

# CHALLENGING BARRIERS:

INVESTIGATING CIVIC SPACE LIMITATIONS  
ON LGBTQI+ RIGHTS IN AFRICA





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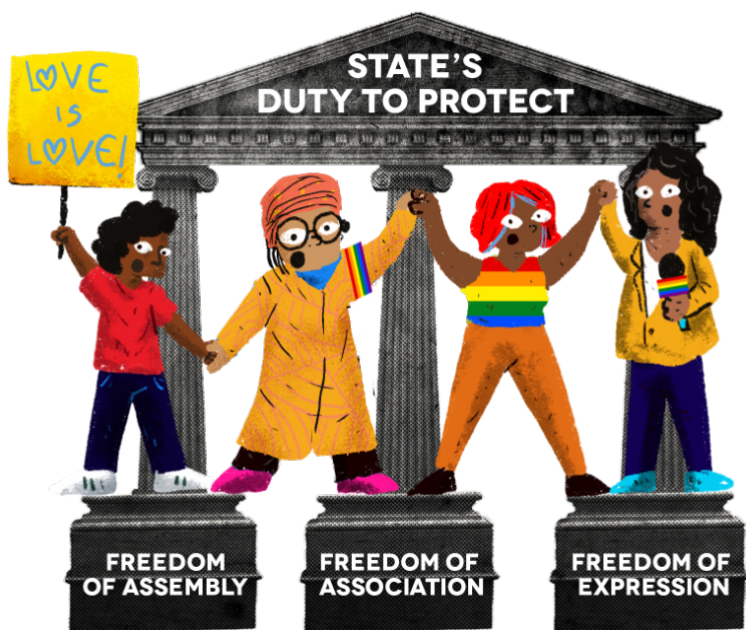




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# METHODOLOGY



This report is based primarily on data analysis drawn from the CIVICUS Monitor updates for Africa South of the Sahara and guided by other CIVICUS resources including CIVICUS's State of Civil Society report and CIVICUS Lens, as well as statements and research reports from civil society organisations (CSOs) advocating for LGBTQI+ rights. Comprehensive desk research, including a review of relevant legislation in selected countries, was also conducted to identify and synthesise relevant research evidence and elaborate on context.

The need for and timing of this paper was influenced by recent developments on the continent, with tighter anti-LGBTQI+ restrictions introduced and implemented by several countries in law, policy and practice. This paper therefore also builds on research findings from CIVICUS's People Power under Attack 2022 [report](#) which found that LGBTQI+ people were the group most involved in civic space incidents in the Africa South of the Sahara that year.



# CHALLENGING BARRIERS:

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## INTRODUCTION

### CONTEXT – THE CRIMINALISATION OF LGBTQI+ PEOPLE

An intense [crackdown](#) on LGBTQI+ rights in Africa has raised much doubt about the effect of regulatory and policy gains achieved globally to recognise LGBTQI+ rights and create enabling space for LGBTQI+ people and defenders to live, love and be.

Globally, the Convention on the Elimination of All Forms of Discrimination against Women ([CEDAW](#)) and the International Covenant on Civil and Political Rights ([ICCPR](#)) both protect the principle of non-discrimination and the rights of LGBTQI+ people to equality. [The United Nations \(UN\) Human Rights Committee](#), which is responsible for interpreting the ICCPR, has [held](#) that discrimination based on sexual orientation or gender identity is prohibited under the ICCPR. Additionally, the [Yogyakarta Principles](#), a set of principles on the application of international human rights law to sexual orientation and gender identity, provide guidance on how existing human rights laws and standards can be applied to protect the rights of LGBTQI+ people.

Regionally, the [African Charter on Human and Peoples' Rights](#), the [Maputo Protocol](#), the [Common African Position](#) and the [African Youth Charter](#) also protect the rights of LGBTQI+ people by prohibiting discrimination of any kind and reiterating the right to equality for all. Incredible progress and shifts can be observed such as the adoption of the African Commission on Human and People's Rights' [Resolution 275](#), which reiterates the obligations of states to prevent human rights violations on the basis of sexual orientation.





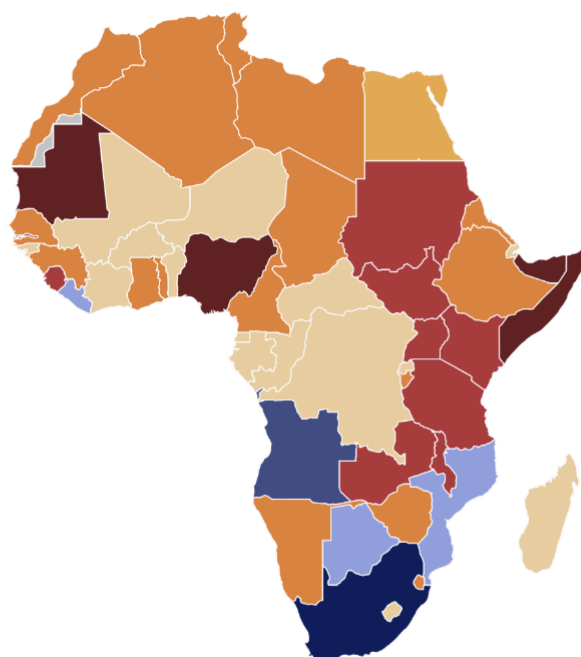


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## SEXUAL ORIENTATION LAWS IN AFRICA

8 countries have decriminalised same-sex relations since 2010:



Protection against discrimination based on sexual orientation



Criminalisation of consensual sexual acts between adults



No protection/  
No criminalisation

Despite these international and regional-level protections, the situation of LGBTQI+ people and defenders continues to deteriorate. The degree of [criminalisation](#) varies across the region, with same-sex relations criminalised in at least 27 out of 49 countries in Africa South of the Sahara, and with a [recent wave](#) of further legal regression introduced by many states across the continent.

Anti-LGBTQI+ regulatory frameworks and restrictions differ from country to country. In countries including Burundi, Chad, Cameroon, Comoros, Guinea, Senegal, Sudan, Tanzania, Togo and Zimbabwe, people found guilty of homosexuality are punished with a prescribed prison period and a fine, with the sentence length and fine varying with each country. In [Mauritania](#), the penalty is death by public stoning.

