Sexual orientation, gender identity, HIV and human rights

An advocacy toolkit

equal rights for all

THE DiDiRi COLLECTIVE
Advancing Sexual Diversity, Health and Rights in Southern Africa

ARASA
AIDS & Rights
Alliance
for Southern Africa

Hivos
people unlimited

POSITIVE VIBES
Hope - Respect - Voice

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equal rights for all

acknowledgements.

foreword.

For those whose sexual identity and orientation need respect and protection – that is, every single one of us – Africa today presents a paradox. On the one hand, more states seem to be embracing democracy. Since 1990, most sub-Saharan states have legalised opposition parties and held multiparty elections. This didn't come smoothly, or from bloodless transitions. But the basic principles of opposition and democracy got a toe-hold, perhaps more. On the other – horror; too much horror. Violence, persecution, imprisonment, ignorant, hate-filled rhetoric against sexual minorities. The reactionary position of some African leaders towards lesbian, gay, bisexual, transgender and intersex (LGBTI) persons is a blight on a continent groping towards, grappling with, its own future.

Open minds towards sexual and reproductive health and rights (SRHR) and sexual orientation and gender identity (SOGI) rights are necessary for rights. They are necessary for democracy. And they are necessary for development. And they are also indispensable for health.

That's why the appearance of this important Toolkit is so delightful. A great and grand array of organisations, across Africa, put themselves on the line in supporting its publication. They are committed to the rights of all people across the gender and sexual orientation spectrum – yours as well as mine. Each organisation represents the diverse struggles of us as Africans to challenge dictatorship, to reject autocracy and minority rule, as well as our own marginalisation and persecution.

The Toolkit is wonderful. It is savvy, well-informed, shrewd and full of good, practical sense. But it is also more. It is a testament to something irreversible in our lives on this our continent – that, more and more, we as African LGBTI people are claiming our sexual and gender identity more and more visibly and vocally. We're coming out and we're proudly saying so.

In doing this, we express our enduring belief in justice and freedom and acceptance – and the power of plain good sense and human love.

This Toolkit does a lot of things. And it does them very well. Lessons in the campaign for access to anti-retroviral therapy in South Africa are wound up with the fight against gender based violence and the right to safety and security in our homes, on the streets and in our communities. These struggles are what lawyers and academics call "intersecting". That means those struggle for them show our rights as humans – different, tender, yearning, needful, proud and clamant humans – are interconnected.

The case studies are vivid and practical. The Toolkit has captured these lessons in a way that organisations and individuals and seminars and classrooms will be able to use and enjoy.
Perhaps we can hope that heads of State and legislators may see it too. It will be helpful in enlarging their humanity – a task that continues, within each of us, every day. The Toolkit makes that task more interesting, pleasurable and practical. I rejoice in its appearance.

Edwin Cameron
JUSTICE OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA
2 March 2015

contents.

glossary of terms.

Bisexual
A sexual orientation and identity. Bisexual people have a romantic and/or sexual attraction to people of the same and opposite gender. Not necessarily at the same time and not necessarily an equal amount of attraction for each gender.

Discrimination
The unjust or prejudicial treatment of different categories of people on the grounds of race, age, sex, sexual orientation, gender (including gender identity, expression, and presentation).

Gay
A sexual identity and orientation; A man attracted to other men, romantically and/or sexually.

Gender
Socially constructed characteristics assigned that may vary according to the times and the society or group one belongs to, and which are learned or assigned to women and men. It is a broader concept than the biological differences between men and women, and includes masculine, feminine, and androgynous traits.

Gender affirming treatment
Can include counselling and psychosocial support, hormone replacement treatment, gender affirming surgery (also known as sex reassignment surgery) to bring one's physical characteristics in line with one's gender identity.

Gender Identity
Refers to a person's innate, deeply felt psychological identification as a man, woman, or sometimes in between, which may or may not correspond to the person's body or sex assigned at birth. An internalized representation of gender roles and awareness from infancy which is reinforced during adolescence.

Gender non-conforming
A person who does not conform to the binary male-female categories that society prescribes; transgender people for example, are gender non-conforming, but others who are not transgender might be as well.

Heterosexual
A person attracted to people of the opposite gender, romantically and/or sexually, where the gender of the attracted person is the key to the attraction.

Homosexual
A person attracted to people of the same gender, romantically and/or sexually, where the gender of the attracted person is the key to the attraction.

Homophobia
Irrational fear of homosexual feelings, thoughts, behaviours, or people and an undervaluing of homosexual identities, resulting in prejudice, discrimination and bias against homosexual individuals

Intersex
Being born with ambiguous sex characteristics (chromosomes, genitals and/or reproductive organs). Many variations exist; intersex is not one single category, but includes many different ways someone might defy the medical definitions of "male" and "female".

Lesbian
A sexual identity and orientation; a woman attracted to other women, romantically and/or sexually.

Men who have sex with men (MSM)
A sexual practice irrespective of sexual orientation or identity. An MSM can be hetero-, bi- or homosexual or transgender man. This term is more technical and is not necessarily an identity

Sexual orientation
Pattern of romantic and/or sexual attraction to a person of the opposite gender, same gender, or more than one gender.

Transman
A transgender man or female-to-male (FTM) is assigned female at birth, but his gender identity is male. Always use male pronouns when referring to a transman.

Transphobia
Irrational fear of transgender feelings, thoughts, behaviours or people and an undervaluing of transgender identities, resulting in prejudice, discrimination and bias against transgender individuals. Where transphobia includes homophobia, we speak of homophobia and transphobia.

Transwoman
A transgender woman, or male-to-female (MTF) is assigned male at birth, but her gender identity is female. Always use female pronouns when referring to a transwoman.

Transgender
An umbrella term which is often used to describe people whose gender expression or gender identity differs from their biological sex or gender assigned at birth. The umbrella terms is used to describe a wide range of identities and experiences, including transsexuals, FTM persons, MTF persons, transvestites, cross-dressers, two-spirits, gender-queers, and many more.*

Transsexual
This refers to people who wish to undergo hormone replacement therapy and/or gender affirming surgery to align their bodies to their gender identity.

Women who have sex with women (WSW)
A sexual practice irrespective of sexual orientation or identity. A WSW can be hetero-, bi- or homosexual or transgender woman. This term is more technical and is not necessarily an identity.

abbreviations and glossary.

AI	Amnesty International
ACHPR	African Commission on Human and Peoples' Rights
AMSHeR	African Men for Sexual Health and Rights
ARASA	AIDS and Rights Alliance for Southern Africa
ART	Antiretroviral Treatment
ASO	AIDS service organisations
CAL	Coalition of African Lesbians
CGE	Commission for Gender Equality
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEDEP	Centre for the Development of People
CSO	Civil Society Organisation/s
DRC	Democratic Republic of Congo
GALZ	Gays and Lesbians of Zimbabwe
GCHL	Global Commission on HIV and the Law
HRC	Human Rights Council
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDAHOT	International Day Against Homo and Transphobia
INERELA+	International Network of Religious Leaders Living with HIV
LEGABIBO	Lesbians, Gays and Bisexuals of Botswana
LGBTI	Lesbian, gay, bisexual, transgender, intersex
NGO	Non-governmental organisation
NSP	National Strategic Plan on HIV and AIDS
MSM	Men who have sex with men
OHCHR	Office of the High Commissioner for Human Rights
PEP	Post-exposure prophylaxis
PMTCT	Prevention of Mother to Child Transmission of HIV
SADC	Southern African Development Community
SANAC	South African National AIDS Council
SHE	Social, Health and Empowerment Feminist Collective of Transgender and Intersex Women of Africa
SRHR	Sexual and reproductive health and rights
TAC	Treatment Action Campaign
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UDHR	Universal Declaration of Human Rights
WSW	Women who have sex with women

about ARASA.

The AIDS and Rights Alliance for Southern Africa (ARASA) is a partnership of over 80 civil society organisations[1] from 18 countries[2] in Southern and East Africa, promoting a rights-based response to HIV and TB through capacity strengthening and advocacy. The ARASA partners comprise a diverse mix of organisations ranging from networks of people living with HIV, women's groups, youth groups, sex worker groups and AIDS Service Organisations (ASO) to lesbian gay, bisexual, transgender and intersex (LGBTI) organisations, legal aid providers and human rights organisations.

[1]*As at 31st December 2014.*
[2]*Angola, Botswana, Comoros, Democratic Republic of Congo, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Mauritius, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe*

Sexual orientation, gender identity, HIV and human rights:

introduction.

Background to the Toolkit

Following a rise in the persecution of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Southern and East Africa in 2009 and 2010, the ARASA partnership realised that a multi-stakeholder effort, building on coalitions of LGBTI and non-LGBTI voices, is needed to advocate strongly for improvement in the health and human rights of LGBTI people across the region. However, LGBTI and non-LGBTI organisations are often unwilling or unable to undertake joint advocacy due to a limited understanding of human rights, HIV, health (particularly sexual and reproductive health and rights (SRHR)) and sexual orientation and gender identity (SOGI) rights and its link to challenges faced by LGBTI persons; a limited capacity to implement effective advocacy interventions; a real fear of repression and backlash from communities and governments, as well as limited experience with forging strong cross-sectoral partnerships and coalitions for advocacy.

In 2010, ARASA developed an innovative advocacy tool, the *Equal Rights for All Manifesto*.[3] This was a collaborative effort undertaken in consultation with civil society organisations (CSO), as well as cultural and religious leaders from around the continent. Partners who contributed to the development of the manifesto included, amongst others, the International Gay and Lesbian Human Rights Commission, the Malawi Law Commission, the International Network of Religious Leaders living with HIV (INERELA+), African Men for Sexual Health and Rights (AMSHeR) and ARASA partners, as well as key individuals from across Africa. The Manifesto presented arguments relating to why the protection and promotion of equal rights for everyone, including LGBTI individuals, are critical to a public health and human rights agenda, in addition to being part of African culture and Christian as well as other religious philosophies.

Objectives of the Manifesto

This manifesto has two key objectives, both geared to ultimately building a movement of individuals and organizations who defend and promote equal rights in their communities and countries:

- Catalysing dialogue on equal rights, starting at the community level, with a long term view to challenging mind-sets and shifting public opinion
- Creating a common platform based on shared principles of equal rights, through which we can establish a network of organisations and individuals who are willing to work together on actions to support equal rights for LGBTI people

In 2012, ARASA, Hivos, Positive Vibes and COC secured funding from the Embassy of the Kingdom of the Netherlands in Pretoria to jointly implement a programme to advance sexual diversity, human rights and the right to health of LGBTI persons in ten countries in southern Africa. For more information on this programme, please visit http://didiri.org

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[3]*The complete manifesto is attached as Annexure 1.*

Since January 2012, ARASA has convened several knowledge-sharing and networking opportunities for 'mainstream' ARASA human rights partner organisations and LGBTI organisations from 10 southern African countries[4] to identify and pursue sustainable joint advocacy efforts for increased access to SRHR services in the context of HIV for LGBTI persons in the region. The meetings also identified key challenges to joint advocacy, including segregated activism and isolationism, lack of support from non-LGBTI led organisations in country contexts and the lack of capacity for sustainable and effective advocacy, at an in-country and regional level. The participants also identified advocacy-related capacity gaps in areas such as media advocacy, movement and coalition building, lobbying policymakers and research and documentation on human rights issues affecting LGBTI people.

About the Toolkit

There are a number of advocacy toolkits available to support advocacy on HIV-related issues, including the ARASA Advocacy Resource Manual on HIV and human rights.[5] This Toolkit specifically aims to address the capacity gaps identified at the ARASA knowledge-sharing and networking consultations. It provides user-friendly guidance, case studies and tools specifically directed at strengthening and promoting advocacy towards the rights of LGBTI individuals in Southern and East Africa. The Toolkit adopts a rights-based approach to SOGI rights advocacy, consistent with ARASA's approach to all its work, and focuses on promoting universal access to SRHR services including HIV prevention, treatment, care and support for LGBTI persons.

Audience

The Toolkit is aimed at a wide range of national organisations (e.g. LGBTI organisations, human rights organisations, AIDS Service Organisations (ASO); organisations of vulnerable and key populations such as women's groups, youth groups, sex worker networks; faith-based organisations), custodians and community stakeholders to support effective advocacy around health and human rights for LGBTI people, including at national level and in collaboration with ARASA and ARASA partners at regional and international levels.
Structure of the manual

Section 1 of the Manual deals with sexual orientation, gender identity and HIV in Southern and East Africa.

- Chapter 1 provides a background to human rights violations experienced by LGBTI individuals across Africa and the world and explains how punitive laws and policies impact on universal access to HIV prevention, treatment, care and support for LGBTI populations.

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[4]**Angola:** *Associacao de Reintegracao dos Jovens / Criancas na Vida Social (SCARJOV),* **Botswana:** *Legabibo, Rainbow Identity Association, Botswana Network on Ethics, Law and HIV/AIDS (BONELA);* **Lesotho:** *Matrix, Lesotho Network of People living with HIV (LENEPWA)* **Malawi:** *Centre for the Development of People (CEDEP), Northern Youth Network, Malawi Network of Religious Leaders living with or personally affected by HIV AIDS (MANARELA+), Centre for Human Rights and Rehabilitation (CHRR);* **Mozambique:** *Women, Law and Development Association (Muleide), Mozambican Association for the Defense of Sexual Minorities (LAMBDA), Mozambican Network of Religious Leaders Living with HIV and AIDS (MONARELA+), National Network of Organisations of People Living with HIV/AIDS (RENSIDA); Diokonia;* **Namibia:** *OutRight Namibia (ORN), Rights not Rescue Trust;* **South Africa:** *OUT, Gender Dynamix; Triangle Project, Social, Health and Empowerment Feminist Collective of Transgender and Intersex Women of Africa (SHE), IRANTI-Org, Durban Lesbian and Gay Community and Health Centre, University of South Africa (UNISA) Tirisano: Unit for behavioural studies on HIV and Health, Free Gender, Transgender Intersex Africa (TIA), AIDS Legal Network (ALN);* **Swaziland:** *Swaziland Positive Living (SWAPOL), Rock of Hope, House of our Pride;* **Zambia:** *Friends of Rainka; Transbantu Association, Zambia Network of Religious Leaders Living with HIV and AIDS (ZANERELA+), Treatment Advocacy and Literacy Campaign (TALC);* **Zimbabwe:** *Gays and Lesbians of Zimbabwe (GALZ), Zimbabwe Lawyers for Human Rights (ZLHR), Sexual Rights Centre;* **Regional:** *AMSHeR, Coalition of African Lesbians, Schorer / CoC, International Gay and Lesbian Human Rights Commission (IGLHRC), Hivos, Positive Vibes, SAfAIDS, Southern Africa Development Community Parliamentary Forum (SADC PF), Gay and Lesbian Archives (GALA)*
[5]*For more information, see http://www.arasa.info/info/training-manuals/*

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- Chapter 2 looks in further detail at HIV in relation to specific human rights and rights relating to sexual orientation and gender identity. It provides information on basic human rights and looks more specifically at why human rights are critical to LGBTI advocacy and how the protection and promotion of specific rights impacts on sexual and reproductive health, with a particular focus on HIV.
- Chapter 3 includes Frequently Asked Questions (FAQ) which are often asked of non-LGBTI organisations and people working on LGBTI issues relating to their work and why they support the human rights of LGBTI persons. They are included to guide activists to respond more effectively to some of the most commonly asked questions.

Section 2 of the Manual provides advocacy guidance.

- Chapter 4 defines advocacy in the context of LGBTI advocacy.
- Chapter 5 looks at how to go about developing an advocacy agenda. It discusses why an advocacy agenda is important, how to determine what SOGI rights issues to work on and setting your goals and objectives.
- Chapter 6 discusses how to develop an advocacy strategy relating to your goal. It includes a discussion of how to map your stakeholders, identify your advocacy targets and identify allies and partners as well as understand your opponents. Finally, it considers how to select the advocacy tools you will use to achieve your objectives, with a discussion of each strategy and case studies of successful advocacy campaigns.

The Advocacy Toolkit includes a list of useful References and Resources for further information on specific issues, as well as useful annexures.

section 1. SEXUAL ORIENTATION, GENDER IDENTITY, HIV & HUMAN RIGHTS

Chapter 1: Sexual Orientation, Gender Identity and HIV in Southern and East Africa

1.1 Overview of Sexual Orientation, Gender Identity and Human Rights in Southern and East Africa[6]

Evidence shows that people across Africa, including those in Southern and East Africa where ARASA's work is focused, face discrimination, abuse and violence because of individual expression, who they love, have sex with and how they look. As across the world, lesbians, women who have sex with women (WSW), gay men, men who have sex with men (MSM), bisexual men and women, transgender and intersex persons living in the 18 ARASA partner countries face disproportionately high levels of violence, abuse and discrimination in laws, policies and practices that undermine their human rights, including their sexual and reproductive health and rights and to access HIV-related prevention, treatment, care and support.

Stigma and discrimination on the basis of a person's sexual orientation and gender identity is arguably both a cause and a consequence of laws that criminalise same sex sexual relationships across a number of countries in Southern and East Africa. Recent broader movements to criminalise, prohibit and restrict a range of sexual and reproductive rights and freedoms across the world of various populations, based on repressive social, cultural and religious norms, are manifest in various laws, policies and practices in the region. Some examples include laws, policies and practices that restrict young people's access to sexual and reproductive health care services; laws that criminalise the transmission of HIV; policies and practices that allow for the forcible or coercive sterilisation of women living with HIV and laws and policies that permit mandatory HIV testing of specific populations such as pregnant women and sex workers.

Amnesty International (AI) reports that violations against LGBTI people are 'increasingly visible' on the continent, and include rape and murders of lesbians, transgender women and men and gay men; arrests, harassment and violence against LGBTI individuals; extortion and threats against LGBTI activists and organisations and attempts to criminalise same sex sexual conduct even further.[7] The 2013 report by the African Men for Sexual Health and Rights (AMSHeR) and the Coalition of African Lesbians (CAL)[8] further documents these various acts of violence against individuals in Africa in recent years on the basis of their real or perceived sexual orientation and gender identity, ranging from arbitrary arrest and detention and torture through to rape and murder. Transgender and intersex organisations have raised concerns about the relative 'invisibility' of discrimination and violence against transgender and intersex people, which "appears to be significant in some African countries".[9]

[6]This toolkit covers Angola, Botswana, Comoros, DRC, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe
[7]Amnesty International (2013) Making Love a Crime: Criminalisation of Same Sex Conduct in Sub-Saharan Africa at p9.
[8]AMSHeR and CAL (2013) Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa Available at http://amsher.net/portals/0/resourcedownloads/English%20SOGI%20Booklet_20131019.pdf
[9]Ibid.

