why they’re reading it, and what they’re going to do with it. What happens to me afterwards?

These are underlying implications that further alienate and marginalise LGBTI+ individuals and produce feelings of shame, compelling them to retreat to being private entities, as described by the participant above. The distrust between the media and individuals are heightened by the insecurity and instability that emanate from visibility. One participant said LGBTI+ individuals navigate the terrain of visibility, security, and the importance of telling thoughtful and truthful stories about their lives. The participant added:

As much as the stories are relevant to be told, is it worth it if it continuously affects our human rights?

These are the issues LGBTI+ individuals must contend with when they weigh the opportunity costs of visibility and having ownership of their stories. In addition, the social cost of visibility includes the ripple effect it has on their families. One of the participants noted:

What we really need to be cautious of is parents. Right? Every single time. Every time I go on anything, if I’m featured in anything, I tell my mother because my mother knew everything before everybody else, so I choose to empower her to know that [I will be in the news]. Her feeling empowered enough to not only consume, but also share with other members of my family who are her counterparts in that generation, has given her at least a space to know what is truth from my perspective, but also where the weird manipulations have been happening and she’s able to have conversations moving forward rather than me just saying they’ll deal with it.

This is important because it shows how media visibility for LGBTI+ people goes beyond themselves; it affects their families, friends, and social relations across the board. It is important for media houses to take this into consideration when creating content that profiles and names specific individuals. Although the participant did not cite any harm or violence meted out on their parent because of their visibility, the social cost comes in different ways: exclusion, alienation from community circles, and being labelled “the parent of the gay child”.

Representation and the Home: Struggles of Parents of LGBTI Individuals

Media representation of LGBTI+ individuals affects the home in several ways. In Botswana, the participants discussed the impact of the increased visibility of lesbian and gay people in popular television shows, and whether this had shifted the ways in which parents and families come to understand LGBTI + issues.

I think it is important to highlight that we're the biggest consumers of everything South African. So, most of the stories that are told, most of those depictions are not depictions of Batswana; they are South Africans. So, the danger in that is, it will always be viewed as something foreign from those people there who do the most, because our culture, Batswana culture, is conservative, safe, nice, and respectful. The people across the border do the most.

The dominance of South African television programmes in Botswana, especially ones which have an LGBTI+ focus or have a gay, lesbian, and/or transgender character, proves to be problematic for the LGBTI+ people in Botswana, as it popularises the idea that these characters and identities are specific to South Africans and is an attempt to promote homosexuality. This type of reasoning, as explained by the above participant, is similar to many utterances made by conservatives who believe homosexuality is a Western phenomenon, promoted by external forces. This argument reveals the conservative national identity. This is dangerous for LGBTI+ individuals in Botswana, as it places them at risk of being labelled unpatriotic and failing to subscribe to the norms and ideals that shape the Batswana identity. This also speaks to comments already made about the ownership of narratives. It is important for Batswana people to have indigenous LGBTI+ portrayals in the media, which offer a diverse representation of identities.

However, one participant added:

I think in the last couple of years we've seen real shifts. I think one of the biggest things, for me, was seeing a government-sponsored ad on Botswana TV about gay men and safe sex, but it didn't last very long. They were strategic about when they played it, it was after nine. I think the two times that I saw it was after nine, 9:00 pm, but it was the first. It was the first government-sponsored ad ever, it was an HIV/Aids awareness thing. They took it off air after a while. It didn't last very long, but that was something...

There was a lot of conversation around it. I mean, so once again we go back to the stereotypes and the sensationalism. In the dialogue [there is] this person [who] identifies as male but had lipstick on and makeup and a really cheap wig, and that's okay. I'm not saying that men can't do that, that's not what I'm saying at all. I'm not saying you have to identify a certain way to be able to do that, let everyone do whatever. But I had real problems with that depiction.

I don't know if it was deliberate. It was as if they were going for something and the only thing they were pushing for was the shock factor. Unfortunately, I believe that [these] kinds of depictions are reinforcing stereotypes. I am happy that conversations are happening, and they have been for a while now. But when they happen in the home and you're there, then, you know, you kind of steer the conversation in a direction that is positive. But what about those households that don't have somebody like that?

The above remarks are important to note; they indicate that representation is heavily reliant on prevailing stereotypes of gay men; the one which expresses gender identity in feminine ways. The problem lies not in the specific portrayal, but in how it contributes to the erasure of the spectrum of identities that LGBTI+ people choose to express. The dominant use of gay men in television programmes reinforces the idea that other identities, such as lesbian, transgender, bisexual, and intersex, do not exist, and thus do not require representation; therefore, leaving a vacuum around these conversations in the home.

In discussing the representation of LGBTI+ people in television programmes, one participant observed:

One of the things that needs to be noted is how the roles about LGBTI, and gay men specifically, do not last very long. All those characters on the different shows were all killed off or they disappeared. This is another thing about how representation is not very good when it comes to us. We don't have long-running characters, except for Prince on The Queen [a popular South African drama series] who is still relegated to a princess and that's it, right? There's no other way to represent us. Even a character being portrayed as bisexual or gender or sexually fluid, it's only when there's another person there for the character to engage with. It's never just a character who is living their best life.

Despite these issues, the data and participants suggest that there has been a significant change in the home. Parents have used the media and the representations in television programmes to create a space for dialogue. The conversations in the private domain, such as the home and church, have allowed parents to begin the process of learning and engaging with their children in positive ways. One participant expressed that the home and parents have the responsibility to create

a safe space for the child before they can find any other safe space. Some parents will rather run with the masses than try to understand what that kid is going through. It should not be for parents that have kids that are LGBTIQ-identifying only. The responsibility should just be for all parents. Because, as a parent, you're going to be a grandparent. Then you're going to be an aunt and uncle and everything else. Right? The responsibility is for all, but the elders need to be educated, and

the media must accept that they play a role in that education.

An important discussion emerged on how parents of LGBTI+ children deal with shame and stigma directed at them for having and accepting LGBTI+ children.

As a parent to a lesbian, [my child] will always be my baby girl, but as a parent it's a struggle. We have to battle a lot with the community, the family, and religion. There are a lot of battles, but we must fight them. It's almost as shocking as it is for the child who has to come out. So, we too need to go through the process. Sometimes it's not because we don't love our kids, it's because we too are going through some things and we don't know how to handle them on the right track.

Another participant who had engaged a parent before added:

The parent said to me, "If my daughter came to me and told me she's lesbian, I would talk to her. I would try and talk her out of it. I would take her to church to pray, to get prayed for." And these are some of the realities that we go through. You'd be lucky if you have someone who's actually older that would understand you as a young person. But most of the time there's always the religion and culture thing. But I also think that, maybe I am wrong, but our parents also need to be given time to deal with a lot of things. They come from a different time and they are not wise enough to know anything else. Like, I know my mother loves me and will do anything for me, but she has to deal with a lot of things. The media is here, the church is here, culture is here, God is here, friends are here, her expectations for me are here. It's just a mix-mix of things and I think we need to give them the space to process and help them. I understand how she can't start from being ashamed to being accepting. In all of that, I still know she loves me.

A documentary filmmaker shared the different ways shame and pain affect parents of LGBTI+ people, and the complexity of having parents confront their ideas around shame and guilt, while affirming the identities of their children.

Parents feel a lot of things, from my experience. And, look, I'm based in South Africa, so my perspective might be vastly different to the context in Botswana. But I remember I did an interview for a documentary with a mom to a lesbian lady who had been gang raped and brutally murdered [and] I had to do the pre-interview with her. I left the interview feeling, like, I need to just fall into a ditch, but it was only when we shot with her and realised that her shame and her pain were in two separate bubbles because when the child was alive, shame was the predominant thing that she was feeling. But now that she had been raped and brutally murdered, the pain superseded that shame. How do you then navigate that space with somebody as a media person making a documentary, because I don't understand generationally what she had to fight off for the shame to supersede

the pain on the other side of her daughter's rape. So, for me, there's a lot of shame amongst parents, but it's not just, oh no, my child is gay. It's, oh no, I have failed as a parent to produce a child who does not fit into this perfect bubble of what society deems normal.

Another parent said the influence of the media, the working relations these parents exist in, and the different communities they are a part of, create and contribute to a lot of internalised shame.

The difficulty of living with an LGBTI-identifying child is not just about having the child. It's about a lot of other things as well. It's the people who you share the homestead with. As a parent, you could have dealt with having a gay child, but you have other people who are part of staff at work who then want to speak about your child in bad ways, and they will expect you to other your child because they don't agree with the gay thing. Then they ask you stories of how you can be okay with it, will you even have grandchildren, how do they have sex, and all of that. Then you start to think bad things as well. We as parents need a lot of support because we do not know how to answer these questions. Even when we try to speak about it on the radio, the other listeners will call in and start calling you an evil and demonic parent. But we want to support our children, but who is supporting us? I love my child but my community and the things I read in the paper make me sad.

Another participant added:

When I was younger, there were two openly gay people in the world, according to my mother. There was a fear, I understood why my mother was extremely homophobic and extremely rigid towards me when I was growing up because there was a fear. As a child, when you were born, your mother sees your potential, your mother sees, "My child could be a doctor, my child could be all of these wonderful things." But then when you become, when you tell her that you are gay or lesbian or trans, her only point of reference are those three gay people that she knows. She knows gay men who either do hair or they are the laughingstock of the community, not by their own account.

The role of parents and familial relationships is a major point of concern. Societies that operate from a sense of community play a role in the lives of many children as they subscribe to the belief that it takes a village to raise a child. However, when parents and children deviate from these established norms, they are shamed and isolated. This is common for the parents of LGBTI+ children; they are ostracised for condoning and supporting LGBTI+ experiences and identities. The home then becomes a fraught place, not only for the LGBTI+ children, but also for the parents. This is the space where parents consume a lot of media, listen in on television and radio commentary, and it is crucial that media creators consider their role in shaping the ways parents respond to, and attempt to understand, their LGBTI+ children.

This is important because, as one participant noted:

Parents become inherent human rights defenders as they do protect and raise LGBTI+ children. I think that's the difficult thing: is they are placed in the space of activist, ally, or the problem. And I think, yeah, it is important to develop a bit more empathy towards that. Especially in spaces like the home.