These regulatory realities are heightened by the systemic and institutional [exclusion](#) of LGBTQI+ people from socio-economic and political opportunities, and often the outsourcing of state power by officials and politicians to anti-LGBTQI+ people through the spreading of false information and ideas that lead to widespread [violent attacks, targeting and harassment of LGBTQI+ people](#) and rights defenders, as seen recently in Ghana, Kenya and Uganda. In countries such as Cameroon, Kenya, Uganda and Zambia, the authorities subject LGBTQI+ people and those perceived to be part of the LGBTQI+ community to [forced anal examinations](#) in order to prosecute them for same-sex relations.

Vulnerability to attacks, violence and targeting is often exacerbated by a person's situation on the gender continuum. Some groups [are more at risk than others](#), particularly trans and intersex people, and people with sexualities, gender identities and gender expressions that differ from mainstream assumptions of gender, including [gender non-conforming people](#).



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## HOMOPHOBIA – A COLONIAL LEGACY

Despite arguments by populist proponents of the criminalisation of same-sex relations, such as Ugandan President Yoweri Museveni, that homosexuality is ‘un-African’, a ‘western, colonial import’ and designed to ‘destroy the African family’, the roots of anti-LGBTQI+ legislation in Africa can be [traced back](#) to colonisation. During the 19th and 20th centuries, colonial administrators, aided by western Christian missionaries, introduced the first explicitly homophobic laws [through](#) the importation of European penal codes, and re-wrote morality and attitudes towards sexual and gender identities.

## THE GLOBAL ANTI-GENDER MOVEMENT AND ITS IMPLICATIONS ON LGBTQI+ RIGHTS IN AFRICA

Visible gains in LGBTQI+ and gender rights around the world in the past decades have been [met](#) with politically driven resistance. The so-called ‘anti-gender’ movement – ultraconservative local and global individuals, groups, movements and coalitions seeking to [counter](#) gender and sexual equality – has become increasingly coordinated, visible and transnational, and has proliferated internationally. The anti-gender movement fights against what it describes as ‘gender ideology’, which it says is destroying the family and ‘family values’. Gender and sexuality, at the heart of a culture war strategy, are [leveraged](#) by these groups for political gains. Anti-gender campaigns have been [taken](#) online, including through online petitions and newsletters, and offline, such as in protests, conferences and lobbying of governments.

Some Christian right-wing organisations based in the USA have actively advanced the anti-gender agenda locally, regionally and internationally, including in Africa. An investigation by OpenDemocracy in 2020 [revealed](#) that over 20 US Christian groups known for their anti-gender agenda have spent at least US\$54 million in Africa since 2007 to influence public opinion, laws and policies against sexual and reproductive laws and LGBTQI+ rights. This amount is likely to be only the tip of the iceberg, with the true extent of funding hidden.

Both Anti-Homosexuality Laws (2013, 2023) passed in Uganda and the 2021 ‘Promotion of Proper Sexual Rights and Ghanaian Family Values’ Bill in Ghana can be [linked](#) to US-funded conservative anti-rights organisations. The draft law, and growing anti-LGBTQI+ sentiment in Ghana, [followed](#) a 2019 conference in Accra, organised by the US-based World Congress of Families, bringing together ultraconservative groups and influential Ghanaian political and religious leaders.



Photo by Chris Beckett/Flickr





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### INCREASING CIVIC SPACE VIOLATIONS FOR LGBTQI+ PEOPLE

This dismal picture is reinforced by research findings from the [CIVICUS Monitor](#). According to CIVICUS's People Power Under Attack 2022 [report](#), the LGBTQI+ community was the group most involved in civic space incidents in Africa for the year 2022, with at least [16 percent](#) of civic space updates from the CIVICUS Monitor reporting on incidents involving LGBTQI+ people. The escalating attacks against LGBTQI+ people in Africa are a cause for concern.



Photo by Anna Moneymaker/Getty Images



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## ANALYSIS OF KEY VIOLATIONS

### I) ASSOCIATION

Freedom of association for LGBTQI+ people and those who advocate for their rights has come under systematic and targeted attack in countries across the continent. The introduction of anti-LGBTQI+ laws and draft laws, discrimination, denial of registration and deregistration of pro-LGBTQI+ CSOs, raids on CSO activities and physical attacks are some of the freedom of association violations experienced by LGBTQI+ civil society members and their defenders.

### ANTI-LGBTQI+ LAWS

In recent years, the continent has seen a raft of overly restrictive laws and draft laws being enacted or proposed by parliaments across several countries to criminalise LGBTQI+ people and those who advocate for their rights.

In March 2023, Uganda's parliament [introduced](#) a new Anti-Homosexuality Bill which essentially [declared](#) that all same-sex acts were non-consensual and criminalised same-sex acts, including broad prohibitions on acts such as touching another person 'with the intention of committing the act of homosexuality'. The Bill also criminalised those who identify 'as a lesbian, gay, transgender, a queer, or any other sexual or gender identity contrary to the binary categories of male and female', proposing a 10-year jail term for this offence. It also de-

clared it unlawful to 'purport to contract a marriage with another person of the same sex', [banned](#) the funding or promotion of LGBTQI+ activities and [targeted](#) landlords, brothel proprietors, chief executives of pro-gay organisations, journalists, publishers and film directors with imprisonment or fines. The Bill, which received heavy [criticism](#) from civil society globally, was passed in parliament for presidential approval but was however [sent back](#) to parliament by President Museveni for review. On 2 May 2023, the Bill was [passed](#) by parliament for a second time, with minimal amendments, and was [signed](#) into [law](#) on 29 May 2023. The amendments to the final version signed by the president excluded criminalisation for identifying as gay but criminalise 'engaging in acts of homosexuality', and also [impose](#) a death penalty for offences considered to be 'aggravated homosexuality', such as cases where one of the parties has a disability.





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Photo by TONY KARUMBA/AFP VIA GETTY IMAGES

In Kenya, a February 2023 judgment by the Supreme Court [confirming](#) the decisions of the High Court and Court of Appeal to permit the registration of the National Gay and Lesbian Human Rights Commission (NGLHRC) as an NGO sent members of parliament into panic as they embarked on multiple, frantic efforts to put a stop to what they deemed as activities against ‘traditional African values’.