In addition to stigma and discrimination, members of LGBTI organisations and support groups, employees, their families and LGBTI human rights defenders face specific and serious threats to their lives and their physical security because of the work they do to promote and protect the rights of LGBTI.[10] They report experiencing a range of human rights violations including threats, coercion, harassment, arrest, extortion and violence in their work and their lives.[11]

The Yogyakarta Principles on the *Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*[12] explain that States are obliged to ensure equal access to human rights for all persons irrespective of sexual orientation and gender identity. Each principle recommends how to achieve these goals, highlighting international agencies' responsibilities to promote and maintain human rights. However, African countries continue to contribute to human rights violations through state-sponsored homo- and transphobia. In her 2014 report to the United Nations (UN) Human Rights Council (HRC),[13] the UN Special Rapporteur on the situation of Human Rights Defenders[14] stated that she had written to a number of countries about discrimination and violence against LGBTI persons and organisations, including Botswana about the government's arbitrary denial to register the organisation Lesbians, Gays and Bisexuals of Botswana (LEGABIBO), to Uganda about the Anti-Homosexuality Bill, and to Zambia about harassment of the LGBTI community.[15]

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[10] ILGA (2013) State Sponsored Homophobia 2013, p33. Available at http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf

[11] Ibid. at p36

[12] Available at http://www.yogyakartaprinciples.org/

[13] The Human Rights Council is an inter-governmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe. For more information, see: http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx.

[14] The Special Rapporteur on the situation of Human Rights Defenders is mandated to seek, receive, examine and respond to information on the situation of human rights defenders; establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration on Human Rights Defenders; recommend effective strategies better to protect human rights defenders and follow up on these recommendations; and integrate a gender perspective throughout the work. Ms Margaret Sekaggya was the Special Rapporteur on the situation of Human Rights Defenders at that time; currently Mr Michel Forst holds the position. For more information, see: http://www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx

[15] Human Rights Council, Report of the Special Rapporteur on the situation of Human Rights Defenders, March 2014, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/115/63/PDF/G1411563.pdf?OpenElement

Sexual orientation, gender identity, HIV and human rights:

Recent examples of discrimination and abuse against LGBTI persons, organisations and activists

Uganda: in February 2014, President Museveni of Uganda signed the Anti-Homosexuality Bill into law. The law increased the penalty for same-sex sexual conduct to life imprisonment. It also criminalised "attempts" to commit homosexuality, which carried a 7 year term of imprisonment. The law also included far-reaching provisions that criminalised the "promotion of homosexuality". With the passage of the bill into law, LGBTI people reported an extraordinary increase in rights abuses, including arbitrary arrests, police abuse and extortion, violence including 'tyre necklacing', loss of employment and eviction. Many people were forced to flee the country.[16] Activists also reported the deliberate 'outing' of gay men in the media, publicly announcing their names, addresses and sexual orientation, leading to their loss of employment, assaults and verbal abuse.[17] In August of 2014 the Constitutional Court of Uganda declared the Act null and void. However, the constitutionality of the Act's provisions was not reviewed; rather it was declared invalid on the technical grounds that a quorum was not present in Parliament during its passing. This has left space for the re-introduction of the Bill into Parliament.

A prominent LGBTI activist, David Kato was murdered in 2011. In November 2012, the government banned 38 non-governmental organisations (NGOs) accused of promoting homosexuality and the police broke up a workshop on LGBTI rights in the same month. In July 2014, the Uganda Supreme Court published a decision that endorsed the shutting down of an LGBT workshop in February 2012. The workshop was raided by the police who were accompanied by the Minister for Ethics and Integrity.

Zambia: Paul Kasonkomona, a prominent human rights activist in Zambia, was arrested in 2013 when he appeared on TV calling for the decriminalization of homosexual relationships as part of a national strategy to address HIV. He was charged with "soliciting for immoral purposes". Following a lengthy trial, he was acquitted on these charges in February 2014. The government has appealed against the judgment and the case continues.

Botswana: in 2013 the Director of Civil and National Registration, Ministry of Labour and Home Affairs refused to register the Botswana organisation Lesbians, Gays and Bisexuals of Botswana (LEGABIBO). Fortunately, the failure to register LEGABIBO was successfully challenged in court. In March 2014, the High Court of Botswana heard arguments in a case filed by 14 activists. Judgment was handed down in November 2014 finding that the failure to register LEGABIBO was unlawful and unconstitutional, violating the applicant's right to freedom of expression, freedom of association and freedom of assembly.

South Africa: Duduzile Thoko, a lesbian living in Thokoza, was raped and murdered in June 2013. Media reports indicate that her family and friends believe that she was attacked because she was living openly as a lesbian.[18] Black lesbians, gender non-conforming women and transgender men are at high risk of violence and approximately 30 lesbians have been murdered in the past 15 years in South Africa.[19] Few perpetrators have been brought to justice.

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[16] See for example: Human Rights Watch, "Anti Homosexuality Act's Heavy Toll", 15 May 2014. Available at http://www.hrw.org/news/2014/05/14/ uganda-anti-homosexuality-act-s-heavy-toll
[17] See for example: CBC News, "WorldPride 2014: A gay rights activist on being outed in Uganda", 20 June 2014, available at http://www.cbc.ca/news/ canada/worldpride-2014-a-gay-rights-activist-on-being-outed-in-uganda-1.2681185
[18] Available at http://www.citypress.co.za/citypress-says/duduzile-zozo-is-dead/
[19] AMSHeR and CAL (2013) Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa.

Zimbabwe: in January 2014, Ricky Nathanson, a transgender woman and activist living in Bulawayo, was arrested on charges of "criminal nuisance" for wearing female clothes and using a female toilet. At Bulawayo Police Station, she was asked to remove her clothes in front of six male police officers in order to "verify: her gender. She was forced to spend two nights in police holding cells after her relatives were barred from paying an admission of guilt fine. The case made national headlines and the mainstream media exposed her life to public scrutiny. Magistrate Ndebele required the prosecutor to indicate how Ricky Nathanson had violated criminal nuisance laws, which are ordinarily used against people committing misdemeanours, such as lighting firecrackers, in public places. The prosecutor could not provide evidence to link Ricky to the charge, which was dismissed.

The raids on the offices of Gays and Lesbians of Zimbabwe (GALZ), arrests, detention and assault while in detention of members as well as the charges against their chairperson are further examples of unlawful harassment of LGBTI organisations in the region. In February, the Zimbabwean High Court held that GALZ was not a private voluntary organisation and therefore did not in fact require to be registered under the Private Voluntary Organisation Act but was instead specifically exempted by section 2(h)(v) of the Act. Prior to that the High Court had ordered the police to return all property seized during the police raid.

Despite the decreasing space for activism to promote and protect the rights of LGBTI people, civil society, often led by LGBTI activists, continues to take efforts to "defy oppression and discrimination".[20] It is critical that all organisations recognise the importance of and value in collaborating to challenge restrictions and violations of access to sexual and reproductive health and rights. Challenging violations of the sexual and reproductive health and rights of LGBTI populations, as well as the restrictions on the SRHR rights of other vulnerable and key populations are complementary activities that can strengthen and reinforce all advocacy for SRHR in the context of HIV and AIDS.

1.2 Links between sexual orientation, gender identity, human rights and HIV

Human rights abuses and violations significantly undermine the right to health of LGBTI people and increase their vulnerability and risk of exposure to HIV, including by limiting access to sexual and reproductive health care such as HIV prevention, treatment, care and support.[21]

1.2.1   Stigma and discrimination

Multiple and overlapping forms of stigma and discrimination, based on sexual orientation, gender identity, gender, actual and perceived HIV status, socio-economic status and race diminish the ability of LGBTI individuals to realize their human rights, including their right to access health care. The failure to access appropriate health care services timeously to prevent the risk of HIV transmission and to treat HIV and AIDS makes LGBTI persons particularly vulnerable in the context of HIV.

[20]ILGA (2013) State Sponsored Homophobia at p34
[21]See, for instance, GCHL (2012) Risks, Rights & Health; AMSHeR and CAL (2013) Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa.

Examples of how stigma and discrimination undermine access to health care, including HIV-related health care:

- Transgender persons face particular forms of stigma and discrimination that undermine their access to health care, work and education. For example, they may not be able to obtain identity documents, including passports, which reflect their gender. This can complicate medical aid insurance for various reasons. Another example is that medical aid companies are not only reluctant to cover transition-related medical procedures; they will also only cover expenses specific to the gender listed in their legal documents. This results in regular sexual and reproductive health services being excluded, which would otherwise be covered.

- LGBTI persons report fear of and may avoid accessing health care services for various reasons. They fear unfair and discriminatory treatment at the hands of health service providers with limited understanding of sexual orientation, gender identity and transgender issues. This leads to prejudice, mistrust, discriminatory treatment, denial of health care and even abuse. LGBTI persons also express fears relating to disclosure of information regarding their HIV status, sexual orientation or gender identity. A Human Rights Watch (HRW) report documented denial of health care, verbal abuse, harassment and violations of confidentiality of MSM, gay men, transgender men and intersex persons in Tanzania.[22] As a result, LGBTI persons may not seek out health services that they need.

- As a result of criminal laws, stigma and discrimination and the general 'invisibility' of LGBTI populations in countries, health information and services are not designed to meet specific health care needs relating to LGBTI person's sexual orientation and gender identity. LGBTI report that HIV-related and sexual and reproductive health information and services do not target or address their specific risks and concerns. Many health facilities and service providers fail to understand and have outdated approaches to gender identity and expression. Health care services fail to provide appropriate sexual and reproductive health services for LGBTI populations such as appropriate barrier methods for lesbian, gay, bisexual, transgender or intersex persons (e.g. condoms with lubricants for men who have sex with men); hormone replacement therapy or gender affirming surgery. This further discourages access to health care.

1.2.2 Criminalisation of same sex relationships, HIV and human rights

The criminalisation of same sex sexual conduct in Africa has had a profoundly negative impact on the human rights of LGBTI persons, including undermining their right to health. Criminalisation pushes vulnerable people away from important health services and information about their sexual and reproductive health needs. This in turn makes it difficult for health care providers to provide accessible, non-judgmental and effective access to HIV prevention, treatment, care and support.

The 2009 *ARASA HIV/AIDS and Human Rights in Southern Africa* report[23] found that nearly two-thirds of the 14 SADC countries surveyed for the report had laws that criminalised consensual sex between men. The 2014 report[24] confirms that the situation has not improved and many countries under review have legislative measures that criminalise same sex sexual conduct for both men and women. Laws in almost all of the 18 ARASA partner countries criminalise same sex sexual conduct between men and more than half of these countries also criminalise same sex sexual conduct between women. Mauritius and the Seychelles have committed to decriminalising same sex relationships, but neither have finalised legislation.

[22]*Human Rights Watch (2013) Treat Us Like Human Beings: Discrimination Against Sex Workers, Sexual and Gender Minorities and People Who Use Drugs. Available at http://www.hrw.org/reports/2013/06/18/treat-us-human-beings-0*
[23]*Available at: http://www.safaids.net/files/ARASA_Human_rights_report_2009.pdf*
[24]*Available at http://www.arasa.info*

Generally, these laws criminalise the act of having sexual relationships, rather than simply criminalising being homosexual. However, implementation and enforcement of these laws is inconsistent. Arrests may take place based on the assumption that a person is homosexual, rather than on the basis of evidence of sexual activity. While there are few known prosecutions in Southern and East Africa, research suggests there has been an increase in the number of prosecutions and convictions since 2012, with cases in Botswana, Uganda, Zimbabwe and Zambia.

Table 1: Overview of criminal laws affecting same sex sexual relationships in Southern and East African countries[25]

Country	Criminalise same sex sexual conduct between men	Criminalise same sex sexual conduct between women	Laws prohibiting discrimination and promoting equality
Angola	X	X	
Botswana	X	X	Only on the basis of sexual orientation
Comoros	X	X	
Democratic Republic of Congo			
Kenya	X	X	
Lesotho			
Madagascar			
Malawi	X	X	
Mauritius	X	X	
Mozambique			Only on the basis of sexual orientation
Namibia	X		
Seychelles	X		Only on the basis of sexual orientation
South Africa			X Alteration of Sex Description and Sex Status Act 2003
Swaziland	X		
Tanzania	X		
Uganda	X	X	
Zambia	X	X	
Zimbabwe	X		

[25]ARASA (2014) HIV and Human Rights in Southern and East Africa. Available at www.arasa.info

1.2.3 Laws that promote equality and non-discrimination for LGBTI persons

Few African countries have laws that promote equality and non-discrimination on the basis of sexual orientation or gender identity, and those that do tend to prohibit discrimination on the grounds of sexual orientation only in the workplace.

South Africa has an equality clause in its Constitution that specifically prohibits unfair discrimination on the grounds of sexual orientation – nearly twenty years after the adoption of the final Constitution in 1996; it remains the only country to do this. The remaining few countries in the region that prohibit discrimination on the basis of sexual orientation, namely Botswana, Mauritius, Mozambique and Seychelles, do so only in the workplace and do not include sexual orientation in their constitutions. The constitutions of several countries prohibit discrimination on the grounds of gender but fail to explicitly prohibit or refer to discrimination on the basis of gender identity.

South Africa also appears to be the only country in the region that allows transgender and intersex persons to change their gender markers on their national identity documents: in 2003, the South African Parliament passed the Alteration of Sex Description and Sex Status Act that permits individuals to change their sex in the population registry. The law applies to people who have undergone gender affirming surgery, those whose sex characteristics have evolved naturally and intersex persons. However, the law does not prohibit discrimination on the grounds of gender identity and the process of applying to change gender markers on national identity documents is cumbersome. The application must be accompanied by two letters from two different health service providers corroborating that the person has undergone psychological diagnosis, hormone therapy and/or gender affirming surgery, although gender affirming surgery is not a pre-requisite for the application.

1.2.4 Violence against lesbians and gender non-conforming people

There is increasing evidence that suggests that lesbians and transgender men and women are targeted for sexual violence because of their sexual orientation and/or their appearance. A submission from Namibia to the Global Commission on HIV and the Law (GCHL)'s Africa Regional Dialogue on HIV and the Law[26] stated that "most of the violence amongst lesbians, gay and bi-sexual persons focuses on transgender persons." It notes that transgender women are more likely to be jailed with other men and experience sexual assault and rape, while transgender men are subjected to corrective rape.[27]

 A report from HRW on South Africa states that "Lesbians, bisexual women, transgender men and other female-born non-conforming people face a range of violence and discrimination in their daily lives from neighbours, relatives, friends, and strangers."[28] Sexual violence increases their risk of contracting HIV, and they face barriers when seeking care in connection with sexual violence, including post-exposure prophylaxis (PEP) for HIV, given the prejudices and limited understanding many health care workers have of sexual orientation and gender identity issues.

1.2.5 Recognition of the vulnerabilities and inclusion of LGBTI populations in national AIDS responses

Little, if any, HIV prevalence data is available for populations other than MSM,[29] and the UNAIDS (2013) Report on the Global AIDS Epidemic confirms that even for this population considered to be at high risk of HIV,

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[26]Held in Johannesburg from 3-4 August 2011. For more information, see: http://www.hivlawcommission.org
[27]GCHL (2011) Report of the Africa Regional Dialogue of the Global Commission on HIV and the Law at p39. Available at www.hivlawcommission.org
[28]Human Rights Watch (2011) We'll Show You You're a Women: Violence and Discrimination Against Black Lesbians and Transgender Men in South Africa. Available at http://www.hrw.org/reports/2011/12/05/we-ll-show-you-you-re-woman
[29]See: Baral SD, Beyrer C and Poteat T (2011) "Human Rights, the Law and HIV amongst Transgender People", Working Paper for the 3rd meeting for the Technical Advisory Group of the Global Commission on HIV and the Law. Available at www.hivlawcommission.org

epidemiological data is limited and not nationally representative.[30] There is no global epidemiological HIV prevalence data on lesbians and WSW and very little on prevalence amongst transgender women, but "emerging evidence suggests that transgender women carry higher rates of HIV than MSM".

As table 2 shows, data on MSM is not collected uniformly and systematically in the 18 countries ARASA partners work in, and very few countries provide information about access to prevention services for MSM.

Table 2: HIV prevalence amongst MSM and access to HIV prevention services[31]

Countries	HIV prevalence (%) in adults between the ages of 15 – 49	HIV prevalence (%) in MSM[32]	% of MSM reached by prevention services
Angola	2.4	8.2	80.1
Botswana	21.9	13.1	44.9
Comoros	>1	0%	91
DRC	1.1	17.9[33]	20.8
Kenya	6.1	18.2	No data available
Lesotho	22.9	11.6[34]	No data available
Madagascar	0.4	14.6	No data available
Malawi	10.3	No data available	No data available
Mauritius	1.1	16.79	85.5
Mozambique	10.8	No national data available[35]	No data available
Namibia	14.3	No data available	No data available
Seychelles	>1	13.2	62
South Africa	19.1	9.9[36]	No data available
Swaziland	27.4	17	82.2
Tanzania	5	22.2	25
Uganda	7.4	No national data available[37]	No data available
Zambia	12.5	No data available	No data available
Zimbabwe	15	No data available	No data available

[30]UNAIDS (2013) Global Report: UNAIDS report on the global AIDS epidemic at p22. Available at http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2013/gr2013/UNAIDS_Global_Report_2013_en.pdf

[31]This information was collected from UNAIDS, primarily the 2014 Global AIDS Response Country Progress Reports available at http://www.unaids.org/en/regionscountries/countries and AIDSInfo available at http://www.unaids.org/en/dataanalysis/datatools/aidsinfo. Note that Lesotho and South Africa did not have 2014 reports available at the time of writing; the 2012 reports were used.

[32]Angola, Comoros, DRC, Lesotho, Madagascar, Mauritius, Mozambique, Seychelles, Swaziland, Uganda and Zimbabwe were identified as countries with insufficient data on men who have sex with men; Beyrer C and Baral SD (2011) "MSM, HIV and the Law: The Case of Gay, Bisexual and other men who have sex with men", Working Paper for the 3rd meeting for the Technical Advisory Group of the Global Commission on HIV and the Law. Available at www.hivlawcommission.org

[33]Kinshasa

[34]This information was extracted from the 2012 country National Commitments and Policies Instrument (NCPI) report submitted to UNAIDS. Available at http://www.unaids.org/en/regionscountries/countries/

[35]Maputo 8.2%; Beira 9.1%; Nampula / Ncala 3.7%

[36]Note that the data quoted in South Africa's 2012 Global AIDS Response Progress Report is from the South African National HIV Prevalence, Incidence, Behaviour and Communication Survey, 2008 and the Human Sciences Research Council (HSRC) survey conducted in 2009. A more recent HSRC study conducted in 3 cities in South Africa, called the Marang Men's Project, showed far higher prevalence with Cape Town at 22.3%, Johannesburg at 26.8% and Durban at 48.2%. For more information, see http://www.hsrc.ac.za/en/media-briefs/hiv-aids-stis-and-tb/marang.

[37]Kampala 9.1%

Sexual orientation, gender identity, HIV and human rights:

Some progress has been made in recognizing the particular vulnerabilities of MSM and in some cases, in recognising the vulnerabilities of transgender persons. However, the categorisation and conflation of transgender persons in MSM (and WSW) discourse also fails to recognise the specific and varied vulnerabilities and gender identity issues experienced by transgender individuals. Beyond MSM and transgender people, LGBTI populations are still not systematically included in national AIDS responses and national strategic plans (NSPs).