Representation was a dominant thread in the discussion; if parents do not have the accurate information from the media, it has a ripple effect on the attitudes and perceptions that develop in the home. The home is the place where transformative justice and its ideas can be created, strengthened, and practised and replicated in the public domain. It is critical to create media that reaches the home in impactful, meaningful, and transformative ways that allow for dialogue that fosters empathy and acceptance.

Conclusion

The discussion in Botswana, like many African countries, highlighted how religion still plays a major role in the making of the nation, and how visibility in the media may endanger the lives of LGBTI+ people. The discussion also highlighted how the lack of local Botswana content on TV limits the fair representation of LGBTI+ people, and therefore limits the ability to foster understanding in the home, the nucleus of African society.

Malawi

Politics and religion have for long been intertwined in Malawi, often making for a tempestuous marriage.

Church leaders have often been at odds with the establishment. In one famous instance, the religious community was targeted for orchestrating the ouster of controversial post-independence leader Kamuzu Hastings Banda, who ruled from 1964 to 1994.

Banda suppressed “dissent, controlling the media and persecuting perceived enemies, including the Jehovah’s Witnesses.”

Such episodes illustrate powerfully the sway that religious institution hold in Malawi. The LGBTI+ community has been caught up in these power struggles¹⁹.

In Malawi “religious and cultural chauvinism” have determined the narratives on LGBTI+ people, access to and protection of their rights, and their everyday experiences of both the state and interpersonal relations²⁰.

The LGBTI+ movement straddles challenging socio-political divides that meet at the intersections of local and international politics; public religion; relationships with donors, human rights activists and NGOs; the Malawian government, and broader society²¹.

Legal Background

In Malawi, there are varied and extensive legislative frameworks that have empowered the state to be the main arbiter on the legality of same-sex relations and/or same-sex conduct. The law empowers the state to determine who has the protection of the law. The constitution dictates that the law prohibits all discrimination and unfair treatments based on “race; colour; sex; language; religion; political or other opinion; national, ethnic, or social origin; disability; property; birth; or other status.”²² There exists no explicit protection from discrimination on the basis of sexual orientation, gender expression, and/or gender identity. Malawi is a signatory to several international human rights agreements and treaties that require states to abide by international conventions and standards to protect and promote the rights of minority groups, such as the LGBTI+ community. However, these have not been domesticated nor have there been international consequences for these universal agreements not being enforced domestically²³.

The Penal Code criminalises same-sex relations for men and womxn under sections 153, 154, and 156. Any real or perceived same-sex relations

(19) Mainstream Christianity thrives in poor Malawi (<https://www.reuters.com/article/us-religion-malawi-christians/mainstream-christianity-thrives-in-poor-malawi-idUSL1739802620070521>)

(20) Canaries in the coal mines An analysis of spaces for LGBTI activism in Malawi, published 2017 (accessed on http://theotherfoundation.org/wp-content/uploads/2017/02/Canaries_Malawi.pdf) at 4.

(21) Id.

(22) Section 20 of the Constitution of The Republic of Malawi.

(23) See above note 20 at 4.



are prohibited and subject to 5 and 14 years of imprisonment for womxn and men, respectively. The law is outlined as follows:

Section 153. Unnatural offences

Anyone who – has carnal knowledge of any person against the order of nature; or has carnal knowledge of any animal; or permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.

Section 154. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.

Section 156. Indecent practices between males

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.

In addition, the Marriage, Divorce, and Family Relations Act provides that a valid marriage is one in which “two persons of the opposite sex who are both not below the age of eighteen years, and are of sound mind enter into marriage with each other”. In section 2 of the Act, sex is defined as “in relation to the gender of a person, meaning the sex of that person at birth”. This has an implication for transgender persons and intersex persons who present variations in biological characteristics. These laws have created a hostile environment for LGBTI+ persons living in Malawi and significantly altered the interpersonal interactions between LGBTI+ people and broader society.

The Social Context for LGBTI+ people in Malawi and the Implications for Media Reporting

The social and political context in which LGBTI+-identifying people exist in Malawi is extremely volatile and hostile. In a Human Rights Watch study titled *Let Posterity Judge: Violence and Discrimination against LGBT people in Malawi*,²⁴ participants of the study shared how because of

pervasive homophobia and transphobia and the criminalization of same-sex conduct, [LGBTI individuals] live in constant fear of abuse because of their real or perceived sexual orientation and gender identity. The abuse takes many forms, including intimidation, beatings by members of the public and some police officers, arbitrary arrests and detention, lack of access to justice, and discrimination in healthcare settings²⁵.

In addition, the study notes that

LGBT people are often victims of mob attacks, physical assault, arbitrary arrest and detention simply because of their presumed sexual orientation, and discrimination in access to health care on the grounds of sexual orientation or gender identity. Several human rights activists told Human Rights Watch that the combination of the anti-homosexuality laws and the religiously and socially conservative Malawian context contributes to the commission of these abuses and deters many LGBT victims of violence from seeking redress, thereby contributing to a culture of impunity²⁶.

Religious conservatism, in conjunction with cultural ideals of marriage, manhood, masculinity, and womxnhood, has translated into the political domain and exacerbated existing tensions for LGBTI+ people. The media terrain has been a highly contested space in Malawi, where politicians and religious leaders use these platforms to express hate speech and homophobic sentiments, while activists and organisations such as the Centre for the Development of People (CEDEP) and the Centre for Human Rights and Rehabilitation (CHRR) have used the media to provide counter narratives on LGBTI+ people and to advocate for their rights.

(24) *Let Posterity Judge: Violence and Discrimination against LGBT people in Malawi*, published by Human Rights Watch in 2018 (accessed at <https://www.hrw.org/report/2018/10/26/let-posterity-judge/violence-and-discrimination-against-lgbt-people-malawi>).

(25) *Id* at 15.

(26) *Id* at 15.

“I do not expose my sexuality, they kill witches in our country”: LGBTI+ People and Religion in Malawi

Religious leaders in Malawi play a critical role in shaping public opinion and discourse. In a joint report by CEDEP and CHRR, Violence and Discrimination Based on Real or Perceived Sexual Orientation and Gender Identity in Malawi, it was reported that “according to a survey by continental pollster, Afrobarometer, 79% of Malawians have ‘somewhat’ or ‘a lot’ of trust in religious leaders. Most people in Malawi reflect views of religious leaders”. In 2016, the Young Pastors Coalition of Malawi (YPCM) “called on Malawians to fight against [the] promotion of gay rights and have vowed to fight against homosexuality”. The pastors said that “homosexuals’ rights should not be given room in Malawi”. As expressed by one of the participants in the study, these utterances are not limited to the public domain, it has trickled down to the interpersonal level and affects how LGBTI+ people experience the social arena, such as in the church and other religious spaces.

Most of the times it happens that you enter inside a church, instead of the pastor preaching what he was supposed to preach, he changes the topic. Maybe, when you got there, they were singing something and now he starts speaking about some parents who don’t know how to raise their children properly, you allow your children to do some satanism stuff. Just because you entered, so that makes us feel outcast because there’s no way someone can say that we don’t belong there.

Another participant added:

We once went to the graveyard at the cemetery [and] instead of preaching the message to deliver people, he changed the message and started insulting me and LGBTI+ people. I’m telling you now, after everything we were beaten, even others they were injured.

Because religion plays a prominent role in the lives of Malawians, it should not surprise us that this is the same for LGBTI+ people. As described in Canaries: “The ongoing repetition of homophobic rhetoric, with its attendant distortions and stereotypes, underpinned by religious bigotry, contributes to hardening public attitudes towards LGBTI people.”

The thing is, most of the people in church do not know that you are gay because you have never come out, but some people, they just presume, just because of the way you dress or the way you talk, or they heard some rumours from somewhere. In the church I’m straight, in the church I do not expose myself as he. In church I am a man, I am not a she, because I do not want to expose myself as a trans woman. But I remember, once in youth choir, I remember this other time they summoned me and ex-communicated me. Now I joined another church, but I don’t expose my sexuality to them because they kill witches in our country.

One participant said the inability to express himself as a trans man in church made him feel

bad at that time and embarrassed. I want to go out of the church and never come back but the same thing can happen again once you go back to church, so what’s the point of leaving? Some churches don’t allow ladies who aren’t wearing skirts. Usually I wear pants, I’m not comfortable in long dresses, so I would rather go to a church where they accept me the way I am. So that’s why I attend fellowships [Pentecostal churches] just the way I am.

It is important to note that the media exists within these prevailing belief systems. Therefore, the utterances of prominent religious leaders affect the ways LGBTI+ individuals are treated at an interpersonal level. The fear expressed by the participants indicates the power of particular voices and how these adversely determine the ways LGBTI+ people access social spaces. Although this particular messaging does not out individuals by name, there is a grave social cost to issuing nationwide directives to kill LGBTI+ people in Malawi. This outing and targeting of a demographic has implications for access to freedom of movement and freedom of expression, which are constitutionally protected in Malawi, as it severely limits the places and spaces LGBTI+ individuals may access without fear or shame. The shrinking of the social domain for LGBTI+ people is evident in the many ways in which they have to seek alternative spaces of fellowship, as expressed by the participant above.

When asked about the responsibility of the church in creating a safer and more accepting environment for LGBTI+ individuals, one of the participants added:

I think the church elders should consider everyone. They shouldn’t discriminate against the LGBTI church members. They should just treat everyone who goes inside the church the same. They should give us a chance since they say God is for everyone. They shouldn’t judge us. Them, being religious leaders, they shouldn’t judge us. They should just leave judgement to God Himself.

Another participant added:

I just want to love God and go to church in peace. Why must they tell about me or who I can love and who I must not love? I get very sad because I want to do things in the church. I want to be an elder and a leader, but everything is difficult. Every time I attend, someone must comment on my looks, what I’m wearing, and if I am wanting to turn people into me. I am not there for that, I am here to worship and love God, just like everybody else, but I must now think about: will people kill me after church? I think this thing must be addressed at the theology schools. What are they teaching these pastors and why are they teaching them like this? We also need to find things we can do with the church and help them understand because, if it was not for the church being homophobic, I think we would live a better life.