Just weeks after Uganda’s anti-LGBTQI+ Bill was passed in March 2023, Kenyan member of parliament (MP) Peter Kaluma [submitted](#) a draconian Bill to parliament, titled the ‘Family Protection Bill’, which is markedly similar to Uganda’s new law. The Bill would have far-reaching effects on LGBTQI+ people and those who advocate for their rights by placing severe limitations on their rights to privacy, assembly, expression and association, as well as on the sexual and reproductive rights of school children generally. The Bill [imposes](#) the death penalty on men found guilty of homosexuality, prohibits same-sex marriage, limits recognition of sex to only male or female as assigned at birth while removing the freedom to reassign oneself, criminalises the promotion, funding and advocacy of LGBTQI+ related issues and proposes the [expulsion](#) of refugees who identify as LGBTQI+. The Bill also [prohibits](#) the inclusion of comprehensive sexuality education topics such as abortion, homosexuality and LGBTQI+ issues in school curricula. Separately, the executive in Kenya, in its policy-making mandate through the Ministry of Education, went further, [establishing](#) a committee in early March 2023 to look into the alleged infiltration of homosexuality in schools. Its role is likely to include reviewing school literature.

The wave of new anti-LGBTQI+ laws and proposed laws in East Africa was also felt in Tanzania. During mid-April 2023 discussions that cited Uganda’s anti-LGBTQI+ law, MPs began mulling over [tougher anti-LGBTQI+](#) legislation to impose harsher sentences in a bid to ‘promote African values’. Although the Criminal Code already prohibits same-sex conduct, which is punishable by up to life imprisonment, the MPs argued that the law was insufficient, instead proposing that a maximum death sentence be given to those found guilty.



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In Ghana, members of the National Assembly introduced the [draconian](#) anti-LGBTQI+ [draft law](#), the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, in June 2021. The Bill prescribes fines, prison sentences and so-called 'conversion practices' for gender and sexual minorities, and will have far-reaching consequences if adopted. It [places](#) a duty on every citizen to promote and protect the provisions of the Bill, including by reporting 'offences' and assisting in the investigation and prosecution of offenders. Additionally, advocacy, support and other promotional activities are criminalised, with heavy prison sentences ranging from five to 10 years. After a constitutional review by a Committee in Ghana's parliament in November 2022, attorney general Godfred Dame [said](#) that parts of the Bill 'pass the test of constitutionality' while others 'violate some fundamental rights and freedoms enshrined in the constitution', and also argued that sexual relations between women should be included.

Photo by AP







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In Senegal, a bill [introduced](#) in parliament in December 2021 would [double](#) prison sentences to 10 years for those convicted of ‘acts against nature’ between people of the same sex and criminalise advocacy for LGBTQI+ rights. The draft law bore many [similarities](#) to Ghana's draconian anti-LGBTQI+ draft law. Senegal's Office of the National Assembly however [blocked](#) the Bill from being considered in the National Assembly on the basis that the Penal Code already criminalises homosexual acts.

In Niger, President Mohamed Bazoum [announced](#), in a broadcast on public radio station La Voie du Sahel in January 2023, plans to criminalise same-sex relations in an overhaul of the Penal Code, which dates back to 1810, to adapt it to the ‘economic and social realities’ of Niger. He further stated that penalties ranging from 10 years imprisonment to life imprisonment or death sentence will be considered for same-sex marriages, while also outlining that ‘legal entities that manage, assist, proselytise or finance’ LGBTQI+ groups or individuals will be subject to prosecution.

Even before anti-LGBTQI+ bills are passed into law, the introduction of proposed anti-LGBTQI+ legislation in parliament often escalates human rights violations rooted in homophobia. In Ghana, a 2022 [report titled](#) ‘We Deserve Protection’: Anti-LGBTIQ Legislation and Violence in Ghana’, published by civil society group OutRight Action International, [outlined](#) the impact of the draconian [anti-LGBTIQ+ draft law](#). According to the report, the draft law has created ‘a hostile and dangerous situation for sexual and gender minorities in Ghana, leading to multiple forms of human rights violations without redress’. These rights violations include mob attacks, physical violence, arbitrary arrests, blackmail, online harassment, verbal harassment, gang rape and other acts of sexual violence, conversion practices, forced evictions and homelessness, employment discrimination and robbery.

## RIGHT TO EQUALITY, PRINCIPLE OF NON-DISCRIMINATION

Discrimination against people who identify as LGBTQI+ has far-reaching effects, including on the right to associate even in places of work.

In March 2022, during Eswatini's Universal Periodic Review at the UN Human Rights Council, the government [refused](#) to [accept](#) recommendations to prohibit discrimination based on sexual orientation and gender identity and decriminalise same-sex sexual conduct between consenting adults. The effects of discrimination and the absence of state protection have been felt in various sectors. According to the [Swaziland National Association of Teachers](#), more teachers in Eswatini are [resigning](#) or seeking transfers due to the stigma related to their sexual orientation. At least nine LGBTQI+ teachers had resigned by late June 2022 as a result, while some had their employment transfers blocked because of their sexuality.



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Photo by PATRICK MEINHARDT/AFP via Getty Images

## REFUSAL OF REGISTRATION AND DEREGISTRATION

Associations fighting for the rights of sexual minorities also face further restrictions in terms of their legal establishment. Formal registration of LGBTQI+ associations is often either illegal or denied by authorities. Failure to register formally can have severe effects on an association's ability to operate, open a bank account and receive funds.

In Uganda in August 2022, the National Bureau for Non-Governmental Organisations (NGO Bureau), the government body that regulates NGOs in Uganda, [suspended](#) the operations of Sexual Minorities Uganda (SMUG) for [failing](#) to register with the NGO Bureau. The suspension was based on the NGO Bureau's denial of a 2012 application to register SMUG because they found the name of the organisation to be 'undesirable and un-registrable'.

In Malawi, the Nyasa Rainbow Alliance's 2016 request to be registered as a trust has been [declined](#) since 2017 after it was rejected by the Department of the Registrar General on the grounds that the Penal Code criminalises consensual sex between same-sex people, and that the organisation's members participate in such illegal activities. The matter is in court.





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In Eswatini, an April 2022 [decision](#) by the High Court affirmed a decision by the registrar of companies to decline registration of the [Eswatini Sexual and Gender Minorities](#) as a legal entity, on the basis that ‘its objectives are unlawful as same-sex intimacy is proscribed in the Kingdom’. In its findings, the court [held](#) that while LGBTQI+ people have a constitutional right to equality, this right was subject to the laws of Eswatini, [recognising](#) that there still exist restrictive laws such as the Sodomy Act which would need to be challenged first if a contrary ruling was to be sustained by the court. With such laws still in force, the court [ruled](#) that the refusal to register the legal entity was within Eswatini’s laws.