As Table 3 shows, 13 of the 18 countries included MSM in their multi-sectoral strategy and 10 identified them as a key population in programming. However, 10 countries indicated that the national legal and policy framework continued to create barriers to universal access to HIV health care and only 3 countries indicated that they had an information, education and communications policy that targeted MSM. There was no information available about how NSPs respond to the needs of lesbians, WSW, bisexuals and intersex persons.

Table 3: Inclusion of LGBTI populations in NSPs on HIV and AIDS[38]

Countries	Does the multi-sectoral strategy include LGBTI?	What LGBTI groups are identified as key populations for HIV programming?	Are there laws and policies that are obstacles to effective prevention, treatment and care interventions?	Is there an IEC programme or policy that targets MSM populations?
Angola	Yes; MSM, transgender	Yes, MSM	No data provided	Yes
Botswana	Yes; MSM, transgender	MSM	Yes, impacts on MSM, transgender	No
Comoros	Yes; MSM	None included	No data provided	No data provided
DRC	No	None included	No	Yes
Kenya	Yes; MSM	MSM	No	Yes
Lesotho	Yes; MSM, transgender	MSM	Yes, impacts on MSM, transgender	Yes
Madagascar	Yes; MSM, transgender	MSM	Yes, impacts on MSM	Yes
Malawi	Yes	Yes	Yes, impacts on MSM, transgender	Yes
Mauritius	Yes; MSM, transgender	MSM	Yes, impacts on MSM, transgender	Yes
Mozambique	Yes; MSM	MSM, transgender	No data provided	No
Namibia	Yes; MSM	MSM	No data provided	Yes
Seychelles	Yes; MSM	MSM	No data provided	Yes
South Africa	Yes; MS, transgender	MSM, transgender	No	No
Swaziland	Not included	MSM	Yes, impacts on MSM, transgender	No
Tanzania	Yes; MSM	MSM	Yes, impacts on MSM, transgender	Yes
Uganda	Yes; MSM, transgender	None included	Yes, impacts on MSM, transgender	No
Zambia[39]	Not included	None included	Yes, impacts on MSM	No

[38]This information was extracted from the 2012 country National Commitments and Policies Instrument (NCPI) reports. Available at http://www.unaids.org/en/regionscountries/countries/
[39]The Zambia 2012 NCPI report is not available on the UNAIDS website; the information provided is from the 2010 NCPI report.

Chapter 2: HIV, Human Rights, Sexual Orientation and Gender Identity[40]

2.1 What are human rights?

Human rights are based on the idea that every person is equal and entitled to be treated with dignity and respect regardless of their race, gender, age, disability, sexual orientation, gender identity or any other characteristic.

Definitions of human rights:

- Human rights are generally accepted principles of fairness and justice.

- Human rights are universal moral rights that belong equally to all people simply because they are human beings.

- Human rights are universal, fundamental, inalienable rights, which all human being are entitled to regardless of their race, gender, sexual orientation, gender identity, age, social class, national origin, occupation, talent, religion, or any other personal factor. All individuals are entitled to human rights simply because they are human.

All these definitions have one thing in common – they are based on the idea that all humans have certain basic rights simply because they are human.

2.2 Brief history of human rights

Human rights are not new. The idea that all humans have certain basic or natural rights has been around since the earliest times. Early ideas of human rights can be found in:

- The world's religions: For example, ideas of equality are found in Christianity and in Hinduism. In the Bible it says "There is no such thing as Jew and Greek, slave and free man, male and female: for you are all one person in Christ Jesus" (Galatians 3: 28). In Hinduism the whole world is seen as one family.

- Humanitarian philosophy (essays and writing on the relationships between individuals and society): For example, the philosophers living in the 17th and 18th centuries argued that everyone was born equal and that they should have certain basic rights like the rights to life, liberty and property.

- The struggle for political freedom: For example, early advocacy for the abolition of slavery was based on the idea that all people were equal and entitled to dignity and respect.

Human rights were only really protected in law after the Second World War, with the Universal Declaration of Human Rights (UDHR). During World War II, the genocide (extermination) policy of Nazi Germany led to the deaths of 6 million Jews. The world was horrified by these human rights abuses, and was determined that they

[40]Much of the material in this section has been adapted from the ARASA (2008) HIV/AIDS and Human Rights in Southern Africa: An Advocacy Resource & Training Manual. For more information, see http://www.arasa.info/info/training-manuals/

should not happen again. In 1948, this led to 14 countries getting together to draft a document protecting the human rights of all people – the UDHR. Countries hoped that by doing this, they could stop massive human rights abuses ever happening again.

Since the adoption of the UDHR, the international community has come together to adopt other conventions that represent a set of common standards that countries agree to be bound by if they ratify the conventions. These conventions expand on specific rights (such as the International Convention on Economic, Social and Cultural Rights (ICESCR), which deals with economic, social and cultural rights) or the rights of specific populations (such as the Convention on the Elimination of all forms of Discrimination Against Women, which sets out the rights of women).

2.3 Why are human rights important to LGBTI advocacy?

Countries where ARASA partners work have ratified core international and regional human rights treaties (see Annexure 2 for a list of core treaties and who has ratified them). They are therefore obliged to protect, respect, promote and fulfill these rights for all citizens and they are accountable for their failure to do so.

None of the international or regional human rights treaties specifically prohibit discrimination on the grounds of sexual orientation and gender identity, nor do they explicitly protect the human rights of LGBTI people. However, the list of grounds on which discrimination is prohibited was never intended to be exhaustive or conclusive. Over the years, several treaty bodies[41] have interpreted non-discrimination clauses to include sexual orientation and gender identity. This means that "any state which has ratified or signed an international human rights treaty must ensure that its own domestic legal system - its laws and the implementation and enforcement of those laws - honours its obligation to promote, protect, respect and fulfill the rights established in that treaty without discrimination based on sexual orientation or gender identity".[42]

In Africa, the African Charter on Human and Peoples' Rights (the 'African Charter') also fails to specifically protect the right to non-discrimination on the basis of sexual orientation or gender identity. However, the rights contained in the Charter arguably belong to all Africans including LGBTI populations. The African Commission on Human and Peoples' Rights (ACHPR) has clearly established that the prohibition of discrimination on the basis of "other status", in Article 2 of the African Charter, can be broadly interpreted to include grounds other than those explicitly listed. In May 2014 the ACHPR called for the protection of human rights regardless of actual or perceived sexual orientation or gender identity in Resolution 275.[43] The Yogyakarta Principles, developed by a group of international human rights experts in 2006, outline a set of international principles relating to sexual orientation and gender identity based on binding international legal and human rights standards which States have committed to. Human rights activists can use the ACHPR Resolution and the Yogyakarta Principles alongside these international and regional human rights agreements to identify the human rights standards that apply to LGBTI populations and to hold their governments accountable when governments fail to protect and respect these rights. Equally, these human rights standards can also be used to promote the rights of LGBTI people.

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[41]*The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. For example, the Human rights Committee monitors the implementation of the ICCPR and the Committee on Economic, Social and Cultural Rights monitors the implementation of the ICESCR. There are ten human rights treaty bodies composed of independent experts of recognized compe¬tence in human rights, who are nominated and elected for fixed renewable terms of four years by State parties*
[42]*Amnesty International (2013) Making Love a Crime: Criminalisation of Same Sex Conduct in Sub-Saharan Africa at p12. Available at http://www. amnestyusa.org/research/reports/making-love-a-crime-criminalization-of-same-sex-conduct-in-sub-saharan-africa*
[43]*ACHPR Resolution on the Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity, Resolution 275, 55th Ordinary Session, Luanda Angola, May 2014.*

Table 4: The eight characteristics of human rights and what they mean for LGBTI persons

Countries	HIV prevalence (%) in adults between the ages of 15 – 49
Human	Only human beings are entitled to human rights. Other legal entities (e.g. businesses), animals or the environment are not entitled to human rights.
Universal	They apply to all persons throughout the world and are not dependent on sexual orientation, gender identity or any other characteristic.
Fundamental	They are important basic rights and should be given special protection by law
Treat all as equal	Human rights recognise that all humans, including LGBTI persons, are born free and equal in dignity and rights.
Protect individuals from the state	States cannot take away these rights on any grounds including the grounds of sexual orientation and gender identity; the state must protect and fulfil human rights for all people.
Inalienable	They cannot be forfeited (given up), transferred or lost.
Inter-related and inter-dependent	Human rights are linked and dependent on each other. The inter-dependent use and enjoyment of a human right is dependent on an individual having all other rights as well.
Recognise principle of humanity	Certain rights are absolute, for example, the rights to life, of freedom from torture and freedom from slavery cannot be limited. Other human rights can only be limited in specific circumstances.

2.4 HIV, human rights, sexual orientation and gender identity

Violations of basic rights, such as the right to equality and non-discrimination, the right to life and the right to health, impact on all people including LGBTI people. Where people's human rights are not respected, protected, promoted and fulfilled, they may be at higher risk of HIV exposure, unable to access sexual and reproductive health care services such as HIV prevention, treatment, care and support and unable to mitigate the impact of HIV on their lives. The table below sets out key rights available to all persons and looks at how human rights violations impact on access to SRHR in the context of HIV.

Table 5: HIV, Human rights and SOGI

Human right	Where do we find them?	How are LGBTI persons rights violated?	% of MSM reached by prevention services
Equality and non-discrimination	ICCPR Article 2 & 26 ICESCR Article 2 African Charter Article 2, 3 and 18(3)	Laws that criminalise same sex sexual conduct violate rights to equality and non-discrimination.	Health care workers may find it difficult to provide appropriate services to populations who are criminalised. LGBTI persons may not be able to access relevant information about HIV prevention.
Right to life	ICCPR Article 6 African Charter Article 4	LGBTI individuals face violence in their daily lives. Some may be murdered because of their sexual orientation and gender identity. Laws prescribing the death penalty for same sex sexual conduct violate the right to life.	LGBTI persons are denied the right to life by acts of violence and punishment by death.
Right to be free from arbitrary deprivation of liberty	ICCPR Article 9 African Charter Article 5	Where police arrest and detain LGBTI persons due to actual or perceived sexual orientation and/or gender identity, even in the absence of a criminal offence, they violate this right.	Arbitrary arrests and detention can lead to treatment interruption, and undermine the right to health. LGBTI people in detention and prison are often at risk of violence, including sexual violence, which can increase their risk of HIV exposure.
Right to be free from torture and cruel, inhuman and degrading treatment or punishment	ICCPR Article 7 African Charter Article 5	LGBTI persons often experience degrading treatment at health facilities and cruel treatment within custody and correctional facilities. Gay men and transgender people may be subjected to humiliating examinations by law enforcement officials to "prove" acts of homosexuality or gender identity.	People may not seek HIV testing, treatment and care for fear of being discriminated against by health care workers. LGBTI persons may also go 'underground' and avoid accessing justice for fear of the actions of law enforcement officials.
Right to bodily integrity	ICCPR Article 7, 9, 17 African Charter Article 4	LGBTI persons often face violence, including sexual violence, at the hands of law enforcement officials and private citizens because of their actual or perceived sexual orientation and/or gender identity.	Sexual violence increases the risk of HIV transmission.

Human right	Where do we find them?	How are LGBTI persons rights violated?	% of MSM reached by prevention services
Right to privacy	ICCPR Article 17	Laws that criminalise consensual adult sexual conduct violate privacy rights.	LGBTI persons are unwilling to seek sexual and reproductive health care if their sexual lives are criminalised.
Right to health	ICESCR Article 12 African Charter Article 4	In many countries, LGBTI populations do not have accessible, available, appropriate and quality sexual and reproductive health care services.	Where LGBTI persons cannot access appropriate HIV-related health care, they are at higher risk of HIV exposure and unable to reduce the impact of HIV on their lives.
Right to freedom of association	ICCPR Article 22 African Charter Article 10	LGBTI persons have a right to form organisations, gather socially and undertake joint activism to promote their human rights. However, in many countries organisations are denied the right to register, offices are raided and members are arrested on various charges linked to sexual offence laws.	Restrictions on LGBTI organisations deny LGBTI populations a range of support services including HIV-related information, prevention, treatment, care and support.
Right to work	ICESCR Article 7 African Charter Article 15	Everyone has the right to the enjoyment of just and favorable conditions of work. LGBTI persons are denied employment at times, on the basis of their perceived or actual sexual orientation or gender identity.	Economic empowerment improves the ability of LGBTI persons to protect themselves from HIV-related risks and vulnerabilities.
Right to educa-tion	ICESCR Article 13 African Charter Article 17	LGBTI persons may be denied educational opportunities on the basis of their sexual orientation and/or gender identity. Sexuality education within schools also often fails to include information on sexual orientation and gender identity.	Education (including comprehensive sexuality education) enables LGBTI persons to seek and make use of information, to become empowered and to reduce HIV-related risk and vulnerability.
Right to self determination	ICCPR Article 1 ICESCR Article 1 African Charter Article 22	Everyone has the right to pursue their economic, social and cultural development. LGBTI persons are denied this right when relationships, organisations and employment opportunities, amongst other things, are denied to them.	LGBTI persons who are forced to live their lives 'underground' are not able to develop to their full potential, participate in the life of the community and access appropriate services, including health care services.

Sexual orientation, gender identity, HIV and human rights:

2.4.1 Human rights instruments that specifically protect the rights of LGBTI persons

As mentioned above, until very recently, the United Nations (UN) system and regional human rights mechanisms failed to directly address the rights of LGBTI populations. The UN human rights system has recently begun to do so, although many states continue to argue that sexual orientation and gender identity are "not established grounds of discrimination under international human rights law."[44] Many of the states who are most active in making these arguments are African. A contributing factor to this is the fact that the African Commission on Human and Peoples' Rights, the body set up to ensure the promotion and protection of human and peoples' rights in Africa in accordance with the African Charter, had not, until recently, considered or made a statement regarding sexual orientation and gender identity.

The principles of universality and non-discrimination under Article 1 of the Universal Declaration of Human Rights, which have been unequivocally affirmed in the Vienna Declaration and Programme of Action, are guiding principles in international human rights law. Core UN human rights instruments as well as the UN Charter embody non-discrimination as a core principle and require that human rights be guaranteed for everyone without discrimination on a grounds that are indicated in a non-exhaustive list that includes race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[45]

The Yogyakarta Principles, which were adopted in 2007, underscore that the failure of governments to protect LGBTI persons results in the violation of several rights, including the rights to non-discrimination and recognition before the law. The Principles further highlight that such failure leads to the violation of the rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention. Also noted are the rights to expression, opinion and association, which emphasise the importance of the freedom to express oneself, one's identity and one's sexuality, without state interference based on sexual orientation or gender identity.[46]

2008 UN General Assembly statement on sexual orientation, gender identity and human rights

The General Assembly of the UN put forward a joint statement on sexual orientation, gender identity and human rights in 2008,[47] which later formed the basis of the 2011 Human Rights Council (HRC) statement. The joint statement reaffirmed the right of every person to enjoy all human rights without distinction and the principle of non-discrimination, which applied equally to people regardless of sexual orientation or gender identity. It furthermore condemned violations of human rights and fundamental freedoms based on sexual orientation or gender identity and urged States to promote and protect the rights of all people regardless of sexual orientation and gender identity.

2011 and 2014 Human Rights Council (HRC) statement and resolutions

Eighty five countries adopted a joint statement in March 2011, Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity.[48] During the June 2011 session, the HRC passed a resolution on the violation of human rights based on gender identity and sexual orientation,[49] which

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[44]*Amnesty International (2013) Making Love a Crime: Criminalisation of Same Sex Conduct in Sub-Saharan Africa, at p68*
[45]*A/CONF.157/23 Vienna Declaration and Programme of Action (1993) para 5, which states that "while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."*
[46]*AMSHeR & CAL (2013) Violence based on perceived or real sexual orientation and gender identity in Africa at p3. Available at http://amsher.net/portals/0/resourcedownloads/English%20SOGI%20Booklet_20131019.pdf*
[47]*Of the ARASA partner countries, only Mauritius supported the statement.*
[48]*UN Human Rights Council, Joint Statement on Ending Acts of Violence Related Human Rights Violations Based on Sexual Orientation and Gender Identity, 22 March 2011, available at: http://www.unhcr.org/refworld/docid/4eb8f32e2.html.*
[49]*Human Rights Council Human Rights, Sexual Orientation and Gender Identity, A/HRC/RES/17/19, 14 July 2011.*

was spearheaded by South Africa.[50] This was the first resolution on sexual orientation and gender identity and it was passed by 23 votes in favour, 19 against, with three abstentions.[51]

The ground-breaking resolution expressed "grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity" and called for a study by the High Commissioner for Human Rights to determine the extent of discrimination and violence against people on the basis of their sexual orientation and gender identity, and to identify ways in which international human rights law might be used to combat these.

The report on discrimination and violence on the basis of sexual orientation and gender identity[52] was published by the Office of the High Commissioner for Human Rights[53] (OHCHR) in November 2011, and presented to the HRC in March 2012. The report found that "people experience violence and discrimination because of their sexual orientation or gender identity" in all regions of the world. Even the mere perception of homosexuality or transgender identity could put people at risk of murder, rape, physical attacks, torture, arbitrary detention, the denial of rights to assembly, expression and information, and discrimination in employment, health and education. The report found that governments and inter-governmental bodies often overlook violence and discrimination based on sexual orientation and gender identity and called for action, especially at the national level, to protect individuals from violence and discrimination.

On September 26, 2014 the HRC passed a further resolution to combat violence and discrimination based on sexual orientation. The resolution expressed grave concern regarding violence and discrimination and asked the High Commissioner for Human Rights to update the 2012 study, with a view to sharing good practices in overcoming discrimination and violence.[54]

2014 African Commission on Human and Peoples' Rights (ACHPR) resolution
The ACHPR adopted a landmark resolution on SOGI during its 55th session in May 2014. The resolution calls for the protection of human rights regardless of actual or perceived sexual orientation or gender identity and rejects discrimination based on any ground.

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[50]http://www.safpi.org/publications/south-africas-first-five-years-united-nations-human-rights-council
[51]Of the ARASA partner counties who were members of the HRC at that time, only Mauritius and South Africa voted in favour, while Angola and Uganda voted against, and Zambia abstained.
[52]UN Office of the High Commissioner for Human Rights (2012) United Nations Human Rights Council Panel on Sexual Orientation and Gender Identity. Available at http://www.ohchr.org/EN/Issues/Discrimination/Pages/PanelSexualOrientation.aspx.
[53]The Office of the High Commissioner on Human Rights oversees major programmes for the UN on human rights. For more information, see: http://www.ohchr.org/EN/Pages/WelcomePage.aspx
[54]Human Rights Council Human Rights, Sexual Orientation and Gender Identity, A/HRC/27/L.27/Rev.1, 29 September 2014.

Sexual orientation, gender identity, HIV and human rights:

Key provisions of the ACHPR SOGI resolution

The ACHPR condemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity. It specifically condemns systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity.

It calls on State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities. It strongly urges States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities; ensuring proper investigation and diligent prosecution of perpetrators; and establishing judicial procedures responsive to the needs of victims.