This comment raises several issues; namely, the responsibility of the church, the conflict between personal religious convictions and the battle for acceptance in the church, as well as the fear caused by religiously inspired homophobia. Like the above participant, many LGBTI+ people in the focus group expressed their deep sense of connection to their religious beliefs and how worshipping with other believers was important to their spirituality. However, there exists tension between their religious aspirations within the church as they do not have access to leadership positions and other roles they may wish to take up. This speaks to a yearning to be accepted by their religious communities. There is a great deal of social rejection and shame that religious LGBTI+ individuals experience, and this is evident in the above comment made by the participant. To mitigate this, the participant emphasises the importance of transforming theological education and ensuring that there is a collaborative approach to dealing with uninformed pastors and those responsible for teaching aspiring theologians. As alluded to by the participant, it is crucial for interfaith groups to enter into dialogues with LGBTI+ congregants in order to create safer and accepting environments, which can be defended and sustained through the use of media to break stigma and discrimination. This should not be exclusively tailored for churches, but also for influential leaders who make use of religious and Christian motifs to speak out against LGBTI+ people for the sake of political expediency.

In 2016 a Facebook post made by politician Ken Msonda went viral. The post called for the killing of homosexuals. Further, Msonda said: "I will not be cowed and have my Christian belief compromised, I stand by what I said, and I will repeat it in court—homosexuals have no rights in Malawi and that is why they are being arrested". He added further, "people should not hide in the name of human rights. If there are gays, let them come out and see if they cannot face the law. Government must not treat homosexuals with kid gloves in exchange for donor aid. This is pathetic." These religious motifs play a significant role in shaping the ideas of patriotism, national identity, and safeguarding Malawian cultural and societal norms. This is an area of contention for a number of LGBTI+ individuals and activists in Malawi as Christianity is the bedrock of all norms

and "contributes to hardening public attitudes towards LGBTI+ people³⁰ⁿ.

"There are no protections if you are an LGBTI person. You're not safe": Media and Representation of LGBTI+ Individuals in Malawi

Journalists have expressed the difficulty of producing positive content about the LGBTI+ community in Malawi, given the heavy-handedness of the state and its ownership of several media publications. One of the journalists in the focus group commented :

It is extremely difficult to write anything positive about LGBTIs in Malawi. The issues are many. Most of the times editors are worried about their affiliation with the state and how their jobs will be taken away if they write anything that goes against what politicians are saying. Even if you write a good story, the editor will tell you to take a position that is in line with the politics of the country. If the state is homophobic, you must be homophobic. If the state is not homophobic, then you have the space to write something good. It is very, very complicated and at the end of it all, I will also write what will keep my job.

Another journalist added:

This is very true. I remember, at the time when there was the process of reviewing the law and everything else, and me and another journalist wanted to write something good, we had to be very careful that we write something that was not too good or not too bad, but it had enough bad to make it look like homosexuality was wrong. And at the time the Americans were threatening to take away money from the country and people were writing stories saying that it is because of the gays that Malawi was going to be poor. It's things like that. Even if you want to be positive, it is hard.

Finally, one added:

As a journalist, it is also about being safe. If you write a good story, you will be blamed for spreading an agenda and wanting to turn the entire country into homosexuals. You will be attacked, and people will even say that you are gay as well. So, to be safe, you must write according to what is happening

(30) See above note 20 at 9.

at the time. Other journalists have said they have been attacked, sworn at, and told that they are not true Malawi people because they are promoting gay sex. So, we don't know what to do.

The above sentiments speak to the terrain in which journalists in Malawi operate. A hostile environment, which is explicitly against the LGBTI+ community and prone to promoting violence, grossly influences the direction of LGBTI+-related content. As with Botswana, the editorial process plays a significant role in the autonomy of journalists.

Journalists and LGBTI+ individuals alike share safety concerns. One participant said LGBTI+ persons chose not to interact with the media because of the high risk of visibility:

There is no protection for you if you are a LGBTI person; especially if you are trans, you're not safe. The media, they do not consider our safety. Because what happens next if you are outed? It's upsetting! Maybe if we could be treated as normal people, maybe we will tell our stories. We tend to hide because we will be killed and beaten up once people know our names and our stories.

Another participant added:

I think the problem is you cannot just go out there and put stuff about LGBTI in the media because it is dangerous out there. These people [journalists], they don't even talk to us first. They hear something and, whether it's true or not, they print it and you must deal with what happens after. What is that? Is that right? It can't be! These people think this is a drama show. This is my life and I must try my best to be safe all the time, and journalists don't help us when we are being beaten after they have written the story. Because of that, I don't talk to the media.

The above remarks are important to consider in crafting any media output related to the LGBTI+ community in Malawi. Safety, the cost of visibility, and the vulnerability of LGBTI+ individuals are directly linked to the willingness of activists and individuals to avail themselves and their stories. The hostile environment faced by individuals and activists, and the failure of the media industry to create safe spaces and adequate responses to human rights violations committed against the LGBTI community post-visibility, causes the LGBTI+ community to retreat into the private domain as a means of protecting themselves from further violence and discrimination.

Conclusion

The Malawian context, specifically related to LGBTI+ people, is determined largely by Christianity and the ideas of social morality attached to it. As seen above, religion is the central feature and point of tension when it comes to the acceptance and protection of the LGBTI+ community. Furthermore, Christianity as a religion and an institution, largely shapes public discourse and opinion and determines the lengths to which both the state and the media will go to ensure that these beliefs are preserved. The complexity of the intersection of a religious citizenry, a religious state, as well as the legislative frameworks founded on Christian beliefs, restrict the media's ability to create counter narratives that provide an accurate and positive representation of LGBTI+ individuals in Malawi.



Zimbabwe

The LGBTI community in Zimbabwe faces extreme challenges in the recognition of, access to, and protection of their rights. A complex set of material facts and circumstances intersect with the political and public discourse around LGBTI+ identities. The political climate in Zimbabwe has had an impact on varied rights for its citizenry, which include freedom of expression, freedom of association, freedom of political association, just to name a few. The political dispensation of former president Robert Mugabe exacerbated the varied human rights violations and the common discourse on human rights and human rights interventions internally, eclipsing the particularity of LGBTI+ rights and the attendant discourse.³¹ The human rights “infractions, specifically the economic crisis, have left the country and its people stripped of resources and the violation of the human rights of sexual minorities have not taken much priority”³². LGBTI+ organisations and individuals operate within an unstable political and socio-economic context, which adversely affects their ability to experience their rights and protections.

In addition to the political climate in Zimbabwe, several competing influences exist, such as religious conservatism, ideas of African tradition and custom, colonial and post-colonial political residues, legal frameworks, alongside ideals of state alliance and patriotism, which have been

used by the state and private citizens to publicly express anti-LGBTI sentiments. These influences, as mutually affirming conservativisms, have been enabled and protected by the legal landscape.

Legal Context

The constitution in Zimbabwe makes mention of the universal protections of “the right to non-discrimination, privacy, and freedom of expression, thought and association).³³ However, the constitution is silent on the inclusion of LGBTI+ individuals within these rights and protections. In 2016, the United Nations Committee on the Rights of the Child noted that “national legislation remains inconsistent with the non-discrimination provisions” in relation to LGBTI+ individuals.³⁴ A 2017 report from the US State Department expressed its concern that the constitution of Zimbabwe “does not prohibit discrimination based on sexual orientation and gender identity” and leaves LGBTI+ individuals vulnerable to varied forms of violence.³⁵ Furthermore, the constitution not only expressly fails to protect LGBTI+ rights, but

(31) *Canaries in the Coal Mines: An Analysis of Spaces for LGBTI activism in Zimbabwe*, compiled by The Other Foundation published in 2017 (accessed on http://theotherfoundation.org/wp-content/uploads/2017/02/Canaries_Zimbabwe.pdf).

(32) *Id* at 4.

(33) The Constitution of Zimbabwe Amendment (No. 20) Act.

(34) The Committee on the Rights of the Child (accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/044/47/PDF/G1604447.pdf?OpenElement>).

(35) See <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/zimbabwe/>.



also prohibits same-sex marriage. Citizens would often interpret this as a form of criminalization of LGBTI+ persons in the highest law of the land. This has led to the tabling of marriage legislation, which in turn reiterates marriage prohibition; the Act is still under debate and has not been passed. The prevailing law in Zimbabwe that explicitly makes mention of LGBTI+ individuals is section 73 of the Criminal Law (Codification and Reform) Act, which was promulgated in 2006.³⁶ Section 73 does not criminalise the sexual orientation and gender expression of LGBTI+ individuals, but it makes illegal the public displays, assumed or real, of same-sex conduct. Section 73 stipulates:

(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.

(3) For the avoidance of doubt, it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person –

(a) who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; or (b) who is of or above the age of twelve years but below the age of sixteen years and without the consent of such young male person, shall be aggravated indecent assault or indecent assault, as the case may be; or

(c) who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person

Section 163, which is a provision on fraud and misrepresentation, has been used as a mechanism disproportionately to discriminate against

transgender people. The provision proclaims that a misrepresentation occurs when:

“Any person who makes a misrepresentation

(a) intending to deceive another person or realizing that there is a real risk or possibility of deceiving another person; and

(b) intending to cause another person to act upon the misrepresentation to his or her prejudice, or realizing that there is a real risk or possibility that another person may act upon the misrepresentation to his or her prejudice; shall be guilty of fraud if the misrepresentation causes prejudice to another person or creates a real risk or possibility that another person might be prejudiced, and be liable to

(i) fine not exceeding level fourteen or not exceeding twice the value of any property obtained by him or her as a result of the crime, whichever is the greater; or

(ii) imprisonment for a period not exceeding thirty-five years; or both.”

Although sodomy laws target men who have sex with men (MSM), subsections as well as the enforcement of criminal offences have an overarching effect. Sodomy laws make it illegal for transgender individuals to have their gender legally recognised and protected. In 2016, the Southern Africa Litigation Centre reported that: “Zimbabwe does not have a specific law that allows transgender people to change the gender marker on their birth documents, or other official documents [and] there are no laws or policies that provide for hormonal treatment or any other gender-affirming healthcare for transgender people.” The existing legal frameworks have a far-reaching effect which places transgender people in greater precarity and vulnerability.³⁷

Although the national laws in Zimbabwe are anti-LGBTI+, Zimbabwe is signatory to many international conventions and treaties that promote and uphold universal rights, such as the African Charter on Human and Peoples' Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights. These international treaties and conventions

(36) Criminal Law (Codification and Reform) Act [Chapter 9:23].