In Mozambique, where same-sex relations were decriminalised with the adoption of a new Penal Code in 2015, the Ministry of Justice has [refused](#) to issue a registration certificate to Associação Moçambicana para a Defesa das Minorias Sexuais (Association for the Defence of Sexual Minorities – Lambda), invoking article 1 of law 9/91 of 18 July 1991, regulating the formation of CSOs, which prohibits associations with an objective contrary to ‘the moral, social and the economic order and offends others and the public good’. Despite an October 2017 Constitutional Court [ruling](#) that the refusal to register Lambda was unconstitutional, the association is still yet to be registered.

## RAIDS ON CSO ACTIVITIES

CSOs advocating for the rights of the LGBTQI+ community face disruption of their activities, in some instances followed by the arrest, detention and prosecution of CSO staff and people attending events.

In Burundi, police officers [arrested](#) 24 people in February 2023 after they raided a seminar organised by MUCO Burundi, a CSO working on HIV/AIDS in Gitega. The raid on the meeting followed reports from neighbours after they saw teenagers entering the organisation’s office. According to the police investigations, ‘condoms and documents on the rights of homosexuals’ were found at the site. After 10 days of questioning, all 24 people were [charged](#) with ‘homosexual behaviours and incitement to homosexual practices’.

Ghana’s first LGBTQI+ community centre in Accra, organised by LGBT+ Rights Ghana, was [forced](#) to close down after security forces raided the centre. The formal opening of the centre, on 31 January 2021, was followed by a backlash, with church groups, political figures and anti-LGBTQI+ groups calling for its closure.

In Cameroon, security forces [raided](#) the offices of Colibri, an HIV prevention and treatment organisation based in Bafoussam, on 24 February 2021, arresting 13 people accused of ‘homosexuality’. Among them were seven staff members of the organisation. They were released a few days later.



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Photo by REUTERS/Monicah Mwangi

## BRUTAL ATTACKS AGAINST PEOPLE WHO IDENTIFY AS LGBTQI+

Attacks against people who identify as LGBTQI+ are common in countries such as Benin, Cameroon and Kenya, raising concerns that there are patterns of attacks rather than isolated incidents.

In Kenya, human rights activists have [reported](#) a pattern of attacks on LGBTQI+ people. Police in Trans Nzoia County [found](#) the dead body of a 50-year-old intersex woman in May 2022, with [reports](#) indicating that she had been raped. Just weeks before, another LGBTQI+ person, Sheila Adhiambo Lumumba, was [found](#) dead in April 2022, with reports indicating that a group of six unknown men attacked, raped and killed her. In yet another [incident](#), in early January 2023, unknown assailants [murdered](#) and dumped the body of LGBTQI+ activist Edwin Chiloba. Chiloba's death, which many linked to his sexual orientation, sparked public outrage, with civil society groups and members of the public denouncing the murder and calling on the authorities to bring those involved to justice. Twitter users shared the hashtag [#JusticeForEdwinChiloba](#) to express growing concerns over increased attacks on LGBTQI+ people. Sexual minority groups continue to face escalating homophobic attacks in Kenya, raising concern about the government's perceived [apathy](#) towards ensuring equal protection for all.





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Photo by Alet Pretorius/Gallo Images via Getty Images

In Benin in early February 2022, police officers [beat](#), stripped and photographed a transgender woman and [forced](#) her to remain naked during her three-day detention, after she and three transgender friends were attacked and assaulted by motorbike taxi drivers and residents before being taken by force to the Pahou police station. A similar incident was reported in April 2021, where three transgender women were [forced](#) to undress and were beaten by a group of men in Cotonou, who also filmed the attack and shared the video on social media. Three LGBTQI+ organisations received threats after publicly defending the three women. The National Human Rights Commission of Benin, in its [annual report](#) published in December 2021, noted its concern about ‘physical and sexual assaults, arbitrary detention, torture and inhuman and degrading treatment observed against LGBTQI+’.

Human rights organisations have for many years [documented violence](#) against and prosecution of LGBTQI+ people in Cameroon. For example, at least 32 cases of attacks on and abuse of LGBTQI+ people were recorded in the first few months of 2022 by the Cameroonian Foundation for AIDS, a prominent human rights organisation that defends the rights of LGBTQI+ people

## II) HUMAN RIGHTS DEFENDERS

The refusal of registration of LGBTQI+ organisations often has far-reaching effects on human rights defenders (HRDs) and CSO staff members. Those who advocate for LGBTQI+ rights face challenges ranging from arbitrary arrest, detention, prosecution and surveillance for doing their work, and are subjected to threats and intimidation.





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## ARBITRARY ARRESTS

Before the suspension of SMUG in Uganda in August 2022, the police and other authorities repeatedly [harassed](#) its staff members. In May 2022 for instance, the authorities [arrested](#) two of SMUG's employees when they reported the attacks on the SMUG office. They were [charged](#) with 'promotion of homosexuality and recruitment of people into homosexuality', and were held in custody for four days. Police officers then launched investigations into three more SMUG employees for 'recruitment to homosexuality'. SMUG also discovered in June 2022 that the NGO Bureau had subjected their office to [surveillance](#) under a police directive.







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Photo by REUTERS/Abubaker Lubowa

In [Kenya](#), police officers [arrested](#) four HRDs working on sexual orientation, gender identity and expression in Malindi for ‘illegally assembling’ in July 2022. The officers raided a meeting organised to discuss issues affecting LGBTQI+ people and arrested four HRDs out of the 30 who took part. Even though the venue hosted other meetings, the authorities declared this particular meeting illegal and demanded organisers provide a permit.

Similarly, police officers [arrested](#) 21 people – 16 men and five women – at a hotel in Ho, southern Ghana on 20 May 2021 while they were attending a paralegal training session organised by LGBTQI+ organisation Rightify Ghana on how to document and report violations against LGBTQI+ people. They were charged with ‘unlawful assembly’ under section 201 of the Criminal Code. They were only released on bail a month later.

## THREATS, INTIMIDATION AND VIOLENT ATTACKS ON HRDS

Globally, HRDs who fight against violence and discrimination against LGBTQI+ people are [subjected](#) to multiple violations, including physical attacks, threats, intimidation and smear campaigns. In Africa, this is no different. In Cameroon, for example, Alice Nkom, lawyer, LGBTQI+ defender and founder of the Association for the Defence of Homosexual Rights, has been [subjected](#) to threats and insults during her fight for the defence of LGBTQI+ people.