Chapter 3: Frequently Asked Questions

Non-LGBTI organisations and people working on LGBTI issues, especially if they are not identified as lesbian, gay, bisexual, transgender or intersex, will often face difficult questions about their work and why they support the human rights of LGBTI persons. This section will set out some of the most commonly asked questions about why human rights of LGBTI persons should be protected and promoted and give activists arguments to respond more effectively.

How are sexual orientation and gender identity determined?

No one knows exactly how sexual orientation and gender identity are determined. However, experts agree that it is a complicated matter of genetics, biology, psychological and social factors. For most people, sexual orientation and gender identity are shaped at an early age. While research has not determined a cause, homosexuality and gender variance are not the result of any one factor like parenting or past experiences. It is never anyone's "fault" if they or their loved ones are lesbian, gay, bisexual, transgender or intersex.

Can gay people change their sexual orientation or gender identity?

No – and efforts to do so are not just unnecessary – they are damaging. Religious and secular organizations have sponsored campaigns and studies claiming that lesbian, gay, bisexual or transgender people can change their sexual orientation or gender identity. These studies and campaigns are based on ideological biases and not solid science. No studies show proven long-term changes in gay or transgender people and many reported changes are based solely on behavior and not a person's actual self-identity. The American Psychological Association has stated that scientific evidence shows that reparative therapy (therapy which claims to change lesbian, gay, bisexual or transgender people) does not work and that it can do more harm than good.

If an LGBTI person approaches you does it mean they want to have sex with you?

No. Just like all human beings, LGBTI people are attracted to some people and not others. Just like a heterosexual person is not attracted to every member of the opposite sex, in the same way LGBTI persons are not attracted to every person simply because of that person's sex, gender identity or sexual orientation.

If gay/lesbian people adopt children, will they make that child gay?

No. Most LGBTI children grow up in heterosexual households. Same-sex parents are no more likely to produce lesbian, gay, bisexual or transgender children than opposite-sex parents.

Are homosexual people perverts? Do they watch pornography and sexually abuse children?

Paedophilia is when an adult is sexually attracted to prepubescent children. Having sex with children below the age of consent is a punishable criminal act in most countries, regardless of who perpetuates the crime. In some countries, homosexuality is mistakenly conflated or confused with child abuse. This is incorrect. There is no evidence to support that LGBTI people are more likely to abuse children than heterosexual people. Just like any heterosexual people, LGBTI people enjoy adult sexual fantasies and may watch pornography. They are normal members of society and should be treated as such.

What is intersex?

Technically, intersex is defined as a "congenital anomaly of the reproductive and sexual system." Intersex people are born with ambiguous sex characteristics. There is no single "intersex body"; it encompasses a wide variety of conditions that do not have anything in common except that they are deemed "abnormal" by society. What makes intersex people similar are their experiences of medicalisation.

Sexual orientation, gender identity, HIV and human rights:

Generally speaking, intersex is not an identity category. While some intersex people do reclaim "intersex" as part of their identity, most regard it as a medical condition, or just a unique physical state. Most intersex people identify and live as ordinary men and women, and are gay, lesbian, bisexual, or straight.

Do all intersex people identify under the LGBTI umbrella?

Intersex people, like everyone else, can be of any gender identity and sexual orientation. Not all intersex people claim intersex as an identity, some live as heterosexual men and women and do not identify or affiliate with the LGBTI umbrella.

Is transgenderism the same as homosexuality?

No, transgenderism is about a person's innate sense of their gender, it is not about the gender of the people they are attracted to; it is not a sexual orientation. A transgender person may be heterosexual, gay, lesbian, bisexual or asexual. For example not all transgender women are heterosexual (meaning they are only attracted to men), some identify as lesbian and are attracted to women, while others identify as bisexual or asexual. Not all transgender men are heterosexual (meaning they are only attracted to women), some are attracted to men and identify as bisexual or gay.

What causes transgenderism?

We know that human sexuality, sex and gender are complex issues; there is no simple analysis and answer to this question. A lot of research is still being done to try and understand this, with current theories ranging from genetic influence and hormonal influence to brain chemistry. There is no definite answer to this question, but transsexual people, like everyone else, have human rights and deserve to have these rights upheld and protected.

Are all transgender women sex workers?

Because of social inequities such as lack of access to employment, education and health care, being disowned by their families and lack of support from families and friends, many transgender people often end up in sex work. However, this does not mean all transgender women are sex workers, or that all transgender women do sex work because they have no alternative options. There are transgender people in various walks of life and professions.

What pronouns do transgender people use?

Many transgender women use the pronouns "she/her", while many transgender men use the pronouns "he/him/his". Not all transgender people use these pronouns; some prefer "they/them" which is a gender neutral pronoun. Always use correct pronouns in reference to transgender persons - whatever pronoun the transgender person has given you. If you are unsure which pronoun to use and you really need to know, you can always ask, respectfully.

Many people argue that homosexuality is un-African. Is that true?

Historians have shown that before the arrival of missionaries in Africa in the 19th century, same sex relationships existed in most African cultures – this is reflected in ancient art; in indigenous language terms as seen with the Hausa people in northern Nigerian, who were among the last cultures to be colonised by Europeans in the 20th century; and in preserved records – for example, a 16th century Brazilian inquisition refers to the "jimbandaa" – a term originating from Angola and Congo to refer to men who had sex with men.

While cultures vary across different African countries and communities, a common element of African cultural life centres on belonging to a community of people. For example, the key principle of Southern African philosophy is ubuntu whose definition is captured in the Zulu saying "Umuntu ngumuntu ngabantu" – "A person is a person through persons".

The framework of togetherness that is encouraged by key philosophies of African origin, like ubuntu, requires that cultures should live side by side, and should see diversity as enriching the community as opposed to diminishing it. The claim that LGBTI people are inherently incompatible with African cultures is not supported by history or contemporary experience.

Why do LGBTI people want special LGBTI rights?

LGBTI people are not asking for special rights. They are simply demanding that their human rights, which everyone is entitled to, be recognised and protected and that they be treated equally and with the same dignity as all citizens of their country. In many countries with repressive legal and social environments, where adult consensual same sex sexual conduct is criminalised, LGBTI people do not receive the same protection of their rights as other citizens. In these places, a violation of their rights is often justified or ignored because of their legal or marginalised status in society. The disproportionately high rates of HIV and other STIs amongst LGBTI people prove that the denial of equal rights increases vulnerability to HIV and has a negative impact on public health outcomes.

Can I be a Christian, or Muslim, and advocate for the human rights of LGBTI populations?

Many people have been able to reconcile their faith and the need to protect human rights of all people, including LGBTI persons. Many LGBTI people are themselves religious and are accepted members of their faith. However, the issue of same sex relationships is a controversial question and has been queried, particularly in relation to Christianity in Africa. There are conflicting Biblical verses, some which seem fundamental to many, but outdated to others.

In navigating the particularly bitter biblical debate that has been triggered by homosexuality, it would be instructive to look to the 22nd chapter of Matthew in which Jesus is asked what the most important commandment is, and simply responds: "Thou shalt love the Lord thy God with all thy heart, and thou shalt love thy neighbour as thyself. On these two commandments hang all the law." In John 8:7 Jesus said "let he who is without sin cast the first stone". The Apostle Paul reiterates this in Galatians 5:14 – "for all the law is fulfilled in one word, even in this: Thou shalt love thy neighbour as thyself".

Homophobia turns this all-important law on its head. It mistakes intolerance for holiness, and throws hatred in the face of two people's love – ignoring the Apostle John's warning in 1 John 2:9 that "He that saith he is in the light, and hateth his brother, is in darkness even until now."

Islam is also a religion based on love, which emphasises compassion and the mercy of God. 113 of the 114 Surah's or chapters of the Qu'ran start with the words; "In the Name of God, the Most Merciful and Gracious, the Most Compassionate and the Dispenser of Grace". But working for human rights is not just about compassion and mercy. It is also about recognizing the God given dignity of every human being and protecting it. Surah 17:70 states "Now, indeed, we have conferred dignity on the children of Adam". The Qur'an specifically condemns deriding, defaming, mocking or insulting others and invading the privacy of others. (Surah 49:11 – 13)

At the foundation of the World Council of Churches in 1948 members stated that: "We are profoundly concerned by evidence from many parts of the world of flagrant violations of human rights. Both individuals and groups are subjected to persecution and discrimination on grounds of race, color, religion, culture or political conviction. Against such actions, whether of governments, officials, or the general public, the churches must take a firm and vigorous stand, through local action, in cooperation with churches in other lands, and through international institutions of legal order. They must work for an ever wider and deeper understanding of what are the essential human rights if men are to be free to do the will of God".

More recently in 1976, member churches at the 1976 Lutheran World Federation stated: "Being aware of the unconditional acceptance of man by God in Christ, we affirm that the Church is a community in which Christians accept each other unconditionally and extend the same love to all people. This gift commits the Church to respect and to promote the understanding and the implementation of human rights".
Both the Muslim and Christian faiths thus compel their followers to protect the human rights of all people, including LGBTI populations.

Can I be a human rights activist but not promote and defend the rights of LGBTI people?
A human rights activist is a person that is willing to defend the human rights of all human beings, regardless of health status, religion, gender, nationality, ethnicity and sexual orientation. In addition, many of the human rights issues faced by LGBTI populations and the human rights they advocate for, share similarities with those of other vulnerable and key populations. Being part of a community of human rights activists provides solidarity and shared responsibility in the struggle to advance social justice in the region.

How can we advocate for LGBTI rights in countries where same sex sexual conduct is criminalised?
You can advocate for the rights of LGBTI people even if your country criminalises adult consensual same sex sexual conduct. LGBTI persons and their allies are entitled to the rights to freedom of expression, association and assembly, amongst others, which provides legal protection to implement advocacy activities for other SOGI rights. However, in particularly hostile environments where law enforcement action against LGBTI activists is severe, safety and security issues should be considered paramount in advocacy activities.

In this region, there are disproportionately high rates of HIV infection amongst MSM and other key populations. It has become evident that punitive laws and policies targeted at groups such as LGBTI populations increase vulnerability to HIV and fuel stigma. In order to address the epidemic in the region, it is crucial, now more than ever, to address barriers (such as punitive laws against same sex sexual conduct) that limit universal access to HIV prevention, treatment, care and support.

What are the links between public health and homophobia?
The high rates of HIV infection reported amongst men who have sex with men in the region[55] are largely the result of social and structural barriers that generate fear of stigma or legal prosecution of being open about involvement in a same sex relationship. This discourages people from seeking access to the education, prevention, testing, treatment and care services that all form part of an essential package for HIV and other sexually transmitted infections.

[55]See, for instance, UNAIDS (2013) Getting to Zero: HIV in Eastern and Southern Africa

The authors of a Lancet paper warned that "The HIV/AIDS community now has considerable challenges in clarifying and addressing the needs of MSM in sub-Saharan Africa; homosexuality is illegal in most countries, and political and social hostility are endemic. An effective response to HIV/AIDS requires improved strategic information about all risk groups, including MSM. The belated response to MSM with HIV infection needs rapid and sustained national and international commitment..."[56]

In addition to generating barriers to accessing health services, homophobia has also fuelled acts of "correctional rape" against women, perpetrated in some countries by men who supposedly intend, by forcing a lesbian woman to have sex with them, to "cure" her of her attraction to women. "Correctional rape" makes women who are engaged in same sex relationships particularly vulnerable to sexual violence and the range of health problems that accompany violence.

[56] Smith, A. D; P. Tapsoba; N. Peshu; E. J. Sander & H. W. Jaffe (2009) "Men Who Have Sex With Men and HIV/AIDS in Sub-Saharan Africa" The Lancet 375 (9687) pp. 416 – 422.

Chapter 4: Defining Advocacy

4.1 Defining Advocacy

Advocacy means working for change. It is action aimed at decision makers, mostly governments, to persuade them to change laws, policies and programmes. Advocacy is also action aimed at holding governments accountable for their human rights obligations, either because they have ratified international or regional instruments, or because of their national legal obligations.

CASE STUDY OF HIV-RELATED ADVOCACY : THE SA TREATMENT ACTION CAMPAIGN

There are many successful examples of advocacy to push for HIV-related laws, policies, services and programmes that respect international, regional and national human rights commitments. For instance, the South African Treatment Action Campaign's advocacy to compel government to change its health policies, in order to provide improved access to live saving medicines to people living with HIV, is a good example of HIV-related advocacy using various strategies.

The Nevirapine case – grass roots activism, high impact litigation and advocating, saving lives
The Treatment Action Campaign (TAC) of South Africa was formed in 1998 to campaign for access to anti-retroviral treatment (ART) for people living with HIV in South Africa. At the time, the South African government did not provide antiretrovirals in public health facilities, initially because of the high costs of medication. Subsequently, then-President Mbeki denied that HIV caused AIDS and stated that antiretroviral medicines were toxic and dangerous.

In 1999, the results of a clinical study showed that a single dose of Nevirapine to a woman during labour and to the newborn could significantly reduce the risk of HIV transmission to children. TAC began to actively advocate for the government to roll out a prevention of mother to child transmission programme (PMTCT) using Nevirapine.

Mobilising
In March 1999, TAC held its first demonstrations in Johannesburg, Durban and Cape Town to demand a national PMTCT programme. Activists also started a petition and collected 13 000 signatures in Soweto and Braamfontein, Johannesburg in support of the national prevention programme.

TAC had established branches across the country and its grass-roots organizing allowed it to mobilise large numbers of people, those affected and infected, to participate in demonstrations and marches against the government's intransigence. These branches trained people living with HIV in treatment literacy and built the capacity of large numbers of people to understand their own treatment regimens, but also to demand their rights from the government.

Thousands of people, many in the iconic white and purple HIV Positive T shirts, marched on Parliament and government offices and demonstrated in front of hospitals, clinics and outside the offices of pharmaceutical companies. They were a key feature of the campaign.

Litigation

By 2001, the government was still refusing to provide Nevirapine to pregnant women, leading to the preventable deaths of scores of children. Recognising that it needed to elevate the campaign, TAC decided to litigate and initiated a case against the government in the Pretoria High Court. TAC's credibility as a voice of and for people living with HIV, allowed it to access high quality legal advice and representation and the arguments made in the case are seen as some of the key jurisprudence on the right to health care, both in South Africa and globally.

Some of the most important evidence in the case was provided by women most deeply affected by the failure of the government to provide access to Nevirapine. Women who had lost children to HIV shared their pain and suffering in affidavits in support of the case. TAC used the testimony to provide a human face to the epidemic, increasing public support for the case and the campaign.

The case went all the way to the Constitutional Court and in 2002, the highest court in South Africa ordered the government to immediately roll out a PMTCT programme.

The Nevirapine campaign is hailed as one of the most successful advocacy campaigns in South Africa, successfully combining a number of different strategies.

TAC's ability to mobilise both large numbers of people and the public generally was a key ingredient to the success of the advocacy: TAC used litigation as both a mobilizing and advocacy tool. The case was carefully connected to a broader advocacy strategy and TAC was able to use the case to mobilise its constituency, bringing thousands of people into the streets during the hearings and when the judgments were handed down. It also used the case to educate its members about their rights and built their capacity to more effectively demand their rights.

TAC carefully crafted messages around the case, including slogans urging people to "save our babies" and pleading for "no more infected children". These messages, often painted or scribbled on banners at marches, along with the stories of individual women and families who had lost children to HIV, shifted public opinion in favour of TAC. Many high profile figures, including Archbishop Tutu, urged the government to provide PMTCT programmes. In addition, TAC also built strong strategic partnerships and alliances that amplified and reinforced TAC's advocacy. These included the largest trade union, medical professionals and lawyers.

TAC also developed a very successful media strategy, working closely with journalists who covered the case. As a result, the case was sympathetically covered in the press and press coverage also tended to reinforce TAC messages.

1998 – 2010 Fighting for Our Lives A History of the Treatment Action Campaign
http://www.tac.org.za/files/10yearbook/files/tac%2010%20year%20draft5.pdf

What is advocacy?

In its widest definition, the practice of advocacy is the pursuit of influencing outcomes. More specifically, advocacy is the deliberate process of influencing those who make or have responsibility for implementing policy decisions. An advocate can be defined as a person who publicly supports or recommends a particular cause or policy, or someone who pleads on another's behalf.[57]

Advocacy is a series of activities aimed at bring about sound political change that will benefit the population.[58]

Advocacy is speaking up, drawing a community's attention to an important issue, and directing decision makers towards a solution. Advocacy is working with other people and organisations to make a difference.[59]

Advocacy takes many different forms such as:

- speaking to decision makers, such as Members of Parliament, to persuade them to make new laws or change existing ones that undermine human rights
- taking mass action (e.g. going on a march or organizing a demonstration) to challenge decision makers to solve a problem
- bringing court cases to change laws and policies documenting human rights violations and using this evidence to argue for change
- educating vulnerable populations about their rights so that they can take action.

HIV-RELATED LITIGATION for SOGI RIGHTS has taken various forms and has included

- Challenging laws that criminalise same sex sexual acts
- Challenging laws and policies that restrict freedom of expression and freedom of association for LGBTI persons
- Challenging laws and policies that restrict gender identity and gender-affirming surgery
- Challenging immigration laws and policies that restrict entry to LGBTI persons
- Challenging hate speech and hate crimes against LGBTI persons
- Challenging policies and programmes that fail to provide access to appropriate services, such as health care services, for LGBTI persons
- Challenging discriminatory practices against LGBTI persons, such as discrimination within the working environment

[57]Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA, at p7
[58]International Planned Parenthood Federation (2010) Handbook for Advocacy Planning at p 31
[59]CEPDA Cairo (1995) Beijing and Beyond, A Handbook on Advocacy for Women Leaders

In this Toolkit, advocacy means taking action to persuade governments to change discriminatory laws, policies and practices that negatively affect LGBTI people and undermine their access to HIV prevention, treatment, care and support. It also means working to hold governments accountable for protecting, promoting and fulfilling the human rights of LGBTI people. As the definitions of advocacy in this section show, advocacy means many things and definitions can be adapted to suit your organisation and what it wants to achieve.

4.2 Why do advocacy?

LGBTI people experience human rights violations that undermine their rights to freedom, equality and dignity and their access to HIV prevention, treatment, care and support. Many LGBTI individuals live in countries that criminalise their most intimate relationships, subject organisations that represent them to high levels of repression and restriction and where mainstream human rights groups fail to support their struggles.

In places with high levels of homophobia and inequality and where same sex sexual conduct is criminalised, doing advocacy on LGBTI issues can be intimidating and even dangerous. It may mean confronting powerful institutions and individuals who do not recognise the human rights of LGBTI people. It can be especially difficult if you are a member of an LGBTI group and face stigmatizing and discriminatory behavior, threats of violence and risks of imprisonment. But, advocacy can also be an empowering tool that helps to make sure these issues are recognized as important human rights concerns and can secure even small changes that make important differences in the lives of LGBTI people.