(37) See Transgender Rights in Zimbabwe (accessed on <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Transgender-rights-in-Zimbabwe.pdf>)

promote and uphold the principles of equality, freedom, free speech, and freedom of association, and are subject to universal standards of human rights and dignity. The ICCPR, in particular, explicitly protects the rights based on sexual orientation and gender identity. However, the enforceability of these treaties and the consequences of deviance are all subject to principles of state sovereignty. This has allowed states to operate with impunity in relation to LGBTI+ rights, as will be discussed and explored below.

Socio-political context

The socio-political context in Zimbabwe presents a complex reality for the LGBTI+ community. The state plays a significant role in shaping national identity, public discourse, and public morality; therefore, it is inevitable that the state makes use of its political arm to determine whom it recognises and deems legally protected. A Human Rights Watch Report published in 2016 noted that “authorities disparaged lesbian, gay, bisexual, and trans persons (LGBT) people and that authorities continued to violate the rights of LGBTI+ people”.³⁸

A Zimbabwe Human Rights Commission report showed continued hostility and systematic discrimination by police and politicians towards LGBTI+ people, driving many underground.³⁹ Political leaders and government officials have made use of state-owned media to express anti-LGBTI+ sentiments. In 2015, former president Robert Mugabe “rejected calls from the United Nations to implement gay rights in Zimbabwe, saying: “We are not gays.”⁴⁰ Furthermore, in response to a threat to reduce aid in Zimbabwe, the former president expressed:

We have this American president, Obama, born of an African father, who is saying we will not give you aid if you don't embrace homosexuality. We ask, was he born out of homosexuality? We need continuity in our race, and that comes from the woman, and no to homosexuality. John and John, no; Maria and Maria, no. They are worse than dogs and pigs. I keep pigs and the male pig knows the female one.⁴¹

The late leader of the official opposition party, Morgan Tsvangirai, denounced homosexuality, stating that “in the draft Constitution, we said

marriage is between a man and a woman, and those who want to marry another from the same sex, have a problem. Why do you want to sleep with another man?”⁴² These sentiments are common cause and have translated into the new political dispensation with the election of the President Emmerson Mnangagwa.

In 2018, while still on the campaign trail, Mnangagwa made the following remarks when asked about the possibility of recognising and protecting LGBTI+ people's rights: “Those people who want it are the people who should canvass for it, but it's not my duty to campaign for this. In our constitution it is banned, and it is my duty to obey my constitution.”⁴³ However, President Mnangagwa met with the Gays and Lesbians of Zimbabwe (GALZ) ahead of the national elections. This was seminal as the group had not had the opportunity to engage the state on this level. GALZ “thanked Mnangagwa for this unprecedented meeting” and for “understanding” them better than his predecessor Mugabe and the opposition parties.⁴⁴

Data suggests that there are few to no prosecutions based on the sodomy law; however, public authorities legitimise their human right infractions against LGBTI+ people through this legislation. The Department of Foreign Affairs and Trade (DFAT) notes in a report that “authorities more commonly harass LGBTI+ persons using loitering, indecency and public order statutes, although violations are under-reported because of the stigma attached to the LGBTI+ community”.⁴⁵

In 2014, GALZ “reported 41 cases of arbitrary arrest, violence, harassment, unfair dismissal and forcible displacement involving LGBTI+ persons”.

⁴⁶ Police also target transgender individuals, as mentioned by the joint submission by the Sexual Rights Centre, GALZ and COC Netherlands to the United Nations Human Rights Council (UNHRC) Universal Periodic Review of Zimbabwe during its 26th Session in October 2016. The Joint Submission noted:

Transgender individuals...are subject to arbitrary arrests and detention, cruel, inhumane or degrading treatment, and torture. Trans women can be charged with sodomy despite their gender identity. LGBTI+ individuals, and,

(38) See Human Rights Watch report (accessed on <https://www.hrw.org/world-report/2016/country-chapters/zimbabwe>)

(39) Id.

(40) UN: “We are not gays” - Mugabe shocks the UN General Assembly (accessed on https://www.youtube.com/watch?v=pxH_Rp9Vlj8).

(41) See <https://www.theindependent.co.zw/2015/11/27/mugabe-comes-face-to-face-with-gays/>

(42) See Morgan Tsvangirai Flip-Flops on Gay Rights (accessed on <https://www.mambaonline.com/2013/03/08/morgan-tsvangirai-flip-flops-on-gay-rights/>).

(43) See Zimbabwe's LGBT community: why civil rights and health issues go hand in hand (accessed on <https://www.news24.com/Africa/Zimbabwe/zimbabwes-lgbt-community-why-civil-rights-and-health-issues-go-hand-in-hand-20180131-2>

(44) See <https://www.hrw.org/world-report/2019/country-chapters/zimbabwe>.

(45) See Country Policy and Information Note Zimbabwe: Sexual orientation and gender identity (accessed on <https://www.refworld.org/pdfid/583311f84.pdf>).

(46) Id.

transgender women and men, highlighted how arbitrary detention and torture at the hands of law enforcement officials were frequent and harmful. In one case, a transgender woman, who had been arbitrarily detained for three days for having used a female bathroom, was stripped in front of four police officers, verbally mocked and degraded, and paraded around for the amusement of the police officers on duty. Several LGBTI+ individuals have reported cases of police abuse, including being doused in cold water, verbally abused, and threatened with arms...⁴⁷

at police stations and detention facilities, LGBTI+ individuals are intimidated and physically assaulted by police officers. LGBTI+ individuals in Zimbabwe are often detained for hours at a time, without access to judicial recourse. LGBTI+ individuals are frequently beaten, mocked, and forced to pay bribes in order to escape custody.⁴⁸

In a survey conducted by Afrobarometer in 2016, it was reported that social integration between the LGBTI+ community and the general population was low, as was tolerance for LGBTI+ individuals; “public attitudes reflect this widespread intolerance: Nine in 10 Zimbabweans (89%) say they would “somewhat dislike” or “strongly dislike” (83%) having LGBTI+ persons as neighbours”.⁴⁹ A closer look at the demographic of the participants showed that:

tolerance levels (strongly like/somewhat like/would not care) are somewhat higher among urban residents (13%) than among rural residents (9%). Education seems to affect levels of tolerance: Citizens with post-secondary education are more likely to express tolerant attitudes toward homosexuals (17%) than respondents with secondary (10%), primary (7%), or no formal education (8%).⁵⁰

The DFAT report found that intolerance created an unsafe environment for LGBTI+ visibility. The reports noted that: “LGBTI+ persons generally do not openly express their sexuality or identity in their workplaces, or within their families. Deeply embedded, traditional cultural (and religious) factors also inhibit the free expression of sexuality in any form, whether an individual identifies as

homosexual, heterosexual or otherwise”.⁵¹

Media and LGBTI+ Representation in Zimbabwe

In Zimbabwe, public officials have made the media an extension of state machinery and have used it to outwardly express homophobic sentiments. There is a stark difference in the political objectives of state- and privately-owned media in Zimbabwe in relation to LGBTI+ reporting. Increased homophobic expressions made by public officials has heightened international media attention on LGBTI+ human rights violations.⁵² The international coverage has amplified positive imaging and messaging of the LGBTI+ community but has not shifted domestic perceptions and reporting on the LGBTI+ community internally. However, “independent newspapers like the Financial Gazette were sympathetic to LGBTI+ people, publishing articles saying that attacking decent individuals who are fully respectful of the rights of others, who are productive and responsible citizens but who happen to be gay or lesbian, is wrong”.⁵³ Media representation and the consequences of visibility have significantly altered organising and the dissemination of information by the LGBTI+ activist community.

LGBTI+ Experiences with the Media in Zimbabwe.

Members of the LGBTI+ community who participated in the focus group discussion commented on the inability of journalists to accurately detail the experiences and identities of LGBTI+ persons. Terminology and framing often create contentious issues between the media and LGBTI+ individuals. One of the participants said:

I think, firstly, the problem is that 90% of the people that are in Bulawayo do not understand what a transgender person is. If a person were to walk in this room, [they would see] a group of gay and lesbian people, and that on its own becomes a problem, because when you are trying to explain to someone who and what you are, you are known as a gay person and if you are a trans person who has either transitioned or is transitioning, you are then known as a drama queen, or something to say you are those people that like to wear dresses, so you are just a drama queen or an over-expressing gay man or an over exaggerated drama.

(47) See Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law (accessed on <https://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>).

(48) See <https://www.ecoi.net/en/file/local/2010015/144497.pdf>.

(49) See above note 47.

(50) Id at 18.

(51) Id.

(52) Id

(53) Id

Another participant explained:

I was invited to a press conference and there was a lot of journalists. I explained to them about the LGBTIQ terminology itself because I realised if someone is a journalist, as much as they want to talk about positive issues about the LGBTI community, there is also the issue of terminology. Because if they see a trans womxn, they are reporting as if they are talking about a gay person.

A journalist participant contributed:

Someone mentioned that when we are writing stories to do with this sector [LGBTI] we are using negative or wrong terms. That can only be solved if we are properly trained. Do you think that's the journalists that are to blame or it's the editors? I've heard from other journalists where they have used the correct terms, and just before it goes to print, the editors will change things and then the journalists will take the blame, but they had initially used the correct terminology. Sometimes the editor will see my story, for example, I'm writing about a transgendered woman, and say that correctly, the editor will ask me why I used transgendered instead of gay. I will have to convince him and teach him. Sometimes the editor will say it's fine, and other times he will say I must use gay because it is newsworthy, and the people will buy the paper and read the story.

Journalists were asked to comment on the challenges in writing positive and informative stories on the LGBTI+ community. One of the journalists commented:

Most journalists think it is about advocating because the moment you write a story, they think it's as if you are advocating for LGBTI rights. Most journalists are afraid that that is the perception they are creating if they write good stories. Especially if you are working for a newspaper that is owned by the state, you don't want to be a person who is against the state. But also, the media should be more like a weapon to educate or to inform people. You [the journalist] are the one who has the power to either destroy or build.

Another journalist added:

Online news media houses are more open to these things because it's not owned by someone who has power, but with other media houses, you have to go through someone else; it becomes a bit difficult. The same is with radio – you have to be cleared by someone so you can talk about these things and say why you are talking about it.