In South Africa, where LGBTQI+ rights have deteriorated in recent years, rights campaigners and LGBTQI+ people live and act in a hostile environment characterised by hate speech, death threats and killings. For example, LGBTQI+ activist Lindokuhle Cele was [stabbed](#) and killed on 6 February 2020 in the township of Umlazi near Durban, KwaZulu-Natal province. In March 2021, the Durban High Court [qualified](#) the killing as a hate crime and sentenced an individual to 25 years in prison for Cele’s murder.





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### III) EXPRESSION

In several countries across the continent, the publication and dissemination of material on LGBTQI+ issues faces restrictions and challenges, including bans and public vilification, leading to censorship of LGBTQI+ people and those advocating for their rights.

### PUBLICATION CHALLENGES

In Côte d'Ivoire, a new magazine [set to be released](#) in May 2023 by GROMO, a CSO advocating for the rights of LGBTQI+ people, failed to meet its publication deadline after the organisation was unable to find LGBTQI+-friendly printers. The magazine, 'Melea-gbo', was to be Francophone Africa's first LGBTQI+ publication.



Photo by TSHEKISO TEBALO/AFP via Getty Images





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### CENSORSHIP

In Kenya, following the February 2023 Supreme Court's decision on NGLHRC, MP Mohamed Ali [tabled](#) a parliamentary motion calling for a total ban on the discussion, publication and dissemination of information or material on LGBTQI+ issues. In February 2022, the Kenya Film Classification Board (KFCB) [banned](#) an Indian film for 'going against Kenya culture'. [According](#) to the KFCB, the film, 'Baadhi', would remain restricted in the country for promoting same-sex marriage, which they argued was against Kenya's constitution. In September 2022, Christopher Wambua, acting CEO of KFCB, [reiterated](#) that all movies with LGBTQI+ content are [forbidden](#) in Kenya on the basis that the law does not allow LGBTQI+ content and relationships.

In June 2023, the president of Cameroon's national media regulator, the National Communication Council, Joseph Chebongkeng Kalabubse, [stated](#) that the broadcasting of LGBTQI+ scenes is prohibited in Cameroon and threatened media outlets that do so with suspension. Kalabubse outlined that homosexuality is prohibited by the country's laws, and that broadcasting scenes linked to homosexuality is against professional ethics and the 'laws of nature'. In Tanzania, Information Minister Nape Nnauye [warned](#) against promoting same-sex relations on social media in September 2022. In a press conference held at the Tanzania Communications Regulatory Authority headquarters in Dar es Salaam, he stated that they would not tolerate popularising acts against the 'established traditions' in Tanzania. Nnauye accused some people of using content related to cartoons popular among children to promote same-sex relationships.



Photo by REUTERS/James Akena





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Photo by REUTERS/Monicah Mwangiz

## IV) PEACEFUL ASSEMBLY

### A HOSTILE ENVIRONMENT FOR PEACEFUL ASSEMBLY

The many violations of freedom of association for LGBTQI+ groups, including the refusal to grant legal recognition, also negatively affect the right to protest, as these fundamental rights are intrinsically linked. Additionally, the hostile environment for LGBTQI+ groups, as outlined above, has created an atmosphere of fear, which discourages groups from protesting for LGBTQI+ rights.

In Zambia, for example, four women's rights activists were arrested in March 2023 after participating in a [peaceful march](#) against gender-based violence (GBV), which authorities said was a march to promote homosexuality. The four were charged with unlawful assembly. In June 2021, in response to a school event aimed at raising awareness on GBV in the Senegalese city of Tivaouane, students [committed](#) vandalism, claiming the event was 'to promote homosexuality', leading to the event's cancellation.

Additionally, adding to the already existing hostile environment, mass anti-LGBTQI+ protests have been documented in several countries. In [Senegal](#), thousands of people [gathered](#) in Dakar in February 2022 to [demand](#) tougher anti-LGBTQI+ laws. The protest was reportedly [organised](#) by the group And Samm Jikko Yi (Together We Protect Our Values), consisting of 125 local Islamic organisations. In Kenya, a few weeks after the Supreme Court ruling in favour of NGLHRC, anti-LGBTQI+ protests were [held](#) in March 2023 across the predominantly Muslim [Lamu](#) and Mombasa counties, and also in Nairobi county, to denounce the ruling. Religious and youth leaders who led the protests called on the government to review the school curriculum, which they accused of promoting homosexuality. In Mombasa, at least 80 LGBTQI+ people [left the county](#) ahead of the protests in fear for their lives.





# CHALLENGING BARRIERS:

## INVESTIGATING CIVIC SPACE LIMITATIONS ON LGBTQI+ RIGHTS IN AFRICA

## POSITIVE DEVELOPMENTS

Despite this bleak picture, strides continue to be made in protecting the rights of LGBTQI+ people and their defenders through the relentless work of HRDs, CSOs and courts across the continent.

In [Botswana](#), [the Court of Appeal](#) handed down a unanimous judgment decriminalising gay sex in November 2021, in an appeal brought by the government to challenge the 2019 High Court ruling that decriminalised homosexuality. The [ruling](#), which struck off two legal provisions that criminalised consensual sexual relations between two men, made Botswana the sixth country in Africa to decriminalise same-sex relations, [following](#) Angola, Lesotho, Mozambique Seychelles and [South Africa](#). [President Mokgweetsi Masisi](#) made a commitment on behalf of the government to fully abide by the Court of Appeal's decision.

As discussed above, in [Kenya](#) in February 2023 a five-judge bench of the Supreme Court [confirmed](#) the decisions of the High Court and Court of Appeal to permit the registration of the NGLHRC. This marked the conclusion of a 10-year legal battle. For a long time, the National NGO Coordination Board [refused](#) to register LGBTQI+ groups and specifically refused to register the NGLHRC because its name contains the words 'gay' and 'lesbian'. The Supreme Court, arguing it was unconstitutional and discriminatory to deny registration on the basis of the sexual orientation of the applicants, found that 'just like everyone else, [LGBTQI+ people] have a right to freedom of association which includes the right to form an association of any kind'.

In Namibia, the Supreme Court [handed down](#) a judgment in May 2023 recognising same-sex marriages concluded abroad between citizens and foreign spouses. This judgment overturned a [previous decision](#) by the High Court, which declined to compel the ministry of home affairs and immigration to recognise the marriages of two same-sex couples who had married outside the country, after the ministry refused to grant permits to their same-sex foreign spouses. Namibia became the [second](#) African country to recognise same-sex marriages after South Africa.