4.3 How can regional and international human rights standards help advocacy on LGBTI rights and HIV?

Advocacy to advance human rights is, in its essence, trying to influence governments to implement and enforce the regionally and internationally agreed human rights standards and domestic human rights laws and policies (such as constitutions, anti-discrimination laws and policies that promote equality, non-discrimination and dignity) and to hold them accountable when they fail or refuse to do so. Advocates are often rightfully more familiar with the human rights standards in their own countries, as these are the standards they work to hold their governments accountable to, but it is also important to familiarize yourself with international and regional human rights standards. They can:

• give useful guidance on what your country has agreed to do on human rights generally
• give specific recommendations on what steps governments must take to protect and advance the rights of LGBTI people in relation to HIV
• help you monitor what your country is doing to fulfill its international human rights obligations

The international human rights monitoring system

Most countries in southern Africa have dualist legal systems where international and regional legal obligations are neither justiciable nor directly enforceable in domestic courts without further action on the part of domestic legislatures. Once a country has ratified (agreed to be bound by) an international agreement, they thus have to take steps to domesticate the provisions of the treaty – that is, to enact the provisions into their own, binding national laws. However, a few countries in the region, such as Mozambique, have monist legal systems whereby ratified international and regional treaties automatically become part of domestic law.

They also accept certain responsibilities to report to the treaty monitoring bodies, committees that monitor progress of the various treaties. These bodies require that countries report back to them regularly about what progress they have made to advance the human rights under the treaty.

These reports are an important source of information about what the government is doing and, importantly, what it has failed to do. NGOs can participate in the reporting process by providing additional information to the treaty monitoring bodies, making statements when the treaty body is considering a country report and raising awareness in their countries about the monitoring process.

A list of treaty monitoring bodies and how to contact them is provided in Annexure 3.

→**FOR MORE INFORMATION ON USING REGIONAL AND INTERNATIONAL HUMAN RIGHTS MECHANISMS SEE LINKS TO REFERENCES AND RESOURCES AND ANNEXURE 3.**

4.4 Developing an HIV and LGBTI advocacy plan

Developing an advocacy plan is a systematic way to define, test and reach agreement on the key elements of your advocacy activity. While it is not always possible to plan in advance for all advocacy initiatives (e.g. such as advocacy in response to human rights crises situations against LGBTI populations), planning does allow organisations to access the collective knowledge of your partners and to prioritise your future actions.

An advocacy plan helps to answer specific questions about who you are trying to convince or persuade, what you are planning to convince them of and how you are going to go about doing so.

Your advocacy plan should work towards doing the following:

- Setting a goal: Identifying what the problem is, and what change you want to bring about to address the problem
- Identifying your target audience: Determining who can bring about the change / who should be targeted to bring about the change
- Developing your message
- Determining advocacy strategies and tactics: Identifying how best to bring about that change
- Determining partnerships: Identifying who to partner with to push for the change.

Chapter 5: Developing An Advocacy Agenda To Advance Universal Access For LGBTI People

"Advocacy planning is rarely systematic, and often it is a response to opportunities and threats emerging in the political scene. Even though some significant experiences have resulted from such projects, our potential for success increases if we implement the project after a sound planning process".[60]

Even though advocacy by its nature is opportunistic and good advocates are always on the look-out for new opportunities they can use to raise their issues with decision-makers, planning is important, especially as you take on a new campaign or begin to work on a new issue. The first step is planning and developing an advocacy agenda. A carefully planned advocacy agenda will help you to identify the specific issue that you want to work on and set objectives for your organization and its partners.

Why is an advocacy agenda important?[61]

An advocacy agenda should help you to:

• Identify the problem you want to address

• Examine and research the problem in detail

• Identify the main issues you can effectively work on

• Identify the goals to address the issues

5.1 The big picture: selecting what to work on

There are many human rights problems that you can choose to work on to advance the rights of LGBTI people and their access to HIV prevention, treatment, care and support. For example, laws and policies that criminalise same sex sexual conduct makes it difficult for health care workers to provide condoms and lubrication to men who have sex with men or dental dams to women who have sex with women – so you may want to advocate for the decriminalization of same sex sexual conduct. Perhaps you want to address hate crimes perpetrated by communities, through the use of community dialogues. Changing the mindsets of communities, including cultural and traditional leaders, is critical as these attitudes and prejudices have exacerbated sexual violence against people of gender non-conforming identity.

Precisely because there are so many problems, it is critical to carefully identify an issue that is contextually relevant and attainable to work on, so that your organisation's advocacy can be focused and the impact measurable. Some organisations develop a mission statement that helps them prioritise the issues they work on; others have criteria to help them decide. In deciding what to focus on, it is important to think about what skills you have

[60]IPPF (2010) Handbook for Advocacy Planning Available at
http://www.ippfwhr.org/sites/default/files/Advocacy%20Planning%20web%20version.pdf
[61]ARASA (2008) HIV/AIDS and Human Rights in Southern Africa: An Advocacy Resource & Training Manual at p152

in your organisation and what resources you have or will need to find in order to do the work. For example, if you want to change laws, you will need people in your organisation that are willing to meet with law-makers, receptive judicial officers and lawyers who are knowledgeable and sensitive to the plight. You must have the technical expertise to do an analysis of the problems with the existing laws or make recommendations about provisions a new law should have. If you do not have this kind of expertise, you should think about whether you need to partner with organisations that have this expertise or build the capacity of your staff or whether there are other issues that you could work on that would more effectively draw on the skills, experience and expertise of people in your organisation (such as working from a grassroots level, with communities, religious and traditional leaders).

In addition, you will need to examine the problem carefully to decide how important it is. The checklist below can help you analyse the problem and who it affects.

Checklist: choosing what to work on

- ✓ Does the issue really impact on the lives of the majority of LGBTI people in the country? How do you know this?
- ✓ Does the issue impact on L, B, G, T, I or all?
- ✓ Is the impact of the problem more or less serious compared with other problems faced by this group?
- ✓ Is it realistic to try and solve this issue?
- ✓ Is it appropriate to use advocacy to solve this issue? Why?
- ✓ Would solving this issue promote understanding of LGBTI populations' lives, including rights, in wider society?[62]
- ✓ Would addressing the problem help to advance the rights of LGBTI persons to universal access to HIV prevention, treatment, care and support?

5.2 Doing your homework

Once you have identified the problem, it is important to examine and research it as closely as you can and break it down into smaller components. This process can involve in-depth discussions with LGBTI people about their experiences, especially about how their rights have been abused as a result of the problem; consultations with experts such as health care workers, lawyers, academics and policy makers as well as background research to discover as much as you can about the different aspects of the problem, e.g. how other countries have dealt with a similar problem.

[62]*Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p7*

At the end of this process, you should aim to have a clear understanding of the different dimensions of the problem and which ones your organisation is going to address.

5.3 Identifying the main issues

Once you have completed as much as research as you need, it is time to analyse the problem so that you can decide what the change is that you want and how you can target your advocacy to achieve this change. There are many different ways to do this analysis; we have included two examples in this toolkit. You can adapt these to suit your purposes or develop other ways that suit your needs.

Example 1: The Problem Tree[64]

➢ What is it? This is a visual exercise that helps you see the different dimensions of the problem, including personal, societal, political and legal. It helps you identify the causes and the consequences of the problem.

➢ Why is it helpful? This exercise works well for a group and can generate lively and intense debate. By identifying the causes and consequences of your problem and potential solutions, you are better able to identify your advocacy goals.

➢ What do you need to do the exercise? A large sheet of paper and different colour markers.

➢ How do you create the problem tree? It's very simple: the main issue is the trunk of the tree, the consequences are the branches (major consequences) and leaves (less important ones) and the causes are the roots of the tree.

TOP TIP

It may be helpful to have a good facilitator to keep the discussion focused and on track when you do this exercise. You may want ask someone who is not a member of your organisation to help facilitate your problem tree discussion.

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[63]Ibid. at p17

[64]Ibid.

PROBLEM TREE: DISCRIMINATION AGAINST TRANSGENDER MEN IN THE HEALTH SECTOR

MULTIPLE SEXUAL PARTNERS

MSM/CSW	Casual sexual intercourse	Sexual abuse	Substance abuse	Lack of assertiveness

Moral values, misconceptions, taboos	Financial insecurity	Lack of early sexual education, life skills education	Lack recreational activities	Family issues

Traditions with stigma and discrimination

Inappropriate law enforcement
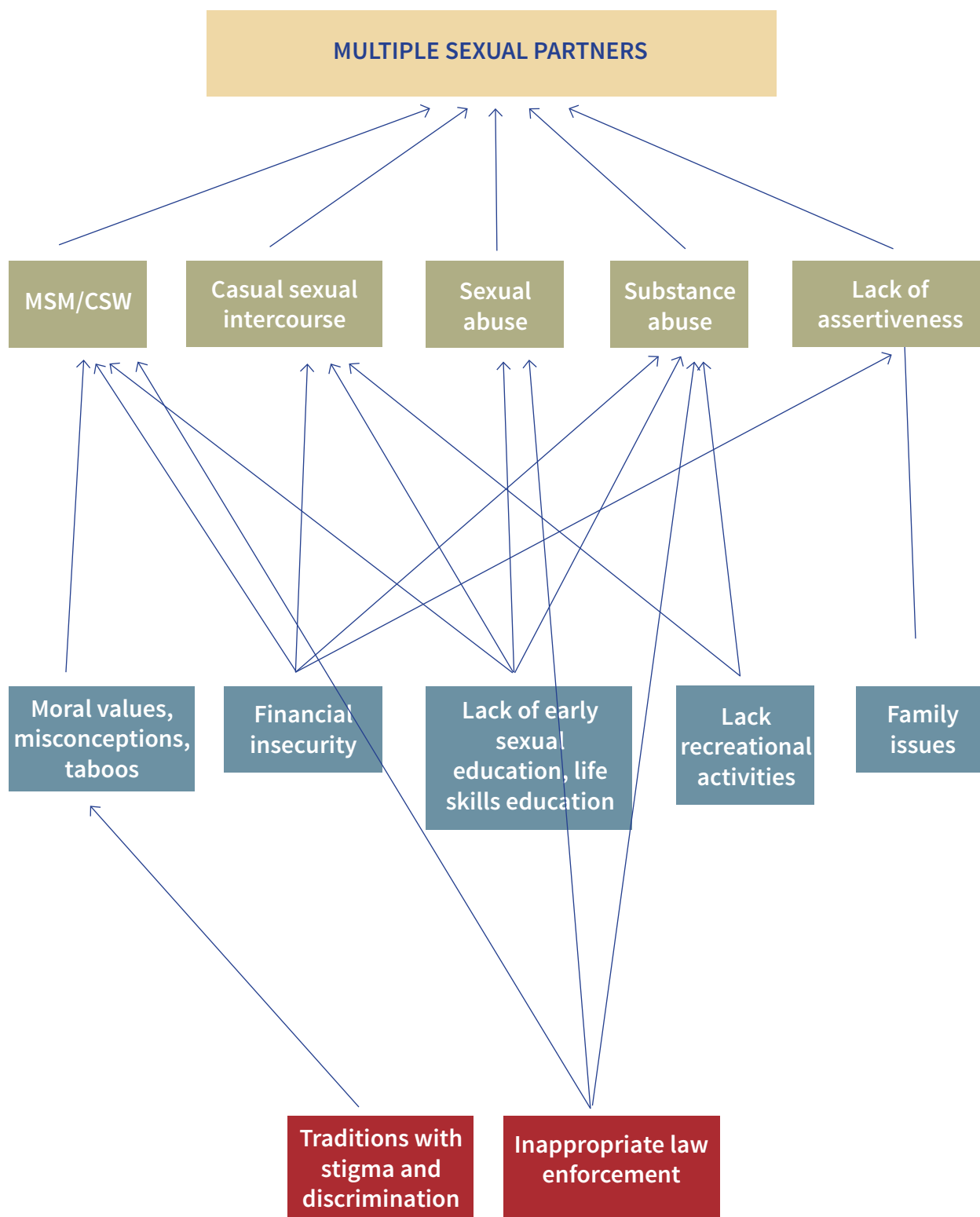
Example 2: Using the ARASA checklist

ARASA has developed a set of key questions to help you identify the main issues and work towards your advocacy agenda:

1. What is the problem?
2. Why do we have the problem?
3. Who is affected by the problem?
4. What can we do to solve the problem?
5. What are the barriers to solving the problem?
6. What are the solutions? (i.e. what change are we seeking?)

Example: High rates of HIV amongst transgender women

- **The problem:** high rates of HIV infection amongst transgender women

- **Why do we have the problem?** Lack of information about the risk factors for transgender women; high levels of sexual violence, stigma and discrimination, lack of access to health care and information about HIV prevention

- **What can we do to solve the problem?** Reduce sexual violence against transgender women; educate health care workers about the prevention needs of transgender women; reduce stigma and discrimination in health settings; community education

- **What are the barriers to solving the problem?** Barriers may include the following: transgender women involved in sex work, in countries where it is criminalised, are hard to reach with prevention services; transgender women may feel uncomfortable accessing appropriate barrier methods due to possible prejudice or ignorance of health care workers regarding their needs; health care workers may have judgmental attitudes towards transgender women.

Once you have answered the questions about what the problem is and who is affected by it, why we have it and what the barriers are to solving it, you work towards identifying solutions for change.

> **Example: HIV and transgender women**
>
> - **Issue 1:** Lack of access to health care and attitudes of health care workers: there is no policy guiding the provision of non-discriminatory and non-judgmental health care, including HIV prevention, to transgender women and they are not identified as a key population in national strategic plans (NSPs)
>
> - **Issue 2:** Sexual violence: transgender women are not recognized as a vulnerable population in programming relating to sexual violence and so are therefore not protected from sexual violence
>
> - **Issue 3:** Sex work is criminalized which makes it hard to reach transgender sex workers
>
> - **Issue 4:** There is inadequate information about the factors that put transgender women at disproportionate risk of HIV and this undermines their ability to protect themselves from HIV.

5.4 Setting your goals and deciding on your objectives

Setting your goals is the final part of developing your advocacy agenda: this means deciding what you want to happen to solve your problem.

> **EXAMPLE: GOAL FOR HIV AND TRANSGENDER WOMEN**
>
> Creating a goal is about taking the issue and turning it into a positive statement of what should be done.[65]
>
> E.g. in the example above, relating to HIV and transgender women you may wish to set the following goal:
>
> To advocate for an enabling and non-discriminatory legal and policy environment that promotes access to appropriate health care services for transgender women

[65]*ARASA (2008) HIV/AIDS and Human Rights in Southern Africa: An Advocacy Resource & Training Manual at p157*

Chapter 6: Developing an Advocacy Strategy

Your advocacy agenda, no matter how well developed, will not lead to change without a clear strategy for change.

> **Key components of your advocacy strategy[66]**
>
> • Deciding who your advocacy targets are
> • Identifying who your allies and partners are
> • Identifying who might oppose the change that you are looking for
> • Deciding what tools you can use to push for change
> • What resources you will need
> • Deciding on your key messages

6.1 Mapping all the stakeholders

This step will help you understand who your allies and potential advocacy partners are, identify your advocacy targets (the people and institutions that have the power to make the change that you want) and who will oppose your advocacy goals. A careful and thorough mapping process is critical to understanding how you will need to engage with each set of stakeholders to advance your advocacy.

> **Example: Who are the key stakeholders?**
>
> • **Opponents: organisations or individuals who oppose your position, but who are not in decision making positions e.g. religious institutions or NGOs that do not support the human rights of LGBTI people. They may have influence with decision makers.**
>
> • **Beneficiaries: The people whose issue you are representing – lesbians, gay men, bisexual, transgender and intersex people.**
>
> • **Allies: Organisations that support your position and who may be able to help you achieve your advocacy goal. These can be local or international organisations.**
>
> • **Decision-makers: these are your advocacy targets and they are the individuals within government that make or influence decisions.[67]**

[66]*ARASA (2008) HIV/AIDS and Human Rights in Southern Africa: An Advocacy Resource & Training Manual at p157*
[67]*Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p29.*

Sexual orientation, gender identity, HIV and human rights:

It is really important to find out as much information as possible about each group of stakeholders and what their position is on LGBTI issues.

6.1.1 Identifying your advocacy targets

During the mapping process, it is likely that you will discover that there are many decision makers who have influence over your advocacy issue. It is important to pinpoint who has the most authority to make the changes that you are seeking. These will be your primary advocacy targets and you will spend most of your time trying to access them and persuade them to make the change you want. You will need to regularly update your mapping of advocacy targets as they will change as the political context of your country changes e.g. after an election or cabinet reshuffle.

Example: Primary and secondary advocacy targets

- **If you are working on a campaign to decriminalize same sex sexual relationships, depending on the country context, the Minister of Justice may be your primary advocacy target as the person responsible for making and amending laws. (In some countries, you may wish to target the Law Commission or a relevant Parliamentary Portfolio Committee). You will have to persuade them why it is important to change the laws about same sex sexual conduct.**

- **The Minister of Health may be a secondary advocacy target – while not the main decision maker on the issue of decriminalization of same sex sexual relationships, the Minister may be able to influence the primary advocacy target. The Minister of Health has an interest in changing these laws because the criminalization of same-sex sexual relationships is recognised to undermine national HIV prevention and treatment programmes for LGBTI populations.**

- **The national Human Rights Commission or Law Commission may also be secondary advocacy targets – they are trying to investigate laws and uphold human rights standards; the criminalization of same sex relationships may be a potential law for investigation and review since it undermines the human rights of LGBTI people. The Commission may be able to influence the Minister of Justice by arguing that the current laws are not consistent with human rights and should be reviewed.**

The table below can help you identify all your advocacy targets, how accessible they are and what it will take to influence them.[68] It may be helpful to complete the table as a group so that everyone can pool their information to create as complete a picture as possible.

Table 6: Factors to consider in Advocacy Targets

Target	Ease of contact	Ease of convincing target	Target makes decisions by…	Target listens to …	How to influence target	Any existing connections?	Rating
Assess whether they are allies, supportive of LGBTI issues or opponents	Assess how easy / difficult it will be for you to access them	What kinds of arguments would the target be receptive to? Personal appeals?	What is important to the target? Are they influenced by voters, supporters?	Who can influence the target? Other politicians? A celebrity? An international policy maker?	What does your target care about? The opinion of voters? His political connections? Should you try to meet directly with the policy maker or have an interlocutor meet on your behalf?	Who do you know that knows your target?	

TOP TIP

Successful advocacy often depends on having access to key decision makers so that you can influence their decision making. Access comes with building and nurturing relationships with key individuals and takes time. It is important to know who the people you are trying to influence are and how they feel about the issue that you are working on. If your advocacy target is a member of Parliament, find out what committees they are involved in and how they have voted on similar laws before. If your advocacy target is a government minister, research what they have said about your issue in the past.

6.1.2 Finding allies and advocacy partners

Groups working on LGBTI issues often feel isolated as there are not many other groups working on these issues or who are willing to publicly support the human rights of LGBTI people. 'Mainstream' HIV and human rights organisations may be potential allies but may be ignorant about LGBTI-related discrimination and how it affects the broader human rights advocacy work they are doing. Your organisation may not understand the 'intersectionality' between SOGI rights issues and rights issues affecting other populations. Part of building coalitions and partnerships between LGBTI and other human rights organisations will involve understanding, exploring, educating and informing each other about the links between human rights, HIV and SOGI issues.