Political Shifts and the Visibility of the LGBTI+ Community in the Media

Participants were asked whether the regime change of President Mnangagwa had signalled an opportunity to engage and challenge the state and, by extension, had created a welcoming environment for LGBTI+ content in the media. One participant said:

I think, like, two years ago it used to be very hard to speak with journalists. But then, now, I feel like things have changed. Journalists are now understanding, and they also want to learn, they are eager to learn. From the few journalists that I've interacted with, most of the times when you introduce yourself and they'd ask you what your preferred pronoun is. So, most of the times, I feel like nowadays most of the journalists are understanding.

Another said:

I think with the shift to positive it is a matter of individuals that have experienced that, because, if you notice, most of us are still scared to speak to the media. I can't speak for [redacted name] but them [redacted name] being a socialite, probably the engagement with the journalists has made them understand you better. But for some of us, it's not the case. I know of so many people that have lives that have been ruined just because of the impact of one article and the negativity around it.

One journalist added:

In my personal observation, I think it relates to individuals. I think within the journalists' space itself there are people who have just decided to be brave. They've decided to be brave and tackle the issues head-on, because this is a hot issue that you just don't play with, but of late more and more people are becoming braver. They are now trying to engage in some way of understanding, putting the issue out there.

Another journalist said:

I don't think before, in Zimbabwe, we could have this meeting. The fact that we are here, we are discussing this, says something about where we are coming from. Sometimes, maybe we are eager to see changes, but it will take time. So, we should maybe be a bit patient.

There was no consensus on the shift in the media landscape. However, participants acknowledged an increase in LGBTI+ content and support in the media during the national elections. Participants expressed mistrust in the rationale behind the increase in LGBTI+ reporting during Zimbabwe's election season.

If you notice around the election time, people were campaigning, "We will try to fight for the LGBTI." We voted for them, where are they now? It is almost as if the LGBTI community has been used as some sort of a tool. Even during elections, like in the past,

it's just a tool that is used from side to side because it is a hot topic and you can get votes. Honestly, it's mainly about it being a weapon, forgetting that real people suffer at the end of the day.

Finally, another participant added:

I don't think there is or will be any difference with the new president or even if a new party had to come in. The government has made it very clear that we are not worthy of being protected and that we are not going to be given our rights anytime soon. So, all of this means nothing. I also don't think that journalists will work different now – everything will be as it was.

Existing Media and its Impact on Public Perception

As previously discussed, public perception about the LGBTI+ community in Zimbabwe is directed and shaped by religion, political influences, and varied cultural and social norms. Despite this, external media content is being consumed by the Zimbabwean public. These include, but are not limited to, South African drama series such as *Generations* and *Scandal*, which have, at one point or the other, integrated LGBTI+ characters in their storylines. When asked about the impact this has had in Zimbabwe, participants shared the following:

The change is not only in the media but from amongst the people themselves, probably because people are much exposed to foreign media now. You find that very few people only watch normal TV; people have DSTV. So, they see the way LGBTI people are covered, they see that these are normal people, they do what they do, they eat, they feel pain. They see that we are similar. I think people are changing, not because of what is being reported in Zimbabwe, but they see what is happening on the TV shows.

A lot of this portrayal is coming from external sources. In as much as we can say we maybe relate more to *Generations* because it within our own culture, unlike American stuff, it still also takes out the element of our own context. It is weird because people will say this LGBTI thing is from South Africa and it's not from Zimbabwe and we are being influenced by the outside world. The norms that you grew up with affect how you shape yourself as an individual, so in as much as it is positive that it is raised in these conversations and drama shows, but there's also that thing that the portrayal is still very much not our own.

The above comments show the importance of creating culturally and context-specific content in order to offer an accurate representation of LGBTI+ individuals in Zimbabwe. The external media representations are important in so far as they create dialogue; however, they encourage the narrative that LGBTI+ experiences and identities are externally motivated and engineered.

Conclusion

The discussions in Zimbabwe highlighted that media is often used as machinery to discriminate against LGBTI+ people. The media is tethered to the state and is used to advance the repressive regime's homophobic and anti-queer views. Whilst there are individuals who attempt to give credence to the rights of LGBTI+ persons within this repressive framework, their efforts are undermined by the drive to recreate sensationalist narratives that are in alignment with the status quo. Further, it was highlighted how the media often incorrectly tells LGBTI+ stories and experiences. This erases people and their narratives. There was also concern around journalists being perceived as LGBTI+ persons for merely reporting on these issues.



South Africa

The South African constitution was the first in the world to include sexual orientation, sex and gender as grounds for discrimination. Despite its progressive and overall liberal attitude towards LGBTI+ people, it's still difficult for most LGBTI+ stories to be told. There is still very little representation of intersex people in particular, and LGBTI+ individuals in general.

Section 9 of the constitution provides that no person may be unfairly discriminated against based on their sexual orientation, sex or gender. The constitution also envisages an intersectional discrimination. The first case in which the Constitutional Court had to engage the right to be free from discrimination based on sexual orientation related to the common law crime of sodomy, and other related legislative offences. The Court held in the National Coalition⁵⁴ case that:

The concept 'sexual orientation' as used in section 9(3) of the 1996 Constitution must be given a generous interpretation of which it is linguistically and textually fully capable of bearing. It applies equally to the orientation of persons who are bi-sexual, or transsexual and it also applies to the orientation of persons who might on a single occasion only be erotically

attracted to a member of their own sex⁵⁵.

The Court held further that "[t]he discriminatory prohibitions on sex between men reinforces already existing societal prejudices and severely increases the negative effects of such prejudices on their lives."⁵⁶ The Court held that the crime of sodomy was unfair discrimination⁵⁷ as the impact it had on men was severe, given that the purpose of the offence was to criminalise sex between consenting adults, which causes no harm to others, and as it gravely affects the dignity of gay men⁵⁸.

Following from there, a host of cases extended the benefits accorded to married persons to people in homosexual relationships. In the second National Coalition case,⁵⁹ the Court held that a provision of the Aliens Control Act⁶⁰ which only extended an entitlement to residence permits to foreign "spouses" of South African citizens amounted to unfair discrimination, as it excluded foreign partners in same-sex life partnerships where the other partner was a South African citizen. The Court held that the provision "constitute[d] overlapping or intersecting discrimination on the grounds of sexual orientation and marital status, both being specified in section 9(3)."⁶¹

(54) National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others [1998] ZACC 15; 1999 (1) SA 6 (CC); 1998 (12) BCLR 1517 (CC).

(55) Id at para 21.

(56) Id at para 23.

(57) Id at para 27.

(58) Id at para 26.

(59) National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others [1999] ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) (second National Coalition case).

(60) 96 of 1991.

(61) Second National Coalition case at para 40.

The Court accepted the state's assertion that the purpose of the provision was "achieving the societal goal of protecting the family life of 'lawful marriages'⁶², but "the impact of [the provision] is to reinforce harmful and hurtful stereotypes of gays and lesbians".⁶³ This is because, in effect, the provision was saying that gay and lesbian relationships did not amount to a family. The Court pointed out that the message given by the legislation was

that gays and lesbians lack the inherent humanity to have their families and family lives in such same-sex relationships respected or protected. It serves in addition to perpetuate and reinforce existing prejudices and stereotypes.⁶⁴

The stereotypes being reinforced by the legislation were that homosexual relationships were merely sexual in nature, with little of the "family-oriented" characteristics associated with marriage, such as love, affection and companionship,⁶⁵ and that homosexual relationships were incapable of procreating.⁶⁶ The Court pointed out that, taken together, this all has the effect of "[constituting] a crass, blunt, cruel and serious invasion of [the] dignity"⁶⁷ of gay and lesbian people.

Following on from this case, the Constitutional Court: extended the benefits of joint adoption to same-sex couples;⁶⁸ afforded to same-sex couples the entitlement to be registered as the parents of children born from artificial insemination;⁶⁹ and extended to same-sex life partners of homosexual judges the benefits enjoyed by judges' spouses in terms of laws governing the remuneration of judges.⁷⁰

In the *Fourie*⁷¹ case, the Constitutional Court declared the Marriage Act⁷² to be unconstitutional as it unfairly discriminated against homosexual people on the basis of their sexual orientation. The Court said:

The exclusion of same-sex couples from the benefits and responsibilities of marriage, accordingly, is not a small and tangential inconvenience resulting from a few surviving relics of societal prejudice destined to evaporate like the morning dew. It represents a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need for affirmation and

protection of their intimate relations as human beings is somehow less than that of heterosexual couples. It reinforces the wounding notion that they are to be treated as biological oddities, as failed or lapsed human beings who do not fit into normal society, and, as such, do not qualify for the full moral concern and respect that our Constitution seeks to secure for everyone. It signifies that their capacity for love, commitment and accepting responsibility is by definition less worthy of regard than that of heterosexual couples.⁷³

The Court suspended the declaration of invalidity for 12 months for parliament to remedy the constitutional defect. It also ordered that, if – during that period – parliament failed to pass legislation that allowed homosexual couples to enter into a marriage or similar institution, the Marriage Act would be taken to read such that homosexual couples were entitled to conclude a marriage. Within the period of suspension, parliament enacted the Civil Union Act⁷⁴ which provides for and regulates the conclusion of civil unions between heterosexual and homosexual couples. When solemnising a marriage, a marriage officer must ask the couple whether the civil union "should be known as a marriage or a civil partnership"⁷⁵ and the certificate reflect either that the parties "have entered into...a marriage or a civil union".⁷⁶ The consequences and benefits which are afforded to marriages automatically attach to civil unions solemnised under the Act⁷⁷, but homosexual couples are still unable to become married in terms of the Marriage Act.⁷⁸

It is worth noting that before the enactment of the Civil Union Act, the Court had to deal with intestate succession in the case of homosexual people as their unions were not recognised by the law. This question arose in the *Gory* case.⁷⁹ The facts of this case are fairly straightforward. Mr Brooks and Mr Gory were at the time of Mr Brooks's death in a same-sex permanent life partnership in which they had undertaken reciprocal duties of support.⁸⁰ When Mr Brooks died intestate, his parents claimed to be the deceased's heirs.

The issue before the Court was section 1(1) of the Intestate Succession Act, which confers rights of intestate succession on heterosexual spouses

(62) *Id* at para 45

(63) *Id* at para 49

(64) *Id* at para 54

(65) *Id* at para 49

(66) *Id* at para 50

(67) *Id* at para 54

(68) *Du Toit and Another v Minister of Welfare and Population Development and Others* [2002] ZACC 20; 2003 (2) SA 198 (CC); 2002 (10) BCLR 1006 (CC).