In Angola, a new Penal Code that was passed by parliament in 2019 and came into [effect](#) in February 2021 decriminalised consensual same-sex conduct and [prohibited](#) discrimination based on sexual orientation. A year before the law was passed, in 2018, Iris Angola, the country's first LGBTQI+ organisation, was [granted](#) legal status after the authorities finally accepted its registration application, five years after its establishment in 2013.

In [Gabon](#), an amendment to the Penal Code decriminalising same-sex relations was [passed](#) by parliament in June 2020. The amendment followed an earlier amendment, passed the year before, which criminalised same-sex relations, [punishable](#) with a prison sentence of six months and a fine of five million CFA francs (approx. US\$9,000). Prior to July 2019, there was no law on same-sex relations.





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In Eswatini, the Supreme Court in June 2023 [nullified](#) the High Court's April 2022 judgement which had affirmed a decision by the registrar of companies to decline registration of the [Eswatini Sexual and Gender Minorities \(ESGM\)](#) as a legal entity for promoting 'unlawful' objectives. In the appeal brought by ESGM, the Supreme court found that the registrar's decision to decline registration was tainted by the fact that in arriving at his decision, the registrar had referred the matter to the Attorney General and the Principal Secretary of the Ministry of Commerce and Industries contrary to the law. The court referred the matter to the Minister of Industry and Commerce for fresh consideration of ESGM's application within sixty days of the judgement.



Photo by TSHEKISO TEBALO/AFP via Getty Images)

*Repeal Section 164(a) and (c),  
165 & 167 of the Penal Code*

*Infringe Constitutional rights to:*

- Equal treatment
- Non-Discrimination
- Freedom from violence
- Access to justice
- Access to health-care

#ReBatswana #Repeal164 #DecrimBotswana

*Repeal Section 164(a) and (c),  
165 & 167 of the Penal Code*

**1 in 3 lesbian  
women has  
attempted  
suicide.**

#ReBatswana #Repeal164 #DecrimBotswana

Reference: Müller, A., Daskilewicz, K. & the Southern and East African Research Collective on Health (in press). Mental health and well-being, experiences of violence and access to healthcare among lesbian, gay, bisexual, transgender and intersex people in Botswana. University of Cape Town: Gender, Health and Justice Research Unit.

*Repeal Section 164(a) and (c),  
165 & 167 of the Penal Code*

**Gay men in Botswana  
experience 5X more  
sexual violence than  
men in the Botswana  
general population.**

#ReBatswana #Repeal164 #DecrimBotswana

Reference: Müller, A., Daskilewicz, K. & the Southern and East African Research Collective on Health (in press). Mental health and well-being, experiences of violence and access to healthcare among lesbian, gay, bisexual, transgender and intersex people in Botswana. University of Cape Town: Gender, Health and Justice Research Unit.







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## LGBTQI+ GROUPS POWER THROUGH DESPITE CHALLENGES

Despite the hostile environment, groups have continued to protest for LGBTQI+ rights in several countries. For example, a group of Kenyan LGBTQI+ students [held](#) a peaceful [protest](#) in January 2022 to demand equal access to education for LGBTQI+ people following [remarks](#) by Education Cabinet Secretary George Magoha that 'children who are homosexual and lesbian must go to day schools close to their homes'. The protesters called on Magoha to withdraw his comments and criminalise phobias that put homosexual students' lives at risk. The comments affected some students; according to a protester, one student was [sent away](#) from school.

Additionally, LGBTQI+ groups and people have actively [participated](#) and engaged in protest movements aimed at fighting other social injustices. LGBTQI+ people in Nigeria took a stance during the [#EndSARS protests](#) against police brutality that erupted in October 2020. With hashtags such as #QueerNigerianLivesMatter, LGBTQI+ groups turned up during the protests in several cities. Their participation was however not without incidents, with reports [documenting](#) physical violence, harassment and intimidation against LGBTQI+ protesters from other protesters. In response to these abuses, a temporary safe house – [Safe House](#) – was set up for LGBTQI+ protesters.

Photo by Safe Place International





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## OPPORTUNITIES FOR CIVIL SOCIETY INTERVENTION

It is important for civil society to continue to build on the few but important positive developments and gains that have been achieved in the region in safeguarding the rights of LGBTQI+ people to associate, express themselves and peacefully assemble. There is also a need to identify opportunities for further engagement and support civil society in more restrictive countries to work towards making progress.

In Uganda, activists have recently [filed](#) two separate cases at the country's constitutional court to challenge the 2023 Anti-Homosexuality Act for [violating](#) human rights and public participation requirements. These cases present an opportunity for civil society and international allies around the globe to offer much needed solidarity and support during and after the litigation process.

Additionally, civil society can work to foster a sense of co-responsibility for the protection of all those at risk. This includes offering protection through appropriate safety and security measures to the LGBTQI+ defenders who are so bravely stepping up to be the faces of court interventions despite the risk of prosecution, and extending these protection measures to all LGBTQI+ people who need them, along with providing movement assistance to LGBTQI+ people who no longer feel safe in their country, including through visa support.

Civil society in the region also has an opportunity to invoke relevant regional mechanisms on behalf of those affected in Uganda, such as by engaging the African Commission on Human and Peoples' Rights on its [Resolution 275](#).

In Malawi, the Nyasa Rainbow Alliance instituted a [court](#) case to challenge the ministry of justice's denial of its request to be registered as an organisation. The case is [ongoing](#) and will be a test of the country's commitment to provide equal protection of rights for all, and offers an opportunity for civil society and others to provide solidarity and engage with the Alliance to identify areas needing support.

In [Botswana](#), while [civil society](#) lauded the judiciary for setting a great precedent in protecting the rights of gay men in the Court of Appeal November 2021 judgement that decriminalised consensual sexual relations between two men, they also [noted](#) that there remains a need to repeal Section 167 of the [Penal Code](#), which was not expressly raised in court proceedings or in the court's judgement. The section, which criminalises consensual sexual activities in private as acts of gross indecency, indirectly prohibits sexual intimacy between lesbian couples. This gap presents an opportunity for further policy engagement by civil society, either through the courts or by advocating for repeal in parliament.