[68]Adapted from: Ishtar MSM (2013) Speaking Out – A Toolkit for MSM-led HIV and AIDS Advocacy in Kenya at p16

Sexual orientation, gender identity, HIV and human rights:

TOP TIP

Whether you are an LGBTI or non-LGBTI organisation, it is important to find allies to support your advocacy cause. The more people fighting for a goal, the more decision makers are likely to pay attention. Some of the advocacy targets may also be more likely to listen to arguments presented as broad human rights issues by non-LGBTI groups and to respond positively if they see non-LGBTI groups and champions supporting SOGI rights issues.

During critical review processes, LGBTI groups have at times described themselves as isolationists, who work in isolation, are defensive / untrusting and are not keen to partner with non-LGBTI groups. Building strong partnerships, coalitions and alliances is particularly valuable for LGBTI as well as HIV and human rights advocacy, as these can illustrate the importance of the issues to both advocacy targets and the public. LGBTI and non-LGBTI organisations should seek the intersectionality between SOGI rights and the rights of other populations such as, for example, people living with HIV, women, young people, people who inject drugs and sex workers. For instance, the criminalisation of same sex sexual conduct and rights violations based on sexual orientation and gender identity are tied to challenges facing citizens globally and in Africa regarding their autonomy over their bodies and lives. LGBTI organisations should take the lead in SOGI advocacy but look for allies amongst groups working with LGBTI communities, the legal and medical professions, women's organisations, youth organisations, organisations of other key populations, faith-based organisations, groups working on gender based violence, groups working on human rights and amongst AIDS service organisations (ASOs). Similarly, these organisations should seek ways to integrate SOGI rights into their human rights advocacy in the pursuit of common goals and objectives for the protection and promotion of the rights of all people.

The table below can help you find potential allies and understand how they can help your advocacy.

Table 6: Identifying allies and how they can help you[69]

Type of power	Rationale	Example
Members – are they a large organisation with many members?	A group with many members is less likely to be ignored by decision makers, the media and the public	Trade unions can mobilise their members to attend demonstrations
Money – will they donate money to your organisation or cause or do they have strong connections with donors?	Access to donor funding gives organisations the resources they need to do advocacy	Large international NGOs can introduce you to donors overseas that you would not otherwise have access to
Credibility – are they an organization that has a good reputation, and has acknowledged expertise?	A group or individual who is viewed as respected and credible can lend that credibility to your cause	A well- known and well-liked activist can speak out about LGBTI issues
Appeal – do they have a special appeal for the media?	Some groups e.g. those working with children, or public personalities can have universal appeal and connecting with them can help advance LGBTI rights	A celebrity or national sports person can be an important spokesperson for LGBTI issues
Network – are they part of an organized network?	Working with a group that is part of a larger network can give to access to other organisations that are part of the network, their resources and credibility	An international network can amplify your advocacy efforts in international settings
Reputation – are they well known as a group who does high quality work and who will not back down?	Working with a group that is recognized as an expert can enhance your credibility	An ally that has already successfully made change will be seen by the media and decision makers as an effective voice on your issues
Skills – do they have skills that your organisation does not have?	An ally can bring technical, media, legal and other skills that will advance your advocacy	A coalition that includes lawyers can make credible arguments on law reform
Newsworthy – is the organisation newsworthy or does it have strong relationships with the media?	Some groups will already have strong relationships with the media that you can build on	A group that is already doing advocacy on high profile issues, often being cited in the media or having published opinion pieces, can more easily provide visibility in the media on LGBTI issues through its existing relationship with the media

Working with partners, informally or in formal coalitions and alliances takes time – you will have to invest in building trust between different groups and individuals. These relationships also take time and energy to maintain – everyone needs to be up to date on what is happening and should share information and strategies.

[69]Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p36

> **TOP TIP**
>
> It can be helpful to designate one person in your organisation who is responsible for sharing information and helping to ensure ongoing consensus on joint advocacy priorities and strategies. It will also help strengthen the relationships between allies and partners if each organisation seeks intersectionalities between partner organisations' advocacy agendas and supports each other's advocacy agendas. It is important to make sure that a person from each organisation attends planning meetings, even on issues that may not be the core mandate of the organization, and that you and your partner organisations mobilise members and partners to support the advocacy of your allies.

6.1.3 Know your enemies

Groups working on LGBTI and HIV advocacy are very likely to face resistance and opposition. This opposition may come from many different sources, including from your primary advocacy targets, other NGOs, the media, religious institutions and members of the public.

While it will be impossible and undesirable for you to engage with all your opponents, it is important to map who they are and to assess whether and which ones are the most important to engage with - either to neutralize their opposition, undermine their arguments, or even turn them into allies. Who these are will vary from case to case.

> **"To increase your chance of success, there are two important reasons to identify opponents before you implement your campaign:**
>
> • **You can anticipate the type and degree of opposition or attack you will encounter.**
> • **You can effectively direct your resources towards weakening or circumventing your opposition."[70]**

> **TOP TIP**
>
> These are some useful ways to respond to opponents:
>
> • **Prevention:** if you can convince potential opponents to join you or at least not to oppose your plans, this is worth planning in advance.
> • **Labelling:** by publicly calling out your opponents' tactics, they will lose power.
> • **Frame the debate on your own terms:** create opportunities to talk about the issue in the way that you want to; don't always be on the defensive and responding to opponents' arguments.
> • **Know when to negotiate:** you should always be on the lookout for signs that your opposition is willing to negotiate – sometimes they will not say so openly. When working on LGBTI and HIV issues, compromise is an important strategy.

[70]*Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p40*

6.2 Choosing your Advocacy Tools

There are various tools and strategies you may consider in order to achieve your advocacy goals and objectives. In this Toolkit we focus on strategies identified as capacity 'gaps' by ARASA partners. Your advocacy strategy may include one or a combination of these approaches that will best address the issue, such as:

• Lobbying decision-makers
• Media Campaigns
• Mass Action
• Documentation
• Litigation

Considerations in selecting your advocacy tool will include:

• The political, social and cultural context within which you are working and the opportunities and constraints presented by that context
• The timing and the different opportunities (or constraints) presented by that particular time, such as elections or international conferences held during the planning period
• Your organisation and its own strengths, weaknesses and skills, as well as that of partners – your advocacy tools should build on the strengths of your and your partners' organisations
• The risks involved in the various approaches

6.2.1 Advocacy with decision makers

Talking directly to your advocacy targets can be the most direct way to bring about change as it allows you to talk to people who have the power to make the change that you want. It can be difficult to get face to face meetings with decision makers when you are working on LGBTI issues, as many may be unwilling to associate themselves with organisations and individuals working on SOGI rights. Sometimes your advocacy partners and allies might be able to help you obtain meetings or your advocacy target may be more willing to meet with non-LGBTI organisations and it may be important for non-LGBTI partners to be present at meetings. Some advocacy targets may also be willing to meet with you if you agree to an off the record meeting or not to publicise the meeting. Sometimes it will be important to make those concessions in order to obtain the meeting, but at other times, you may decide to refuse to meet with policy-makers on those terms.

Sexual orientation, gender identity, HIV and human rights:

Example: Meeting with Parliamentarians in Namibia fails when details leaked to press

In 2013, members of the Namibian HIV Prevention Technical Working Group for Key Populations secured a meeting with the Parliamentary Standing Committee on Human Resource, Social and Community Development to discuss current programming for key populations at higher risk of HIV (Sex Workers, LGBTI, Men who have Sex with Men and Women who have Sex with Women). Following an initial meeting, the Standing Committee requested that the Technical Working Group submit a position paper on laws and policies that violate the rights of key populations. A lawyer was commissioned to do a desk review and a report, entitled "Legal Framework on the rights of lesbian, gay, bisexual, transgender and intersex people and sex workers in Namibia" was prepared to be presented to the Standing Committee. However, details of the meeting were leaked to the media by a member of the Technical Working Group, resulting in a front page headline: "Sex Workers to Grill MPs". Subsequently, the members of parliament cancelled the meeting and efforts to engage the Parliamentarians have stalled. The Technical Working Group continues to explore avenues to re-build the relationship with the members of the Standing Committee, because engaging with the media before the document reached the Standing Committee violates the general protocol of recognition of submission.

If you are able obtain a face to face meeting with your primary advocacy target, it is important to be well-prepared. The purpose of any advocacy meeting is to persuade a decision maker to make the change you are advocating for. You need to establish before the meeting the extent to which your advocacy target agrees with you that there is a problem and what needs to be done about it. To achieve this, you need to know as much as possible about their opinions and positions to help you calibrate your advocacy messages and decide what information they need to hear from you in order to make the decision. The documentation and mapping discussed in the section on 'doing your homework' may come in handy at this point to present evidence-informed arguments for your case.

CASE STUDY: S.H.E. ADVOCATING WITH DECISION MAKERS FOR HEALTH CARE SERVICES FOR TRANSGENDER AND INTERSEX PERSONS

Social, Health and Empowerment Feminist Collective of Transgender and Intersex Women of Africa (SHE) is an organisation that advocates for the rights of transgender and intersex women. SHE identified the lack of health care services for transgender and intersex persons as a major gap in service provision in the Eastern Cape. As a result, SHE embarked on a campaign that involved lobbying decision makers within public health care facilities and using the media to advocate for improved access to health care for transgender people in the Eastern Cape.

Advocacy with decision-makers took various forms at local, provincial and even national level. It included written requests and complaints to the Department of Health and hospital administrators, with requests for improved access to services, as well as offers of support (in terms of training and developing protocols on provision of health care services to transgender and intersex individuals). SHE also engaged with local policy bodies, such as the Eastern Cape Provincial AIDS Council, to discuss the impact of failure to target the health needs of transgender and intersex people on public health responses to HIV. Finally, SHE lobbied national human rights institutions such as the Commission for Gender Equality (CGE) to discuss the public health and human rights implications of failing to recognise the sexual and reproductive health and rights of transgender and intersex people.

Alongside the lobbying of decision-makers, SHE also used the media to increase understanding of the issues amongst the broader community. SHE engaged with a wide variety of persons from the media to publicise the issues as broadly as possible. For example, SHE engaged with various journalists in the mainstream provincial papers and local papers, asking journalists to write about the health care issues faced by transgender and intersex people. They also held shows on different community radio stations

As a result of SHE's advocacy, transgender and intersex persons are now beginning to access health care services and referrals to appropriate services, at local hospitals.

Key to the success of the advocacy was the strong partnerships SHE had with allies from both government as well as civil society organisations. For instance, SHE drew on its partnerships with the CGE as well as the South African National AIDS Council (SANAC) Women's Sector to seek support for their advocacy objectives and to integrate transgender and intersex health issues into their work.

For more information, see http://transfeminists.org/

→**FOR MORE INFORMATION ABOUT BACKGROUND RESEARCH AND FACT FINDING REFER BACK TO CHAPTER 5 ABOVE**

Sexual orientation, gender identity, HIV and human rights:

TOP TIP

Timing is important – think about what is going on politically and socially in your context and assess how it might affect your advocacy target, e.g. Members of parliament may be distracted by campaigning during an election period; a newly appointed minister may not yet be properly briefed on your issues. If there is a high profile LGBTI case going on and LGBTI issues are receiving a lot of negative publicity, it may also not be the best time to seek a meeting.

If you decide to take a delegation to the meeting, think about which members of your organisation or group will be most effective in a particular meeting. This decision will depend on many factors, including their knowledge of a particular issue, their public profile, whether they are open about their sexual orientation and what you hope to achieve by having the meeting. At all times be professional in your dealings as this will ensure that you and your issues are taken seriously and your target is not distracted.

TOP TIP

If one of the members of your delegation is open about their sexual orientation or gender non-conformity, it is important to think about how a policy maker will respond to this. Some may believe that this is the first time they are meeting with a gay, lesbian, transgender or intersex person and this may present an opportunity to carefully challenge stereotypes and prejudice. Others may be offended and you will need to think of the advantages and disadvantages of including this person in the meeting.

It can be useful to bring survivors of human rights violations to advocacy meetings as this may be the first opportunity your advocacy targets have to hear firsthand how survivors are affected by specific laws, policies and programmes. This can be a powerful way of showing policy makers why change is necessary.

TOP TIP

If you are bringing survivors to a meeting, it is important to pay careful attention to their well-being:

- Ask them if they are willing to speak about what happened to them and don't pressurize them to attend a meeting or speak out.
- Prepare them for the meeting: share you strategy for the meeting and how their information fits in. Set clear expectations about their participation.
- Some survivors may not be 'out' (living openly as an LGBTI person), so discuss issues relating to privacy and confidentiality with them before you invite them to attend the meeting. If they are not out, make sure that policy makers and their staff know this in advance and are willing to respect confidentiality before you provide peoples' name and other identifying information.
- Make a time to de-brief with survivors after the meeting – some may find speaking out stressful and it is important to give them space to talk about their experiences.
- If possible, provide access to resources like counselors if survivors need additional support.

Decide in advance who is going to speak and what their messages will be. Give your advocacy target an opportunity to speak and express their opinions, but don't allow them to dominate the meeting. Think about how they might respond to specific arguments and plan your own replies.

Establish your expertise and knowledge but avoid being arrogant or using too much jargon. Before the end of the meeting, make sure that you have told your advocacy target exactly what you want them to do. Make sure that your demands are appropriate for the particular policy maker and be prepared and willing to compromise if this will help bring about some change. Prepare a memorandum to leave with your advocacy target – this document should contain your key advocacy messages, any important evidence and information that is relevant and your demands. Try and keep this document as short as possible, bearing in mind that policy makers do not have time to read long documents. If you have any additional material that supports your advocacy, such as reports, make sure to leave copies at the end of the meeting.

If you agree or offer to do something during the meeting e.g. provide more information on a particular aspect, send a report or make an introduction, do that as soon as possible. This not only increases your credibility with your advocacy target; it also gives you another opportunity to strengthen your relationship with them.

> **TOP TIP**
>
> **Find out who the target's 'gatekeepers' are – these are the staff of your advocacy target who manage their diary, make their appointments and prepare them for meetings. They can be a useful source of information about a decision-maker's opinions and what information will be persuasive to them. Remember to thank them for any help they give you.**

If you are not able to get a face to face meeting, you may consider writing to your advocacy target. Your letter should set out the problem, what you want the recipient to do about it and offer an opportunity to discuss this in person.

> **TOP TIPS: Writing a good letter [71]**
>
> - **Make sure that you address your letter to the right person – if you address your letter to the wrong target, don't assume that it will be passed onto the correct office.**
> - **If possible, just address one issue in the letter as this is more likely to result in a quick response. Keep it short!**
> - **Ask your advocacy target to state their position in the reply.**
> - **Make it a specific ask – tell your advocacy target exactly what you would like them to do. Be concise and clear about what the action is.**
> - **Consider asking other allies to co-author or endorse your letter. You may even want to circulate the letter to other organisations to solicit sign-ons. This will show that you have a critical mass supporting your ask.**
> - **Use your own words – avoid using jargon.**
> - **Use your organisation's letterhead – it will establish your credibility.**
> - **Say something good – if there is something positive that you can say about your advocacy target, include it. It is a good way to build a relationship.**
> - **If your advocacy target does respond, thank them, but politely challenge any unsatisfactory answers.**
> - **Follow up – if you don't receive a response, write again.**

Sexual orientation, gender identity, HIV and human rights:

6.2.2 Media Campaign

Media campaigns use the print, electronic and broadcasting media to raise awareness about and increase public support forLGBTI people and SOGI issues. Media campaigns may be particularly useful in countries where public figures, such as political and religious leaders, denounce LGBTI populations and where the media itself portrays LGBTI populations negatively. They can help to portray not only SOGI and human rights issues, but a more balanced and respectful representation of LGBTI persons where they reflect on the everyday lives of LGBTI populations and the situations they face.

Media campaigns may also be an important complementary strategy to use with other advocacy tools, such as litigation or mass action, in order to increase awareness, understanding and support for the goals of the broader campaign and to increase pressure on your advocacy target.

Media campaigns may include using newspapers (either writing or supporting sensitised journalists) to produce news articles, opinion pieces, editorials, letters, press releases, weekly columns or to place advertisements, using broadcast media to hold radio or television discussions and dialogues or to integrate SOGI rights issues and messages into popular local radio or TV shows, as well as producing other forms of media such as newsletters, pamphlets, leaflets, posters, artwork and banners to accompany advocacy campaigns.

TOP TIP

Media should be designed to not only get the public's attention, but also to provide the core information or message you wish to convey. Some key tips to remember when creating effective media to grab public attention are the following:

- **Messages:** Keep the main message, or messages, as clear and simple as possible. Choose to deal with one issue at a time and focus on telling a story rather than explaining a rights issue if need be. It can help to develop a popular slogan that can be repeated throughout the advocacy campaign and that aims to reflect your goals or objectives.
- **Images:** Choose images carefully. The public needs to accept and understand the images you use in your media campaigns. You may wish to avoid sensitive or culturally valued images. The images should present a clear message themselves, evoking a reaction or understanding linked to the message you wish to convey. Also bear in mind personal safety issues of LGBTI people before using their images in a media campaign.
- **Resources:** Creating media is costly. However, in some cases effective media – particularly media that uses generic messages and images, may be used time and time again for different campaigns.

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[71]Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p86

CASE STUDY: CEDEP MEDIA CAMPAIGN TO INCREASE AWARENESS AND DESTIGMATISE SAME SEX SEXUALITY IN MALAWI

The Centre for the Development of People (CEDEP), a Malawian organization that fights for the rights of sexual minorities and the Centre for Human Rights and Rehabilitation (CHRR), a mainstream human rights organisation in Malawi, developed a media engagement advocacy strategy as part of a broader advocacy campaign that includes strategies such as participating in the review of the constitutionality of the sodomy law, mass action and sensitising parliamentarians and religious leaders.

The media are important allies in SOGI rights advocacy. They can also be seen as opponents, when they report on LGBTI people and SOGI rights issues in a sensationalist and negative manner which can fuel homophobia and transphobia. In this case, the organisations collaborated with the media in an effort to destigmatise adult consensual same sex sexual conduct in Malawi, illustrating how engaging with and sensitising the media can help to strengthen SOGI-related advocacy campaigns.

The media campaign involved various strategies. It included the creation of a Media Task Force on sexual minority rights, setting up an Editor's Forum on human rights in order to ensure sensitised and ongoing profiling of SOGI rights issues in the newspapers, contributing to a regular media column on sexual minorities and a developing media human rights awards.

The advocacy campaign has seen some recent gains, including increased funding for and targeting of sexual minorities for health care services, support from various leaders, including religious leaders, for SOGI rights and increased awareness amongst the broader public on SOGI rights issues. Engaging with the media as an ally, rather than an opponent, has strengthened reporting on SOGI rights issues and has contributed to an improved public perception of LGBTI populations in the country.