(69) *J and Another v Director General, Department of Home Affairs and Others* [2003] ZACC 3; 2003 (5) SA 621 (CC); 2003 (5) BCLR 463 (CC).

(70) *Satchwell v President of Republic of South Africa and Another* [2002] ZACC 18; 2002 (6) SA 1; 2002 (9) BCLR 986 (CC).

(71) *Above n 33*.

(72) 25 of 1961.

(73) *Fourie* at para 71.

(74) Act 17 of 2006.

(75) *Currie and De Waal* page 231.

(76) *Id*.

(77) Section 13.

(78) *Currie and De Waal* page 231.

(80) *Id* at para 2.

but not permanent same-sex life partners.⁸¹ The argument by Mr Gory was that this section unfairly discriminated against persons based on their sexual orientation.⁸² In this regard, Van Heerden AJ, writing for the unanimous Court, held:

Given the recent jurisprudence of South African courts in relation to permanent same-sex life partnerships, the failure of section 1(1) to include within its ambit surviving partners to permanent same-sex life partnerships in which the partners have undertaken reciprocal duties of support is inconsistent with Mr Gory's rights to equality and dignity in terms of section 9 and 10 of the Constitution⁸³.

In this regard, the Court held that section 1(1) was unconstitutional and invalid and the most fitting way to cure this unconstitutionality was by reading in after the word "spouse" the words "or partner in a permanent same-sex life partnership in which the partners have undertaken reciprocal duties of support".⁸⁴ The Court further held that the order of constitutionality should operate retrospectively⁸⁵.

Recently, another matter pertaining to same-sex life partnership and intestate succession came before the Court. In Laubscher,⁸⁶ the Court had to answer the same question as in Gory, only with the interplay of the enactment of the Civil Union Act.

Mr Laubscher and Mr Duplan had lived together since 2003 and during this time had undertaken reciprocal duties of support. Mr Laubscher died intestate with no children and his parents having predeceased him. The dispute in this case was whether Mr Duplan was entitled to inherit intestate, notwithstanding the fact that there was never a formal solemnisation or registration of their partnership.⁸⁷ The Court, in this regard, held that the enactment of the Civil Union Act did not cure the mischief created by section 1(1) of the Intestate Succession Act and as a result the order in Gory remains, which means that unmarried same-sex life partners can inherit intestate if they can prove that they had a reciprocal duty of support.

The Court held that inequality may exist between opposite-sex permanent partners and their same-sex counterparts by virtue of the Gory order. The question was whether same-sex permanent

partners ought to be deprived of the Gory benefit or whether the benefit should be extended to include opposite-sex permanent partners. Justice Mbha, writing for the majority, held that the Legislature was competent to adopt either a generous or a more restrictive approach to its recognition of permanent relationships as it has done previously.⁸⁸

In the end, the Court held that the reason for the order in Gory did not fall away when the Civil Union Act was promulgated.⁸⁹

Social Context

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 time, South Africa's high rates of rape and homophobic crime, perpetrated disproportionately against Black lesbians in townships,⁹⁰ demonstrate that robust legislation does not necessarily translate to societal acceptance. A 2017 report on violence faced by the LGBTI+ community in South Africa found that a shocking four out of ten LGBTI+ South Africans knew of someone who had been murdered for their sexual orientation or gender identity; that number rises to 49% for black LGBTI+ people in the country.⁹¹

In March of 2018, in a huge step towards addressing the country's persistent problems with homophobic and transphobic violence, South Africa's cabinet approved a bill criminalising hate crimes and hate speech and submitted it to parliament. Aside from providing justice to victims of bias crimes, the bill would greatly improve data collection on the incidence and nature of hate crimes in the country.⁹²

More recently, a transgender womxn in South Africa, currently serving a 15-year sentence in a prison for men, sued the Correctional Services Department to seek recognition of her right to gender expression while in custody. In September 2019, the Equality Court held, amongst others, that a refusing to allow the applicant to express her gender constituted unfair discrimination in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act.⁹³

(81) *Id* at para 19.

(82) *Id*.

(83) *Id*.

(84) *Id* at para 43.

(85) *Id*.

(86) *Laubscher N.O. v Duplan and Another* [2016] ZACC 44; 2017 (2) SA 264 (CC); 2017 (4) BCLR 415 (CC)

(87) *Id* at 43.

(88) *Id* at paras 31- 32.

(89) *Id* at para 36

(90) James Fletcher, "Born free, killed by hate - the price of being gay in South Africa" BBC News. 7 April 2016.

(91) Michael Morris, "LGBT community still faces high levels of violence - report" News24. 4 December 2017.

(92) Prevention and Combating of Hate Crimes and Hate Speech Bill (B9-2018).

(93) *September v Subramoney NO and Others* (EC10/2016) [2019] ZAEQC 4

South Africa has similarly seen progress in legal gender recognition and accommodations for transgender individuals. After a lawsuit from three transgender people and their spouses, the Western Cape High Court ruled that a law barring married individuals from changing their gender without first divorcing was unconstitutional⁹⁴.

Civil society organisations in South Africa have been developing innovative approaches to combating discrimination and hate crimes. A nationwide initiative addressing violence against LGBTIQ+ communities has launched a website to help victims anonymously report hate crimes in South Africa.⁹⁵ A 2016 survey of LGBTIQ+ people found that 88% of respondents did not report hate crimes or discrimination, as they often feared having to come out to friends and family or facing victimisation from the authorities or community.⁹⁶

In September 2018, an umbrella organisation for LGBTIQ+ employee network groups launched an index to measure how companies in South Africa were faring when it came to the inclusion of sexual and gender minorities in the workplace. Of the 17 companies – representing six different sectors and employing over 30,000 people – that participated in the analysis, very few had provisions protecting employees from discrimination on the grounds of gender identity and expression⁹⁷.

In early 2017, activists from South Africa and Kenya gathered in Pretoria to take part in a consultative meeting on the Model Law on the rights of intersex persons in Africa, which the Centre for Human Rights was drafting for eventual tabling at the African Commission on Human and Peoples' Rights. The Draft Model Law sought to, "prevent unfair discrimination and to protect and promote the rights of intersex persons in African countries."⁹⁸

At the end of the year, intersex and human rights activists hosted a National Engagement on the Promotion and Protection of the Human Rights of Intersex Persons with the Department of Justice and Constitutional Development, the first large-scale engagement with the government of South Africa. They discussed several issues of importance to the intersex community, including infant genital mutilation and healthcare procedures, and strengthening legal mechanisms against discrimination.⁹⁹

Intersex Stories and the Media:

Participants lament the lack of empathy and respect in reporting about intersex people. One of the participants highlighted a general misunderstanding about the "i" in LGBTIQ+.

I think, when it comes to intersex people, the law is very silent in the sense that they don't understand you being intersex. So, I'll say my experience with intersex issues, I'll speak from the media perspective, people generally don't understand the difference between the "i" [and the rest of the LGBTIQ]. So [unless] you find specialised stories or it refers to Caster [Semenya, the world-famous South African athlete] you don't generally find anything around intersex.

Another participant agreed with this sentiment:

I feel like in the past, maybe two or three years, there's been a shift of media houses wanting to know what the "i" stands for, but they tend to change people's stories. It's like they want to understand, but at the same time they have their own mindset on what things are and, therefore, instead of reporting what is supposedly right, they report what they think is going to be interesting to the people, therefore giving horrible information. And I've got examples of these, like Nthabiseng's interview with ETV, I think. That was horrible and I know Nthabiseng will never say those things because I recently watched their movie the other day...and I know that Nthabiseng articulates themselves very well, and I know what they are capable of saying, but then that story wouldn't be interesting to ENCA and the ENCA viewers. Therefore, they had to chop it up and make it interesting, and then it was a very bad interview.

Another participant said:

They are still saying being an intersex is a medical condition. Saying there's something wrong with you...So, that mindset, I don't know what it would take for people to just understand what being intersex is...They think there is something wrong with you...I have a major problem with that because most of the time, when it comes to intersex people, we are having our debates with people. Not even religious people are part of it

(94) *KOS and Others v Minister of Home Affairs and Others* [2017] ZAWCHC 90; [2017] 4 All SA 468 (WCC); 2017 (6) SA 588 (WCC) (6 September 2017).

(95) "New LGBTIQ hate crime reporting platform launched" OUT. 13 March 2018.

(96) Hate Crimes against Lesbian, Gay, Bisexual and Transgender (LGBT) people in South Africa, 2016 Love Not Hate Campaign; OUT LGBT Well-being. (2016).

(97) The South African Workplace Equality Index 2018. LGBT+ Forum. (2018).

(98) Centre for Human Rights hosts first consultative meeting to discuss Draft Model Law on the rights of intersex persons in Africa Centre for Human Rights, University of Pretoria. 26 April 2017.

(99) Report on National Dialogue on Protection and Promotion of the Human Rights of Intersex people published in April 2018 by Iranti.

because they are already feeling like those people are something.

These misunderstandings reinforce certain pathologies that harm intersex people.

The level of information is out there. So, you often come across, I'd say, three, four, could be more, types of people. One, a person who doesn't know what intersex is at all. Two, someone has an idea, but it is completely wrong. Three, someone has an idea but they pathologise it to make it more interesting. If ever you tell them [what intersex is], they are like, "Oh, but it's not that interesting anymore." I don't know if Caster Semenya has publicly come out and said that "I'm intersex," but somehow she has become the face of being intersex and you kind of ask yourself why and how, because the thing is, I tell you, in every single interview that I've done they're, like, "Oh, like Caster Semenya," and I'm, like, "No. She has not come out and said this." ... And hence the next question now moves to, "What's down there?" And the thing is there's, like, a whole spectrum of different conditions that are under the umbrella of intersex. So, I think, for me, it's just mainly about perceptions.

One participant explained the erroneous conflation of intersex and homosexuality:

For me, it's the whole connection of intersex with homosexuality. That now because it's placed within that LGBTI narrative, people who are intersex and heterosexual are marginalised more. If a person wants to come out as intersex then they kind of get placed into the whole homosexual [category] and struggle as well, whereas... the reality about being intersex is that it literally has nothing to do with sexual preference. So, the fact that it is so connected to sexual preferences makes anyone who is going to hear or read about intersex people [think] that this person is not straight because they are intersex. Part [of being] so connected with the LGBT community is it makes it difficult to kind of separate. Even from maybe a child who is intersex, already there is that notion that the child is going to be gay. So, it's very important that there's a focus on separating these two, because also, for example myself, I'm intersex and I'm also a lesbian. I can have issues that are going to be related to the lesbian part only that have nothing to do with the intersex part, so it's very important to always distinguish or make it clear that there is a difference.