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Photo by REUTERS/Thomas Mukoya

In Eswatini, the High Court, in its April 2022 findings in the case against refusal of registration brought by the Eswatini Sexual and Gender Minorities (ESGM), [recognised](#) that there still exist restrictive laws such as the Sodomy Act which would need to be challenged first before [it could affirm](#) the rights of LGBTQI+ organisations to register. Although the court seemed to take a more literal and restrictive approach to its interpretation of the law in this case, its recognition that restrictive laws still exist that constrain its liberty to pronounce more progressive judgments provides an opportunity for civil society to challenge the restrictive provisions, through instituting a case with the judiciary to strike out the provisions in question, or by advocating for an amendment process in parliament. Although the Supreme Court in June 2023 [nullified](#) the High Court's April 2022 decision to reject ESGM's application, it did not delve into the substance and constitutionality of the right to register but focused on the legality of the process followed by the registrar. The judgement however still offers an avenue for policy intervention and engagement by civil society with relevant actors, including the Ministry of Commerce and Industry whose Minister was mandated by the Supreme Court's judgement to review the application afresh.

In [Kenya](#), despite the positive judgments that have come from the three highest courts affirming the right of the NGLHRC, and by extension all LGBTQI+ organisations, to register, much remains to be done within the other arms of government, and within public spaces in general. While human rights groups and activists lauded the Supreme Court ruling affirming the rights of LGBTQI+ people to associate and have their organisations registered, the ruling was followed by fierce [backlash](#) from anti-LGBTQI+ groups, the clergy and individuals, including prominent government figures, among them the president. Social media users took to Twitter to engage in conversations around the ruling, with homophobic content shared for days after the ruling was made. President William Ruto [criticised](#) the ruling, insisting that while he respected the Court's decision, 'Kenya would not allow same-sex marriages'. He went ahead to implore the clergy to increase education on 'traditional values'. Deputy President Rigathi Gachagua also [criticised](#) the ruling, terming homosexuality 'satanic'. MPs [condemned](#) the ruling, with politicians such as James





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Nyikal saying that homosexuality goes against natural laws. Christian and Muslim clerics also [criticised](#) the decision, while the attorney general announced that the government would [challenge](#) it. A clear disconnect and variance between different arms of government in the commitment to uphold the rights enshrined in the constitution is evident, extending an opportunity for civil society engagement.

Countries that have taken steps to decriminalise LGBTQI+ relationships, as well as civil society organisations (CSOs) from these nations, have a crucial role to play as champions and supporters of advocacy for equal treatment. Their influence can extend beyond their own borders, inspiring change in countries that continue to criminalise LGBTQI+ relations throughout the continent. By lending their voices and resources, these countries and CSOs can make a significant impact in promoting equal rights for all individuals, irrespective of their gender or sexual orientation, and contribute to a more inclusive and progressive society. In May 2023, South Africa's Deputy President Paul Mashatile [affirmed](#) that the South African government is committed to actively participating in discussions both at the national and international levels to emphasise the moral and political imperative to uphold the rights of LGBTQI+ individuals. Noting the seriousness of the plight of LGBTQI+ community globally, with 67 countries (34.3%) across the world still criminalising same sex relations, Mashatile said that the South African government would engage these countries persuasively to recognise the rights of LGBTQI+ people. Many other countries and CSOs can take up this role to drive change.



Photo by Alet Pretorius/Gallo Images via Getty Images





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The need for tailored, country-and-context specific sensitisation of the public and government personnel on the universality of human rights for all people, including LGBTQI+ people, cannot be overstated, and presents a crucial area for further civil society intervention. By emphasising that LGBTQI+ rights are fundamentally human rights, CSOs can play a pivotal role in challenging societal stereotypes, prejudices and discriminatory practices. Over time, sensitisation efforts can help dispel misconceptions and highlight the inherent dignity and worth of every person, regardless of sexual orientation or gender identity.

Photo by YASUYOSHI CHIBA/AFP via Getty Images







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## CONCLUSION – REPERCUSSIONS OF RESTRICTIONS

With most African countries still criminalising homosexuality and organisations that advocate for the rights of LGBTQI+ people, it continues to be commonplace that LGBTQI+ people and those who represent them experience violence, persecution and widespread, systemic and institutionalised discrimination and harassment. In recent years, African states have taken it upon themselves to place tighter restrictions in policy, law and practice, in what seems to be a coordinated attack against the rights of LGBTQI+ people across the continent. Since 2021, no fewer than five countries have passed or attempted to pass laws which severely punish homosexuality and those who advocate for the rights of LGBTQI+ people. CSOs advocating for these rights continue to be denied registration, even against a backdrop of positive court cases affirming their right to association. HRDs and staff members working on these rights are targeted with arrests and prosecution, freedom of expression is muzzled through blatant censorship and the authorities clamp down on peaceful protests that are perceived to promote homosexuality.