TOP TIP

Engaging with the mainstream media to reflect SOGI issues sensitively and fairly is an important strategy for strengthening public support for your campaign. It is important to support and encourage media representatives to do so, in various ways:

- Hold information and sensitisation workshops with media representatives to strengthen their capacity to present LGBTI issues in a balanced and non-discriminatory way
- Develop a range of positive media stories for sharing with media representatives
- Promote non-discriminatory approaches to SOGI issues in media codes of practice
- Develop media awards to recognise the efforts of sensitised and balanced media portrayal

6.2.3 Mass action

Mass action amounts to activities taken on by a large group of people to try to persuade decision-makers to change. For example, demonstrations and marches are a form of mass action. Sanctions (refusing to buy products from a certain organisation or country) can also be a kind of mass action. Petitions and letter writing campaigns from members of the public directed towards your advocacy target can also be a form of mass action. Mass action, while it can help raise awareness and increase knowledge about LGBTI issues and mobilise communities, uses the power of many people to bring public attention to an issue to compel decision makers to bring about change.[72]

Check list: Preparing for mass action[73]

✓ **Decide what type of mass action is most appropriate and safest:** a demonstration, a sit in, a march on a government building – there are various options and you should consider all the options carefully before making a decision.

✓ **Get legal advice:** for example, some countries may require you to obtain a permit if you want to hold a demonstration on public property; others may have restrictions on how close you may get to a government building. It is important to get legal advice so that you can comply with any legal requirements. Decide what you will do if permission is refused.

✓ **Build alliances:** support and endorsements by many organisations or a broad coalition of groups can enhance the legitimacy of your actions. NGOs that support the mass action can also help to get their staff and members to join in the action.

✓ **Speakers:** beyond getting your messages out, speakers can be an important draw card and can engage the crowd, so where possible, identify high profile speakers, use members of your organisation who are good public speakers and make sure that they know what your messages are.

✓ **Media strategy:** publicity is a key part of a mass action strategy, so it is important to make sure that the media are informed about the action. Do your homework and know who the journalists are covering your issues – let them know in advance about the action, give them access to detailed background information and speakers and prepare them to be able to report your story. For the actual event, invite as many media as you can – make sure that you tell them the date, time and location of the event. Designate a spokesperson who will be readily available for comment during the event.

✓ **Campaign Media:** Develop materials to accompany your mass action like t-shirts, banners, posters and leaflets. Keep messages simple and clear and directed towards your goal. These media materials are an important part of support for mass action – they help to clarify common goals and messages for participants as well as convey important messages and visual images for the broader public. You may wish to develop a slogan which can be repeated and used to rally support for your goal throughout the campaign. Aim for maximum visibility of messages. Visible messaging is not only important for the event but for media reports on the event. These images should link and will accompany the other media (such as print and electronic news articles) relating to your campaign.

✓ **Dates:** think about strategic dates for mass action, e.g. International Day against Homo and Transphobia (IDAHOT, 17 May), International AIDS Day (1 December), International Women's Day (8 March) and Human Rights day (10 December) can be useful times to stage mass action.

[72]ARASA HIV/AIDS and Human Rights in Southern Africa: An Advocacy Resource & Training Manual at p160
[73]Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p103

✓ **Lawyers:** lawyers can play an important role in preparing for mass action and during and after the event. They can help you understand what the legal requirements are regarding permission to stage the event; they can observe the event to document violence against peaceful participants and they can assist when participants are arrested.

✓ **Equipment:** think about what you will need to make the event successful – a public address system for the speeches; first aid kits in case of minor injuries etc.

CASE STUDY: International Day against Homophobia and Transphobia (IDAHOT) 17 May 2014

The International Day Against Homophobia and Transphobia (IDAHOT) is an annual international day of action, to raise awareness about homophobia and transphobia worldwide. LGBTI organisations can and have used this annual day to undertake activities that raise awareness about and advocate for the rights of LGBTI persons. On 17 May 2014, ARASA (through the DiDiRi Programme) supported partner organisations in 6 countries in Southern Africa - South Africa, Malawi, Lesotho, Namibia, Botswana and Swaziland - to hold 'mass action' community mobilisation events to mark IDAHOT and to raise awareness about sexual orientation and gender identity rights.

What did they do?

- In South Africa, Iranti-org held an event at Constitutional Hill Precinct in Johannesburg, providing the LGBTI community with a safe space to celebrate. The event included talks and discussions, a movie screening and a cultural programme celebrating SOGI rights. Free Gender held a pride march, distributed materials and held a concert in Khayelitsha in the Western Cape to draw attention to violence against sexual minorities.
- In Malawi, the Centre for the Development of People (CEDEP) organised an activity to raise awareness about the rights of LGBTI persons, the impact of homophobia and transphobia and the importance of accommodating diversity. The day was commemorated with a panel discussion aired on the radio and a workshop that brought together a diverse range of stakeholders to discuss homophobia and transphobia.
- In Lesotho, Matrix Support Group organised a march through the centre of Maseru including speeches, discussions and performances, to increase understanding of LGBTI issues by families, friends and the public.
- In Swaziland Rock of Hope organised an event at the Manzini club to celebrate and support the LGBTI community, raise awareness and provide a safe gathering space. During the day there was entertainment by poets, refreshments were served and prevention materials distributed.
- In Botswana LEGABIBO organised a series of events starting on the 15th through to the 18th May 2014. Events included a press conference, a night of stories, song and dance, a march and vigil and a debriefing session.

Outcomes

The IDAHOT events achieved several important outcomes, helping to raise awareness and encourage acceptance of SOGI rights. The events enjoyed high media visibility, drawing media attention as well as broader public attention to the LGBTI community and their rights. The various events also aimed for and often achieved diverse participation from a range of stakeholders including the LGBTI

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community, non-LGBTI civil society organisations, political, religious and traditional leaders, legal practitioners and the media.

Challenges

- Safety and security of participants is often a challenge at these events, with low attendance at times due to fears of homophobic attacks. It is essential that all events provide for the safety and security of participants in various ways, such as through the use of volunteers and law enforcement officials to monitor events and provide visible security; through careful choice of venue and maintaining confidentiality e.g. not requiring signing of a register. Transport to and from events, as well as holding events in daylight hours, may further help with safety and security concerns as well as encourage and facilitate attendance more broadly.
- Achieving diverse participation at events is said to be a challenge, particularly where all members of the LGBTI community itself -lesbians gays, bisexuals, transgender and intersex people – and / or non- LGBTI organisations are not unified behind common advocacy goals for SOGI rights.
- Resources remain a challenge for many LGBTI organisations and resource limitations limit the scope of activities.

Lessons Learned

- The involvement of the grass-roots LGBTI community is critical to the success of events.
- Broader community ownership and participation in IDAHOT events is an important objective and LGBTI organisations should seek ways to promote broader participation, for instance by involving LGBTI communities and non-LGBTI organisations at the outset, in the planning and development of all activities.
- Engaging with the media is important to increase the reach of the message beyond those who attend the event.
- Accompanying awareness-raising and advocacy events with entertainment (such as song, dance, music, and plays) helps to encourage broader attendance at events.

Matrix Support Group organised a march through the centre of Maseru to increase understanding of LGBTI issues by families, friends and the public.

TOP TIP – Issues of Safety and Security

The high levels of political, and in some cases public, hostility against LGBTI individuals, coupled with punitive legal environments that criminalise same sex conduct in Africa, make safety and security a critical issue to be considered in all advocacy campaigns and particularly in very public campaigns such as mass action. In particularly hostile environments, safety and security issues will be a major consideration in determining the advocacy strategies and tools to be used in advocacy plans.

Organising public demonstrations on LGBTI and HIV issues can place individuals at risk. When considering whether to organize mass action, a thorough risk assessment should be undertaken to evaluate what threats exist and how to mitigate them. Your organisation should research, understand and make provision for protecting the safety and security of staff, organizational members, their families and supporters (such as human rights defenders or public supporters) before, during and even after the event, where necessary. It will be important to have contingency plans about what you will do if people are arrested or the event turns violent.

You will need to take measures to protect the physical safety of people, to keep them safe from violence, abuse, harassment, extortion, arrest and detention during an event. You will also need to consider measures to ensure the safety of persons after an event, including the confidentiality of participants' personal information, where necessary, to protect them from follow up harassment and harm and ensuring human rights defenders are available to follow up on criminal actions or police action that results in arrests or detention.

If possible, it is a good idea to work closely with the police during the planning stage and while the event is happening. Keeping the police informed at an early stage and trying to enlist their co-operation can help defuse tense situations and ensure that your event is not derailed or disrupted. If you are able to work with the police, designate one person as the police liaison who will be responsible for meeting regularly with the police in the run up to the event and keeping in touch with them during the event if there are problems.

Specific expertise may be required to deal with safety and security and there are also a number of important guides and tools that have been developed to support organisations in safety and security issues.

→FOR MORE INFORMATION ABOUT SAFETY AND SECURITY SEE LINKS TO REFERENCES AND RESOURCES

If you plan to send out a press release about your event, the box below sets out tips on writing a good press release.

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TOP TIP – writing a press release[74]

- Write a simple and interesting headline – this should aim to catch the attention of journalists and tell them what your story is about
- Your first sentence should succinctly set out the most important facts of your story – and should indicate who is involved, what is happening and where, when it is happening and why.
- The rest of the press release should explain these in more detail.
- Use quotes – this adds interest to your press release. The person who is quoted should be available to give media interviews
- Include names of spokespersons and their contact details.

6.2.4 Documentation

Documentation (or fact finding) of human rights abuses is collecting information about human rights violations that can be used to provide help to individuals whose rights are violated, educate policy makers and the public about human rights violations against LGBTI persons, litigate against abusers and create a public record of the abuse. Documentation can also provide you with an evidence base for your advocacy.

Why document LGBTI and HIV-related human rights violations?

- It can "shine a light" on communities who are often invisible to policy-makers and the public.
- "Naming and shaming" governments by documenting their role in human rights violations against LGBTI people can be a way of pressing them to make changes.
- Documenting the links between human rights violations against LGBTI people and HIV can provide evidence about the need to address these effectively in laws, policies and programmes.
- Documentation allows individuals to tell their stories and can offer them an opportunity, often denied to them, to share what happened to them to a sympathetic and sensitive listener.

You will need to carefully design your documentation project, making sure that you understand what information you will need to collect to advance your advocacy objectives. It will be important to know how you are going to use the information as this will also determine what type of information you collect, how much evidence you will need to gather and what resources are necessary. For example, if you plan to produce a report, you will need to interview a sufficiently large number of people to give your claims credibility. If you plan to include direct testimony from those whose rights are violated in a letter to the government, you may not need to interview a large number of people.

Working through the questions below may help you to design your investigation.

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[74]Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p117

Questions to consider:

- What are the issues we will be investigating? What is the nature of the discrimination and abuse against LGBTI people and how does it link to their vulnerability to and risk of HIV and their ability to access HIV prevention, treatment, care and support? What are the consequences of the abuse?
- For what reason are we documenting abuses?
- What strategies will we use to investigate?
- What support and resources will we need?
- What are the risks or benefits of doing such an investigation?
- What methods could we use to draw attention to our findings?
- What do we wish to achieve as a result of the investigation?
- What recourse do we have against the abusers?
- What international and regional human rights treaties has the government ratified?
- What is the local human rights framework?[75]

In the same way as you have prepared for the overall advocacy agenda, it is important to prepare for your investigation. This means that you will need to carefully research the problem so that you understand the violations that you will be documenting, whose rights have been violated and how you will go about the investigation: this is usually referred to as the WHO, WHAT, WHERE, WHEN AND WHY.

Example

The AMSHeR and CAL 2013 report on Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa presents a range of case studies on different forms of violence against sexual minorities in Africa. It tells stories of arbitrary arrests and detention, physical violence including rape and murder, harassment and threats of violence and extortion and blackmail. The project noted the limited monitoring, documenting and reporting of homophobic and transphobic violence in Africa as well as the misreporting that takes place. It was compiled by pooling information from civil society organisations and analysing media and other reports. The compilation aims to provide a quick reference point to the plight of LGBTI individuals in Africa, and to advance the case for promotion and protection of LGBTI rights in Africa.

[75]Adapted from: Open Society Institute (2009) Human Rights Documentation and Advocacy: A Guide for Organisations of People Who Use Drugs, 2009, available at : http://www.opensocietyfoundations.org/sites/default/files/hrdoc_20090218.pdf

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There are two categories of evidence that you will potentially gather: testimony from people whose rights have been violated and witnesses to these violations, as well as documentary evidence. The most crucial evidence is usually the direct testimony of those whose rights are violated, but it is also important to interview witnesses, NGOs that are providing support to individuals, family members, health care workers and anyone else who has relevant information. Documentary evidence may also be valuable and again, documents that provide direct evidence of the violations are the most important. These can include medical records, police reports and photographs. Other documentary evidence, such as media reports and information about similar abuses or cases, is helpful to support your direct evidence.

You will need to gather accurate, impartial and specific evidence from survivors of violations. This means that you will need to ask the right questions and carefully record the answers. Make sure that you collect the full names of a person – check that you have the correct spelling. Record the date, time and place of the interview.

> **TOP TIP**
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> **If you are documenting violations in countries where homosexuality is illegal or where there are high levels of homophobia, be aware that survivors may be at risk just by talking to you. Be careful to protect the safety of survivors and take steps to mitigate any risks. Discuss the security context with NGOs working in the country and ask for advice on how to safely undertake documentation.**
>
> **Similarly, communication and documentation relating to human rights violations against LGBTI individuals may also be a safety and security risk. You may need to consider steps to keep your exchanges of information (over computer or cellular technology) secure and to minimise the risks of unwanted exposure for survivors. You may also need to consider steps to ensure that documentation, particularly that which reveals sensitive or personal information, is safe and secure from being discovered or being destroyed.**

Plan your interview beforehand and know what the most important things are that you will need to cover. If it's helpful, you can develop a questionnaire to help guide your interview and make sure that you don't miss anything. As a rule of thumb, try to start and end the interview on a good note, so try to locate difficult questions about the violation in the middle of the interview.

Do not start the interview by asking about the violation – you will need time to build trust with the survivor, so spend some time at the beginning of the interview asking them about themselves. Once you feel that you have built a level of trust, move on to details about the violation. Don't be afraid to ask questions – it is important to clearly understand what the survivor is telling you. If there are contradictions, ask for clarification and explain that you are asking these questions because it is important to you to really understand what happened and not because you do not believe the story. Try not to interrupt, but wait until the person has finished before asking more questions. Before you end the interview, ask the survivor if there is anything else that they may want to add. Ask the survivor what they would like to see done about the abuse they have experienced.

Guidelines for interviewing survivors of human rights violations: do no harm

- Remember that you are interviewing people about traumatic events that could include sexual violence or physical assault – it is important to be empathetic during the interview. Be mindful of your body language, tone and how you frame your questions – never display a judgmental or negative attitude towards a survivor. Show that you are listening carefully to what the survivor is saying. Make eye contact.
- Look for signs of trauma e.g. weeping, hyper-vigilance or other signals of distress – if you are concerned about the survivor's well-being, do not continue with the interview.
- If possible, find out about what services are available for survivors in the area that you are working in. This could include health and mental health services, NGOs and other forms of support. Provide that information to survivors who may need it.
- Conduct the interview in a private space and do not allow any person who is not essential to your interview to be present. If you cannot conduct the interview in a private space, be careful about what kinds of questions you ask. You do not want to expose a survivor to any additional risks.
- If you are working with an interpreter, make sure that you have briefed them fully before the interviews to ensure that they are able to be empathetic to survivors. Make sure that they can be impartial and objective during the interview.
- Describe carefully to the survivor why you want to interview them and what you will do with the information. Do not create false expectations. For example, do not promise things that you are not able to deliver on and do not create false expectations about your role as an investigator.
- Obtain informed consent before you start the interview or take pictures: this means making sure that the survivor understands who you are, who you work for or represent and what you will do with the information that you collect. Tell survivors that they can stop the interview at any time and that they don't have to answer questions that make them uncomfortable.
- Discuss confidentiality: tell the survivor that you will not use their real names or include any details that could identify them without their permission. Again, make sure that they understand what you will do with the information so that they can make an informed decision.
- Do not rush the interview, allow survivors to tell the story in their own words.
- Thank them for their time.
- Self-care: interviewing victims of human rights violations can be stressful and it is important to recognise the impact that might have on you and others working with you. Take time to discuss how this work makes you feel with colleagues or friends and seek out counselling if you need to.

When you have completed your interviews and gathered all evidence that you need, you will need to analyse it and eventually publicise it. There are many ways to analyse your evidence. The example below provides a clear structure that will help you present your evidence in a compelling and persuasive manner.

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Example: analysing your evidence[76]

1. **Show that there is a protected right:** for example if you are documenting how intersex persons are being beaten up by the police because of their gender presentation, you need to show what human rights are being infringed. In this case, these will include their rights to bodily integrity, freedom from cruel, inhuman and degrading treatment and freedom from discrimination. If the government has ratified the ICCPR or the ICESCR or if these rights are protected under national laws, you can argue that these rights have been violated.

2. **Show that the violation of that right was on the grounds of sexual orientation and/or gender identity:** examine your interview notes to look for evidence that gender identity was the reason for the assault. The police may have used derogatory and discriminatory language during the assault or demonstrated in other ways that the assault was linked to gender identity.

3. **Link the violation to HIV:** find the evidence you have collected that shows how the assaults on intersex people drives them away from any government provided services, including health care, compromising their access to HIV treatment; show how intersex people are afraid to ask health care workers for information and services related to HIV prevention in case they are reported to the police and assaulted again. Make the argument that this is a violation of their right to the highest attainable standard of health.

4. Show that the government has a responsibility to act and has failed or refused to prevent the assaults by e.g. enacting protective laws and policies, prohibiting discrimination, identifying and punishing perpetrators.

5. **Identify solutions:** this is a critical part of your analysis, as you have the opportunity to make recommendations that can prevent further abuse, bring perpetrators to account and expand access to health care for intersex people. For example, you may recommend that the police establish a specially trained unit to investigate assaults of intersex people; you can also recommend that the department of health conduct mobile clinics to offer HIV prevention and treatment to intersex people.

6. **Publicise the results:** decide what the best vehicle is to publicise the results of your investigation. It could be a report, a press release or an op-ed. Send copies of whatever document you produce to the relevant government institutions and share copies with the survivors that you interviewed.

TOP TIP: Planning a report[77]

Careful planning will help you write a clear, concise and effective report:

- Consider the report as a whole
- Break down the task of writing the report into various parts
- Decide how much time you have to write the report
- Set yourself clear deadlines

[76]Adapted from: Open Society Institute, Human Rights Documentation and Advocacy: A Guide for Organisations of People Who Use Drugs, 2009. Available at http://www.opensocietyfoundations.org/sites/default/files/hrdoc_20090218.pdf
[77]Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p85

6.2.5 Litigation

Litigation (bringing a case to court) is another useful strategy to bring about change to laws and policies. Challenges to law or policy can take place:

- using national bodies (like courts and commissions), or
- using regional and international bodies (like the African Commission)

What is strategic or impact litigation?

Strategic litigation involves selecting cases with the goal of creating broader changes: that is changes that will go beyond the individuals involved in a single case.