A large part of the discussion dealt with the media and their support of Caster Semenya, and thus badly framing other stories about intersex people. One participant said:

The reporting is mainly focused on supporting Caster and so on... The mainstream media has been coming, looking for stories, even though they frame them badly...do you think has changed? What do you think has led to that in the past two to three years? Why the interest? Is it in relation to the Caster stuff,

like, "Oh, let's find an intersex person because Caster," or is it not related to Caster? Is it part of, maybe because ISSA?

And another participant stated:

I also do think that it is linked, because I think South Africa knows Caster to be the only intersex person and Caster is not willing to talk, so they are now seeking out the stories. And I think because the LGBTI community is so visible and the "i" is missing, there's a curiosity on what's going on there with that.

Representation in the Newsroom

The discussion touched on representation in the newsroom and how that affects the telling of stories. One person spoke about how having intersex people in the newsroom helps and allows for more nuanced stories to be told.

Another participant spoke about the role of race.

Race plays a major role. [For example, in] The Mail & Guardian we've got middle class white people type, so they do these long pieces and even one-on-one where they profile an intersex person. There it is there. They get it. But when you get to predominantly black media it's not there. They are still confused. They're still like "haibo!" When you get stories around that, there's always problematic reporting, like the use of the opinions or how the story is presented. There're always these little smaller things that they throw in that throws the whole thing over, so what's the point?...So I think race also plays a major role in that, where amongst the white community, they get it and it's there. It's one of their priorities, just like when you speak of the whole thing of those gender-neutral battles, you know? It's a big thing, but then you go to the black communities, like why? So, it's that thing where as black people we still have a long way to go and the more we report on these things, the more visible these stories are outside of Caster and outside of sport, because normally it's always linked to sports. This woman runs like a man, you know?...But when we start presenting proper stories... like educational pieces, we'll get the community to understand.

The participants spoke about how a lack of representation leads to silencing:

Representation from all sides is so important. We need allies so that people will put out correct information. Everything then gets lost in translation, and the person who's going to catch that tabloid piece reads something completely different from what I then said in the article.

The Big Thing is Language

Another discussion focused on the usage of language and how language can be a barrier. One participant said:

I think the biggest thing is language because [it is] much easier when I say "sex chromosomes and genetics," and, "This is what happened," and describing intersex, the varieties and everything... But the thing is, that granny sitting on her stoep crocheting, when you say "chromosomes," it doesn't go. When we hear of intersex stories, it's always of the bad omen, or the child that was killed, or midwives encountering these kinds of things. There's always these hidden stories and they're taboo and having to describe that as well is a bit difficult, and I don't even know how.

This was echoed by another participant:

For me, the experience was difficult when I have tried to translate the "intersex" part to Setswana...With chiefs and traditional healers, it's so difficult, because we need to work with them, and we need to use the language that they hear. If we use the intersex language, they don't even know what we are saying. I keep on explaining myself, the condition I have, and still it seems like they want to see, and I can't undress so [I always end up] trying to draw a picture on a board, showing them what I'm talking about. It's like I'm taking myself out, so it's so difficult to work with those people.

Connected to this, another participant raised a question about what the media campaign was aiming to change, because it appeared to them that in South Africa people did not understand what it meant to be intersex at all:

This is a media campaign that's based on using media to change hearts and minds, so that's [based on] existing ideas about the LGBTI community, but what I'm noticing is that, unlike the other four countries where there's already like a basic understanding of what it means to be lesbian and gay, in South Africa it seems like we are a few steps back because people don't know what it means to be intersex in the first place. So, what is it that we aim on changing? If we say changing hearts and minds, it sounds like we need to be educating minds first, so then, how do we go about doing that while meeting the goals of this campaign?

A single narrative about a people is dangerous

I think the stories being told are so disconnected from me. In my household you turn on the TV and they are like, "Oh, Caster Semenya, she's good at running because she is intersex." Even if I'm watching that with my family, no one can relate because [I can't run like Caster]. So, I feel maybe we need to tap into those conversations, because now when we turn off the TV, my mom is not going to be like, "So this is what intersex is about?" because her child is not like Caster

Semenya, and the struggles of Caster Semenya are not necessarily the struggles of her child. But you know, there's that shift at the same time. I remember my mom saw Sharon's story and she was like, "She is beautiful, she is tall."...They say it so casually. Now [they think] the reason why she is taller or slimmer is because she is intersex. So, literally, the stories that are being told, we cannot relate to, because they are not on an educational point of view.

Media and Reporting

In a focus group with journalists in South Africa, one participant spoke about the need for journalists to understand their role in creating an impact.

But we also need to think impact; above, all impact. It's nice to make a pretty story that looks good and that makes sense to the organisation that speaks to the heart of the story, but is it going to have impact?

Beyond this, another journalist spoke to the need for increased training for journalists, coupled with a monitoring and evaluation process:

So, I think that, from a work-employment theme, where you have a diversity workshop, you could have a pre and a post survey of employee perceptions around these kinds of things. You would see how their opinions have changed.

A large part of the conversation that journalists had pertained to story ideas.

I think that's cool because we can educate, but at the same time appeal to the human, because everyone has a parent, and a lot of people have children, so even if your child isn't intersex or even if you aren't intersex, you can relate to that on some level.

Another journalist echoed the need to educate.

For me, I think a story that I would like to have sent out there has a question that shows the diversity of intersex people. Because most of the time we have this idea [focused on] like a man or you present as a woman. [But] there is diversity within the intersex community.

Religion was also an important discussion point. One of the journalists said he/she had a radio show that asked the question, "Does the Bible address the intersex?" This show received mixed responses, but it was an important conversation to have that showed that intersex people were not necessarily homosexual.

The medical professional space also became a topic of discussion for the journalists. This was connected to the treatment of patients at public hospitals.

I'm ready to speak to at least twenty doctors on camera and ask them, particularly GPs. Because before you get to a specialist, like a gynaecologist, you go to a GP. Do they know what to do with an intersex person when they come to them with medical issues or cases? They engage, they listen to you. In a public hospital they couldn't give a damn because they don't owe you anything. Unfortunately, most of the victims are people that don't have money. People from the township, people that don't understand themselves.

This conversation showed that there was a marked difference in treatment in the private and public healthcare sector. The discussion also brought to the fore issues of safety facing LGBTI+ people when accessing healthcare. One journalist lamented:

But I like that because it speaks to safety, but also speaks to dignity, like in having to ask someone, "Where do I find a dental dam?" and having to explain what the hell you're going to use it for.

An interesting conversation was exploring black people and intersections with LGBTI+ individuals. Below are the comments made by a few journalists:

I think there's also, some angles we can enter through, sort of exposing the facts around black people being uncomfortable speaking about genitalia or sex, in general even. How would you [talk about that] as an intersex child? Because your family knows that you're intersex. They are very, very aware. But how do they talk to you?

So, it's then a very closed topic. It's not up for discussion, and you can't talk about anything...So, it's very important to maybe find angles into asking why people are uncomfortable speaking about penises and vaginas.

That was my point. You're confused, you don't have anyone at home to speak to, then you go to a doctor and the doctor gives you...wrong information and then you're sitting in a state and you don't understand what's happening.

Conclusion

South Africa's discussion highlighted the lack of intersex stories in mainstream media and the dangers of a single story being told, which implies that intersex people are a monolithic group with a homogenous identity. The discussion was emblematic of how the gains made legislatively have not necessarily translated into gains on the ground. Media representation needs to adequately address the various gender identities of LGBTI+ persons and to account for the heterogeneity of these experiences in a manner that reflects the rights in the constitution.



Namibia

In Namibian law, there is no codified sodomy provision, but it remains a crime in the country under the Roman-Dutch common law in force. A report issued by the Ombudsman of Namibia in 2013 specified that sodomy was defined as “unlawful and intentional sexual relations per annum between two human males.”¹⁰⁰ The definition excludes sexual relations per annum between heterosexual couples, and sexual relations between lesbian women. This definition also does not consider whether the sexual intercourse takes place in public or in private or whether it is consensual or non-consensual.¹⁰¹

Section 299 of the Criminal Procedure Act (2004) relates to evidentiary issues on a charge of sodomy or attempted sodomy. Schedule 1 of the Criminal Procedure Act groups sodomy together with a list of other crimes for which police are authorised to make an arrest without a warrant or use of deadly force in the course of that arrest. Public displays of affection between two men can be considered “immoral” behaviour, which is punishable under the Combating of Immoral Practices Act, 1980.¹⁰² This section provides:

Any person who in public commits any immoral act with another person shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

In 2013, the Office of the Ombudsman in Namibia released a baseline study on human rights in Namibia and stated that

the presence of sodomy laws on Namibian statute books makes gay men particularly susceptible to discrimination and interference with their privacy. Until this matter is addressed through repeal of these laws, Namibia remains answerable to protect the rights of people with a different sexual orientation, in terms of its international law obligation. The continued presence of sodomy laws also mistakenly creates the impression that the practice or otherwise of homosexuality is illegal in this country and this is wrong because there is a conceptual difference between the two. Sodomy relates to the criminalizing of sexual activity between two men and, therefore, does not include sexual activity between two women. Homosexuality, on the other hand, is a term that refers to people who are emotionally, physically and sexually attracted to people of the same sex. Regardless of their sexual preference and gender identity, members of the LGBTI community are protected, in terms of the provisions of the Namibian Constitution, by virtue of being human.

(100) Office of the Ombudsman (Namibia), Baseline Study Report on Human Rights in Namibia (z) at, 97.

(101) Id.

(102) Id.



Furthermore, the report stated that the Namibian constitution, in terms of its article 10, did not expressly mention sexual orientation as a prohibited ground of discrimination. Article 10(1) provides that "all people shall be equal before the law and (2) no one shall be discriminated against on the grounds of 145 See section 8 of (Act No 21 of 1980) sex, race, colour, religion, ethnic origin, creed, social and economic status".