Photo by TONY KARUMBA/AFP VIA GETTY IMAGES







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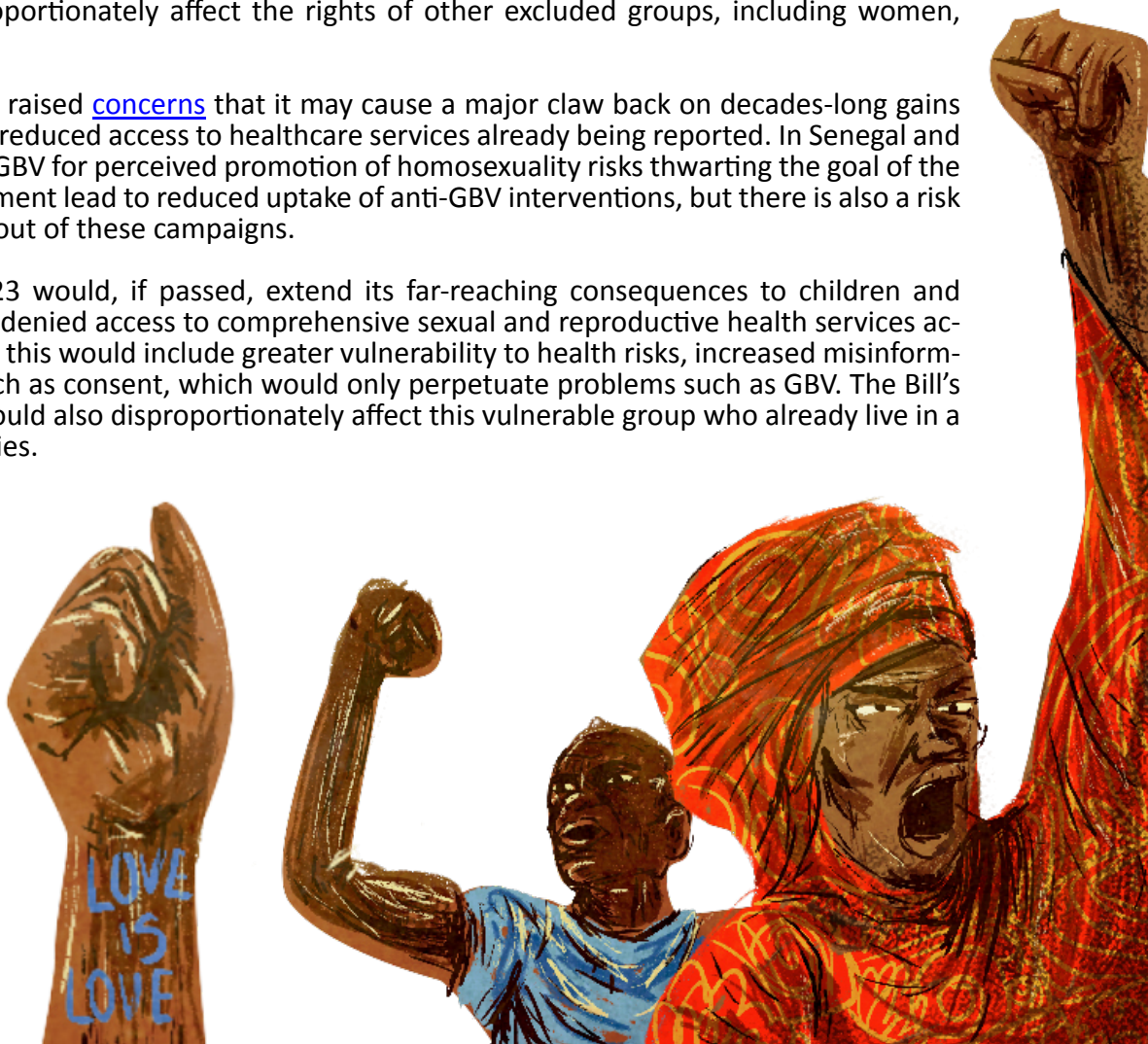
The role of civic space in enabling all people to advocate for and realise their human rights cannot be overstated. Across the world, HRDs, CSOs and people in general have been able to claim their rights and participate in democratic space through exercising their freedoms of association, expression and peaceful assembly. Civic space is the cornerstone of a functioning democracy, but despite its importance, minority groups such as LGBTQI+ people continue to be denied the opportunity to freely exercise their civic freedoms.

It is vital to appreciate the wider impact of these civic space violations as they significantly limit the ability of LGBTQI+ people and their defenders to advocate for rights and access essential services. It is also important to appreciate that anti-LGBTQI+ restrictions often have far-reaching ramifications that also disproportionately affect the rights of other excluded groups, including women, people living with HIV/AIDS, children and refugees.

In Uganda for instance, the new anti-LGBTQI+ law has raised [concerns](#) that it may cause a major claw back on decades-long gains made in the country over the HIV/AIDS response, with reduced access to healthcare services already being reported. In Senegal and Zambia, the clampdown on peaceful activities against GBV for perceived promotion of homosexuality risks thwarting the goal of the larger anti-GBV campaign. Not only may fear of harassment lead to reduced uptake of anti-GBV interventions, but there is also a risk that GBV victims in same-sex relationships will be left out of these campaigns.

In Kenya, the proposed Family Protection Bill of 2023 would, if passed, extend its far-reaching consequences to children and refugees. Children, particularly adolescents, would be denied access to comprehensive sexual and reproductive health services according to the Bill's provisions. The dire implications of this would include greater vulnerability to health risks, increased misinformation and a lack of information on crucial concepts such as consent, which would only perpetuate problems such as GBV. The Bill's proposal to expel refugees who identify as LGBTQI+ would also disproportionately affect this vulnerable group who already live in a precarious environment away from their home countries.

Across the continent, the criminalisation of LGBTQI+ people and censorship of material perceived to promote homosexuality only fuels stigma and violence from the public. Governments have a primary obligation to ensure equality and equal protection for all. Without ensuring that LGBTQI+ people can exercise their civic freedoms and other human rights without discrimination, the pledge to achieve the Sustainable Development Goals is at risk, with targets on gender equality, health, decent work and equality remaining unattainable for LGBTQI+ people and, by extension, other excluded groups.





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## RECOMMENDATIONS

### TO CIVIL SOCIETY

- Continue to collect and document evidence of LGBTQI+ rights violations and trends in order to develop reports that provide alternative views to government accounts, to help people hold their governments accountable.
- Establish regional multi-stakeholder working groups on sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) to lead advocacy efforts for strengthened regional LGBTQI+ rights protection legislation and recourse to regional legislative and judiciary bodies.
- Continue lobbying and engaging in advocacy with diplomatic missions and international human rights mechanisms to raise awareness of the implications of the clampdown on LGBTQI+ rights in Africa for human rights globally.
- Advance advocacy towards the establishment of an African Commission on Human and Peoples' Rights special mandate on SOGIESC rights and violations.
- Develop training materials for state and non-state actors regarding SOGIESC rights, where it is safe to do so.
- Continue to work with the human rights legal community to advance strategic litigation and legal complaints.





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## TO GOVERNMENTS

- Repeal anti-LGBTQI+ laws and decriminalise homosexuality where these restrictions exist.
- Improve national legal and policy environments by developing national actions plan to combat LGBTQI+ discrimination and hate speech and to domesticate principles of the African Commission on Human and Peoples' Rights Resolution 275.
- Create an enabling social, political and legal environment for LGBTQI+ people, HRDs, organisations and social movements.
- Ensure that HRDs and journalists working on LGBTQI+ issues are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Ensure LGBTQI+ people's safety and security from violence and arbitrary killings committed by state and non-state actors.
- Engage in a peer review through the African Peer Review Mechanism on progress towards the comprehensive implementation of human rights, including freedom from discrimination and equal treatment for all people regardless of sexual orientation or gender identity.
- Protect LGBTQI+ refugees, asylum seekers and displaced people who seek refuge from violence and persecution.
- Establish LGBTQI+-friendly psychosocial facilities for LGBTQI+ people who are victims of trauma.

## TO INTERNATIONAL AND REGIONAL INSTITUTIONS AND THE PRIVATE SECTOR

- Regional and international human rights mechanisms must strengthen their collaboration with each other and with intergovernmental organisations to build on existing regional and international gender and human rights frameworks to advance LGBTQI+ rights policies in Africa.
- The private sector and agencies involved with foreign aid, assistance and development programmes must redirect their resources and efforts towards addressing the LGBTQI+ humanitarian and human rights crisis.



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