The Supreme Court in Namibia has pointed out that homosexuality is not illegal in the Namibian legal and constitutional landscape. The prohibition of sex discrimination under Article 10 of the constitution does not include the prohibition of sexual orientation discrimination. This ruling could be used to covertly or overtly discriminate and exclude people with a different sexual orientation. This ruling, as the report indicates, is inconsistent with the jurisprudence of the UN Human Rights Committee. For instance, in *Toonen v. Australia*, the UN Human Rights Committee determined that the prohibition based on sex encompassed the prohibition of discrimination on the grounds of sexual orientation and that a criminal prohibition on same-sex sexual activity, even if unenforced, constituted an unreasonable interference with the right to privacy.

State-sanctioned homophobia in Namibia

In an article written by Asser Ntinda, titled "Dr Hage Geingob Unimpressed by Gay Activist" it was noted that Dr Hage Geingob, the president of Namibia, responded aggressively to a question on rights pertaining to LGBTIQ+ people. He said:

My goodness, we are talking about poverty eradication, unemployment, food, and yet my young brother comes up with gay issues! Those are not the issues we are talking about. Those things are luxuries. I am talking about poverty eradication, lack of houses...Are you oppressed? Are you suppressed? Are gays oppressed here? Is there any gay who has been arrested here for being gay? Those are issues that you should report to the Police. The Police deal with such cases.

The statement by the president makes it clear that LGBTIQ+ rights and issues are not of paramount importance to the objectives of the Namibian government. On another occasion, then Justice Minister Albert Kawana said that Namibia would not reform its law on sodomy since LGBTIQ+ people

were not "persecuted or harassed as long as they do their things in private".

However, not all politicians support the president and his sentiments. In December 2013, McHenry Venaani, president of the opposition Democratic Turnhalle Alliance (DTA) party, now known as the Popular Democratic Movement, came out in support of rights for LGBTIQ+ people in an interview with a gay news site. He said, "For many years gays have been part of the society all along. It is scientifically proven all races and cultures have gays." He said that his party would protect LGBTIQ+ people and he would speak up for them upon entering parliament. He was sworn in shortly after in February 2014.

Social Context

Researchers have highlighted a lack of resources as one of the reasons why the discourse on LGBTIQ+ identities remains underdeveloped. Reports note that the former liberation party, SWAPO, has been vociferously homophobic. However, this is beginning to change as there is a presence of key LGBTIQ+ allies in state positions.¹⁰³

In the religious sector, the Council of Namibia has released affirming statements concerning sexual orientation. However, the broader sector remains predominantly hostile to LGBTIQ+ people.¹⁰⁴

Canaries reports that there have been negative public statements from various sectors that have affected societal attitudes towards LGBTIQ+ people, but the previously official homophobia is weakening. Canaries also reports increased advocacy for same-sex civil unions or civil marriages, including from leaders of the country's political parties, promising to support LGBTIQ+ human rights in parliament.¹⁰⁵

Tradition and culture do not universally function as sites of exclusion for LGBTIQ+ people and their experiences of such spaces are not always negative.

Media Reporting and its Impact on LGBTIQ+ Individuals in Namibia

One of the participants indicated that laws in Namibia were not inclusive of the LGBTIQ+ community.

But then we have a community that for some reason is able to adhere to treatment better than

(103) Canaries at 12.

(104) At 13.

(105) At 7.

other communities, and that seems to be something that's working. And then also at policy level, there's not much about trans-diverse persons. We had a meeting with the minister of justice the other day and he was saying we like to complain. As a community we are not giving solutions and then in that same space where your minister of justice is inviting you to this office. You'll have one of the most key political members, state members, get up and say, God only created a man and a woman. So we are still living in that era where patriarchy and religion are still sort of maintaining control.

The lack of law and policies was articulated by another participant:

Um, just to add up, is that if you look at our constitution, our constitution is not against homosexuality as such, but there are no policies or laws that protect us as we are all sitting here. We have the same needs. [We] want to get married and wanna adopt kids...So it is very important. You know, this thing keeps bothering me a lot. Narratives is very, very important.

And then there are those people that are now pushing a decriminalisation agenda that want to sue the government and say change the laws, but you have not prepared those people in the room that [are] sitting here. You know, these people, their lives are already disorganised [inaudible]. But, again, you're getting this dead issue... It's hectic. And I don't think the discrimination agenda is as high for the country. I don't think discrimination, stigma and violence is as high as we are talking about. It depends on where you are finding yourself... there are those of us that live in very tight-knit communities that are not really willing to represent people's issues. They sit there and say, they are representing everybody's issue, but they do not know what happens with some constituents. I don't want to sit here and say Namibians beat up people or Namibians don't beat up people because here in Windhoek I'm able to walk outside and it's a small town. I am able to walk down the street without anybody saying anything transphobic and the girls that I'm meeting at the conference room, when I get there, are telling me that they got beat up last night. So, even as people in senior leadership, our experience is different.

“Some media houses are not that sensitised” Language and Misrepresentation in Media

An entry point into the discussion on LGBTI+ people's experiences with the media, was the issue of uninformed journalists and media practitioners who are not trained or skilled in using the correct categories, pronouns, and language when reporting on LGBTI+ issues. Many participants expressed how this was a contentious issue in their interaction with the media.

We should also look at a way to approach media because some media houses are not that sensitised...Because sometimes they will be thinking that we just came to be, like, you guys should tell

our story, we should look at how to do work with them closely.

Sensitising the media appeared to be a central concern for a few participants.

The first important thing is to sensitise the media houses because they are the ones that are causing a bad situation to be worse because right now, we can still access the services, although there is stigma and discrimination, however once the media has published, I think it's gonna be a big crush to us as well because the people have their own personal agendas and their own needs in a way. The media is misrepresenting.

Another participant lamented:

The article that we did once, where the journalist came to interview us about access to healthcare, the heading thereof was really, really horrifying. I was literally angry when I saw the heading. The health ministry fingered, you know, we are fingering the health ministry for not providing services to LGBTI persons.

Another participant highlighted how some radio stations did not permit segments on LGBTI+ persons.

I think also the problem with radios would be that 90 percent of the stations are state-owned and it's almost very difficult to even get a slot to talk about LGBTI-related issues. I think that's where the whole problem comes in with the blockage of community reaching the message because most of the radio stations are in our native languages but it's state-owned... So I think there is a problem when it comes to live interviews on radio and media houses, I don't know how to articulate it.

One participant highlighted how the media has evolved.

You know and media reporting is changing... compared to an article that was done about me five years ago...It's amazing, five years ago they were refusing to even use my preferred name and two days ago, it was my full preferred name, full title. I mean, back then they were writing sex worker, trans woman, instead of my title. I think media is a very important tool, right now in the country. Also, we are advocating for access to information to regulate how media reports and how communications will be handled in the country and as a queer people we are making sure that we are part of that process, that project is also more frequent.

One participant spoke about safety and the media.

I think safety in terms of media, and for those of us that are portrayed in the media, is on two levels. It's, one, how media houses report and how ethical is the information is put out there... and also the respect to identity as a trans-identifying person.

Another participant spoke about changing the narrative and supporting each other.

I know that we are very smart, intelligent people. We are capable of doing so much, contribute so much to this world. But we need to learn to work on a few things. You need to change our narratives. We need to change our attitude. We need to be more tolerant towards each other. Do we expect someone else to be tolerant towards you but you're not giving the same amount of tolerance towards your own person, how do you expect the world to tolerate you? So, it's very, very, very important that we need to look at our attitudes and, as leaders, we need to change.

Another participant said:

I think, just to add on to that, sometimes not only individually but also how the media publishes our stories, but also the organisations itself, uh, suffering. I remember two or three, two years ago, we fought so hard to actually finally get, like, the opportunity to sit with the parliament to discuss our issues and yet given the date, the day before we're supposed to go to the parliament, here comes a newspaper with the heading.

Another participant expressed the importance of working well with the media.

I think also generally...how we work with the media determines how articles are published and how it affects the general community because what we also do is, we harm activism, using media, because you've met with the Minister of Gender. We sit in a very heated political environment when it comes to our issues and she's met with you in confidence and you take her picture right there in the room...you are sitting next to the minister, you've snuck a picture in and you take it to the newspaper and you put it all over and the Minister of Gender is very upset, and that she wants nothing to do with the next 10 organisations' agendas.

Conclusion

The media's coverage of the LGBTI+ community has been influenced by the lack of relevant legal framework, and the prevailing homophobic attitude towards these individuals, expressed in particular by public figures. However, some participants noted a slight softening of attitudes, including meetings being granted by senior officials.

Key Media production recommendation

After engaging with both media and LGBTI+ stakeholders related to content creation within mainstream media in all five countries, the following recommendations are made in order to have an enriching and transformative media campaign:

1. Editors and Journalist Training - A common and recurring theme across all five countries is the lack of knowledge and training for editors and journalists in how to adequately and sensitively report on LGBTI+ issues. As suggested by the data, ill-informed journalists and editors create an unsafe environment for LGBTI+ individuals when creating stories. Therefore, we recommend, through the partner organisations, that there be in-depth training and sensitisation workshops with editors and journalists in order to constructively address and challenge norms and cultures within the media industry in each country.

2. Editors and Journalist Media and Reporting Guide

- Subsequent to the above workshops and training, there ought to be a media and reporting guide tailored towards shifting reporting on LGBTI+ issues within each country. This should include, but not be limited to, appropriate language and framing, guiding questions for interview purposes, and remedies for unfair treatment by the media.

The following recommendations are made for the potential media campaign:

1. TransHealth Series.

An in-country TV or web series that documents transgender people's challenges to accessing gender-affirming healthcare. This may also include guided conversations with medical practitioners.

2. Intersex Awareness.

A series that highlights intersex lives as a way of demystifying the experiences of intersex people.

3. Family and Acceptance.

A docu-series about family and the importance of acceptance to highlight:

- the effects of rejection, mental health, suicide, and the experience of violence
- this can also be extended to an in-country photo series

4. Social Media -

a social media campaign of testimonies of injustice and discrimination.

5. Human Rights are for Everyone

a series on employment exclusion based on an individual's sexuality, gender identity, and/or gender expression.

6. Religion and LGBTI people

this is a series on LGBTI+-friendly religious leaders on acceptance and love within religious communities



iranti

1 Newtown Avenue, Level L3.
Soul City offices. Johannesburg
2193, South Africa.