It will be important to choose the case that you bring to court carefully – the main reason for litigating these cases is to set a precedent for future cases. Unless you are sure that the particular case will have a serious impact, you should probably re-consider the decision to litigate. Before starting litigation, it is important to evaluate the consequences of losing the case – this may mean that a bad precedent will be set that will undermine future cases and reinforce existing laws that are harmful. This is not always the case and sometimes you may still decide to go to court even when you do not have a reasonable chance of success.[78]

Key Questions to consider before litigation include:

- **What is the risk of bad judgment and bad precedent?**
- **What are the facts of the case?**
- **What is in the interest of clients?**
- **What is the current jurisprudence on separation of powers between the executive and the judiciary? What is the court's view on its role as deferential to parliament?**
- **Are the courts sufficiently independent to be willing to engage on issues?**
- **Has the court indicated sympathy for LGBTI cases before?**
- **What is the court's attitude to questions of public morality? Is public morality alone seen as a sufficient basis by courts for criminalizing same-sex behaviour?**
- **Do the courts understand the difference between sexual orientation and same sex sexual conduct? Do they understand LGBTI? What are their misconceptions and prejudices?**
- **Have we done enough groundwork to ensure judges and the public are sympathetic to the issues?**

[78]Carroll A (2010) Make It Work: Six steps to effective LGBT human rights advocacy, ILGA at p95

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TOP TIPS from partners in the region[79]

- Litigation is not a magic bullet. If the outcome of a case is negative, it can actually hinder your advocacy efforts. It is important to choose cases wisely and at times, only choose to litigate where the chances of success, or at least positive publicity and positive outcomes, are high.
- Progressive judgments don't always translate into positive change in policy, implementation or in attitudes. Ongoing advocacy at community level is vital to shift mindsets, change public perceptions and influence future progressive judgments.
- The mobilisation of LGBTI activists and human rights activists is critical to complement strategic litigation. Their presence and actions inside and outside the court room are very important. This helps to raise visibility of the issues to the broader public and to court officials.
- Developing a wide network of experienced and sensitised lawyers is critical to rapid responses in times of crisis (e.g. the arrest and detention of LGBTI activists) as well as to long term strategic litigation. Relationships with other experts, such as medical experts, are also important.
- Litigation is a long term strategy and may require large amounts of time and funding. This should be considered when selecting litigation as an advocacy tool.

CASE STUDY: BOTSWANA HIGH COURT ASSERTS RIGHTS OF LGBTI OR REGISTER THEIR OWN ORGANISATION

On 16 February 2012, members applied to register the organisation Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) in terms of the Societies Act, with the aim of providing information on human rights for lesbians, gays and bisexuals and to advocate for their rights, particularly the right to access to health services.

However, on 12 March 2012, the Director of the Department of Civil and National Registration rejected the application for registration of LEGABIBO on the basis that the Botswana Constitution does not recognise homosexuals and that the objectives of the organisation were contrary to section 7(2) of the Societies Act. LEGABIBO appealed against the decision to the Minister of Labour and Home Affairs and the appeal was rejected on 12 November 2012.

LEGABIBO decided to challenge the refusal to register the organisation through litigation and mobilisation of communities to create visibility and raise awareness about the issue. In March of 2013, twenty applicants filed a case before the High Court of Botswana, asking the court to review the decision to refuse to register LEGABIBO. They argued that the refusal to register their organisation violated their constitutional rights, including their rights to freedom of association, freedom of expression and equal protection of the law. They also mobilised communities to conduct sit-ins at the courthouse by LGBTI people dressed in clearly visible red T-shirts. Such visibility helps in raising the profile of the matter to court officials, who realise that this is an important issue concerning real people who are visible in court.

In November 2014, LEGABIBO won the case. The court recognised the importance of freedom of association, assembly and expression, noting that such rights should only be limited where this is reasonably justifiable. They furthermore noted that the objects of LEGABIBO, such as political lobbying for equal rights and decriminalisation of same sex relationships, are all lawful objectives and are not crimes, nor is it a crime to be homosexual. They found that the refusal did in fact violate the rights to freedom of association, assembly and expression and was not justifiable in the circumstances.

LEGABIBO said of the victory "Lesbians, gays and bisexuals have long strived to be able to form an organisation which can support them and be their voice on matters that affect them. It has been a long and arduous journey towards recognition and we are relieved that the court has protected our rights."

TOP TIP

Litigation can be prohibitively expensive and is probably one of the most costly ways to bring attention to an issue. In addition to paying your own legal fees, you may be responsible for your opponents' legal costs if you lose the case.

Partnerships between lawyers and human rights activists have been very successful in many countries in challenging unfair and discriminatory laws. It is worth exploring whether you can find lawyers who are sympathetic to your cause and who will work at a reduced rate or for nothing. Building a long term relationship with lawyers can be an important component of your litigation strategy.

In Botswana, LEGABIBO went to court to challenge the refusal by authorities to register their LGBTI organisation. They won the case.

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7. Conclusion

SOGI rights advocacy is critical in Southern and East Africa, where increasing human rights violations against LGBTI populations not only impacts on the equality and dignity of people, but also limits the rights to health. Effective SOGI rights advocacy requires collaboration between LGBTI and non-LGBTI organisations in the region in order to realise common goals of protecting and promoting the sexual and reproductive health and rights of all populations in the context of HIV. Organisations are encouraged to build on their existing skills and experience towards achieving these goals. They are encouraged to use this Toolkit as well as the links to other useful References and Resources, to find ways to identify these common goals and to build their capacity for joint advocacy on SOGI rights. Strengthening the protection and promotion of SOGI rights is not only a human rights imperative, but is also a critical pathway for strengthening the sexual and reproductive health and rights of all people.

References and Resources

Resolutions and Related Documents

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Resources

HIV and AIDS – these websites contain information about HIV transmission, the latest prevalence data and related information on prevention, treatment, care and support.

Avert: http://www.avert.org/
UNAIDS: www.unaids
World Health Organisation: http://www.who.int/topics/hiv_aids/en/

These websites have information on the links between HIV, human rights and sexual orientation and gender identity:

African Men for Sexual Health and Rights (AMSHeR): http://www.amsher.org/

AIDSFree World: http://www.aidsfreeworld.org/Our-Issues/Homophobia.aspx

AIDS and Rights Alliance of Southern Africa (ARASA): www.arasa.info

Canadian HIV/AIDS Legal Network (CHALN): http://www.aidslaw.ca/site/our-work/lgbt-rights/

Global Commission on HIV and the Law: http://www.hivlawcommission.org/

International Gay and Lesbian Commission on Human Rights (IGLHRC): http://iglhrc.org/

SAfAIDS:http://www.safaids.net/category/thematic-focus-areas/lesbians-gays-bisexuals-transsexuals-and-intersex-lgbti

Southern Africa Litigation Centre: http://www.southernafricalitigationcentre.org/our-programmes/lgbtsex-worker/

UNAIDS Reference Group on HIV and Human Rights: http://www.hivhumanrights.org

These organisations work on human rights sexual orientation and gender identity and their websites contain information about international human rights and the links between human rights and SOGI:

Amnesty International: http://www.amnesty.org/en/sexual-orientation-and-gender-identity

ARC International: http://arc-international.net/about

Centre for the Development of People (CEDEP), Malawi: http://www.cedepmalawi.org/

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Human Rights Watch: http://www.hrw.org/topic/lgbt-rights

International Commission of Jurists (ICJ): http://www.icj.org/themes/sexual-orientation-and-gender-identity/

International Service for Human Rights: http://www.ishr.ch/news/lgbt-rights

LGBTnet: http://www.lgbtnet.dk/

The Inner Circle, South Africa: http://theinnercircle.org.za/

Groups working on sexual orientation and gender identity issues in Africa:

Behind the Mask, South Africa: http://www.mask.org.za/

Coalition of African Lesbians: http://www.cal.org.za/

Forum for the Empowerment of Women (FEW), South Africa: http://www.few.org.za/index.php?option=com_content&view=article&id=55&Itemid=112

Gay Kenya: http://www.gaykenya.com/

Gays and Lesbians in Zimbabwe (GALZ): http://galz.co.zw/

Gender DynamiX, South Africa: http://www.genderdynamix.org.za/

Global Action for Trans Equality (GATE), Global: http://transactivists.org/about/

International Lesbian Gay Bisexual Intersex Association (ILGA): http://ilga.org/

Iranti.org, South Africa: http://www.iranti-org.co.za/

Lesbians, Gays, Bisexuals of Botswana (LEGABIBO): http://legabibo.wordpress.com/

Mozambique Association for Sexual Minority Rights (LAMBDA): www.lambda.org.mz

Rainbow Identity Association, Botswana: http://rainbowidentitybotswana.blogspot.com/

Sexual Minorities Uganda (SMUG): https://sexualminoritiesuganda.com/

S.H.E, Africa: http://transfeminists.org/

Transgender and Intersex Africa, South Africa: http://transgenderintersexafrica.org.za/

Annexure 1: Equal Rights for All Manifesto

The AIDS and Rights Alliance for Southern Africa (ARASA) has drafted this 'Equal rights for All' manifesto in conversation with civil society, cultural and religious leaders from around the continent. It presents the arguments for why equal rights for lesbian, gay, bisexual, transgender and intersex people are a crucial element of African culture and Christian philosophy, in addition to being a public health and human rights imperative.

Please share your thoughts on this document with us, which can easily emailed to equalrights4all@arasa.info. We would appreciate your assistance in disseminating this widely to your friends and networks. We would appreciate your help in making it an all-inclusive LGBTI manifesto.

We hope that this manifesto will serve as a tool to catalyse dialogue on equal rights, with a long term view to shifting public opinion and creating a network of organisations and individuals who are committed to supporting equal rights in their communities. A more comprehensive advocacy strategy on equal rights will be developed with partners in the months to come.

African Cultures and Homophobia

It is often argued that "homosexuality is un-African". While cultures vary across different African countries and communities, a common element of African cultural life centres on belonging to a community of people. For example, the key principle of Southern African philosophy is ubuntu whose definition is captured in the Zulu saying **"Umuntu ngumuntu ngabantu" – "A person is a person through persons".**

In many Western cultures, human identity places less emphasis on interpersonal relations, and is instead based on an individualistic approach: "I think, therefore I am". Ubuntu on the other hand says, **"I am because you are, and because you are, therefore, I am".** In other words, the individual is affected by what happens to the whole group, as indeed the whole group is affected by what happens to the individual.

The framework of togetherness that is encouraged by key philosophies of African origin like ubuntu requires that **cultures should live side by side, and should see diversity as enriching the community** as opposed to diminishing it. The claim that lesbians, gays, bisexuals, transgenders and intersexuals (LGBTI) are inherently incompatible with African cultures is not supported by history or contemporary experience.

Historians have shown that **prior to the influx of missionaries in the 19th century, same-sex relationships existed in most African cultures** – this is reflected in ancient art; in indigenous language terms as seen with the Hausa people in northern Nigerian, who were among the last cultures to be colonised by Europeans in the 20th century; and in preserved records – for example, a 16th century Brazilian inquisition refers to the "jimbandaa" – a term originating from Angola and Congo to refer to men who had sex with men. As seen in the following quote from "Being Rwandan and Gay", a 2009 article in a Rwandan newspaper, contemporary experience also confirms that homosexuality is not a "Western" phenomenon.

"Many people think that gay Rwandans were influenced by western cultures. This is a big lie and an insult. I take myself as a living example: I've been in contact with Western Culture through the Internet for two years

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but I knew I was different since I was 12. Right now, I am in my twenties and nothing has changed. I am still attracted to men. I've never told anybody since it would be called a shame and I would be an outcast in my family. It really is not easy; I didn't choose that, and I wasn't influenced by anybody."

Therefore, although culture has been used as justification for discriminating against LGBTI, the paradox is that, while **sexual orientation is a factor of one's nature regardless of citizenship, homophobia is in itself the "un-African" crime** in that discrimination – and particularly, the violent discrimination that frequently accompanies homophobia – is in absolute opposition to the cultural philosophy of ubuntu. To discriminate against LGBTI is therefore to harm our culture and break down our own social fabric.

Christianity and homophobia

The issue of same-sex relationships is one of many controversial matters that arise in relation to Christianity. There might never be consensus on such matters, which often hinge on several verses in the Bible that seem fundamental to some but outdated to others.

In navigating the particularly bitter biblical debate that has been triggered by homosexuality, it would be instructive to look to the 22nd chapter of Matthew in which Jesus is asked what the most important commandment is, and simply responds: "Thou shalt love the Lord thy God with all thy heart, and thou **shalt love thy neighbor as thyself.** On these two commandments hang all the law."

In another well-known biblical statement, Jesus said **"let he who is without sin cast the first stone"**. This instruction is especially worth remembering when, as with homophobia, the issue at which stones are flung is simply an interaction between two consenting adults based on a feature of their natures that is not chosen, changeable nor harmful to others – while our communities continue to be destructed by an abundance of other actions, such as gender violence, that are far more deserving of our attention yet pass by with frequent impunity.

So why have same-sex relationships in particular been singled out for abuse, violence and state-sanctioned hatred – all in the name of a God whose first and foremost law was Love? The Apostle Paul reiterates this in Galatians 5:14 – "for all the law is fulfilled in one word, even in this: Thou shalt love thy neighbour as thyself".

Homophobia turns this all-important law on its head. It mistakes intolerance for holiness, and throws hatred in the face of two people's love – ignoring the Apostle John's warning in 1 John 2:9 that **"He that saith he is in the light, and hateth his brother, is in darkness even until now."** Archbishop Desmond Tutu put it most plainly when he said:

"We reject homosexuals, treat them as pariahs, and push them outside our church communities, and thereby we negate the consequences of their baptism and ours. We make them doubt that they are children of God, and this must be nearly the ultimate blasphemy."- Quote from "Homophobia Equals Apartheid", Afrol News, 7 July 2010

Public health and homophobia

The social stigma that comes with being in a same sex relationship makes it **difficult to cultivate a sustained relationship that is psychologically and physically healthy** in many ways – the most well-documented of which is its impact on HIV.

In August 2009 a paper published in the Lancet, a leading medical journal, suggested that rates of HIV among men who have sex with men (MSM) in the sub-Saharan African region are up to ten times the rates in the overall male population.[80]

This is largely the result of **social barriers that generate fear of stigma or legal prosecution** if one is open about his or her involvement in a same-sex relationship, which have a potent impact of discouraging people from seeking access to the education, prevention, testing, treatment and care services that all form part of an essential package for HIV and other sexually transmitted infections.

The authors of the Lancet paper warned that "The HIV/AIDS community now has considerable challenges in clarifying and addressing the needs of MSM in sub-Saharan Africa; homosexuality is illegal in most countries, and political and social hostility are endemics. **An effective response to HIV/AIDS requires improved strategic information about all risk groups, including MSM**. The belated response to MSM with HIV infection needs rapid and sustained national and international commitment…"

In addition to generating barriers to accessing health services, homophobia has also fuelled acts of "correctional rape" against women, which is perpetrated in some countries by men who supposedly intend, by forcing a lesbian woman to have sex with them, to "cure" her of her attraction to women. **"Correctional rape" makes women who are engaged in same sex relationships particularly vulnerable to sexual violence** and the range of health problems that comes with this.

The United Nations has issued calls for action to ensure the protection of sexual minorities in law and to thus increase their access to health services, with Secretary General Ban Ki-Moon stating:

"Not only is it unethical not to protect these groups [sexual minorities]; it makes no sense from a health perspective. It hurts all of us."

Human rights and homophobia

In numerous regional treaties, African states have affirmed their respect of the right to equality and dignity of all peoples. Most countries have ratified the African Charter on Human and Peoples' Rights, Article 2 of which states that **"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction** of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion".

It also guarantees the **"the unquestionable and inalienable right to self-determination"**, which includes the freedom to pursue one's social development according to whatever policy he or she has chosen.

These articles make no exception for cases where the policy or opinion is linked to expression of sexual orientation, and even if they did, the question remains as to **why sexual orientation should be singled out as particularly deserving of exclusion from human rights norms**, as compared to other acts that inflict far more damage on society.

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[80]*Smith, A. D; P. Tapsoba; N. Peshu; E. J. Sander & H. W. Jaffe (2009) "Men Who Have Sex With Men and HIV/AIDS in Sub-Saharan Africa" The Lancet 375 (9687) pp. 416 – 422.*

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Given the realities of discrimination and oppression with which our continent has historically grappled, it is an unfortunate irony that intolerance towards sexual minorities – whose sexual orientation inflicts no harm upon society – has become a state-sanctioned hallmark of our current social politics.

The **arbitrary hatred and violation of rights that have been heaped upon LGBTI have no place in a region that has claimed to embrace fundamental human rights principles**, to the point of enshrining them in regional African policy and legislation. The African Charter calls on the individual to act in the spirit of "tolerance, dialogue and consultation", none of which are compatible with homophobia.

Annexure 2: Core Treaties and their Ratification

List of International human rights treaties and their ratification

Countries	ICCPR[81]	ICESCR[82]	CEDAW[83]	CRC[84]	CPRD[85]	CERD[86]	CAT[87]
Angola	X	X	X	X	X	S	S
Botswana	X		X	X		X	X
Comoros	S	S	X	X		X	S
DRC	X	X	X	X		X	X
Kenya	X	X	X	X		X	X
Lesotho	X	X	X	X		X	X
Madagascar	X	X	X	X	S	X	X
Malawi	X	X	X	X		X	X
Mauritius	X	X	X	X	S	X	X
Mozambique	X		X	X	X	X	X
Namibia	X	X	X	X	X	X	X
Seychelles	X	X	X	X	S	X	X
South Africa	X	S	X	X	X	X	X
Swaziland	X	X	X	X	X	X	X
Tanzania	X	X	X	X	X	X	
Uganda	X	X	X	X	X	X	X
Zambia	X	X	X	X	S	X	X
Zimbabwe	X	X	X	X	X	X	

[81]International Covenant on Civil and Political Rights, New York, 16 December 1966
[82]International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1996
[83]Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979
[84]Convention on the Rights of the Child, New York, 20 November 1989
[85]Convention on the Rights of Persons with Disabilities, 13 December 2006
[86]Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966
[87]Covenant against Torture and Other Cruel, Inhuman and Degrading Treatment, New York, 10 December 1984

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List of International human rights treaties and their ratification

Countries	ACHPR[88]	Maputo Protocol[89]	CRWC[90]
Angola	X	X	X
Botswana	X		X
Comoros	X	X	X
DRC	X	X	
Kenya	X	X	X
Lesotho	X	X	X
Madagascar	X	S	X
Malawi	X	X	X
Mauritius	X	S	X
Mozambique	X	X	X
Namibia	X	X	X
Seychelles	X	X	X
South Africa	X	X	X
Swaziland	X	X	
Tanzania	X	X	X
Uganda	X	X	X
Zambia	X	X	
Zimbabwe	X	X	X

S = signed

[88] *African Charter on Human and Peoples' Rights, 27 June 1981*
[89] *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 7 November 2005*
[90] *African Charter on the Rights and Welfare of the Child, 1 July 1990*

Annexure 3: Treaty Monitoring Bodies

Committee	Treaty	Membership	Reporting requirement
Human Rights Committee	ICCPR	18 independent experts elected by states who have ratified the ICCPR (member states), for a period of 4 years	A country must submit an initial report within a year of the ICCPR coming into force in that country, setting out the initial measures take to give effect to the provisions of the treaty. After that, they should submit progress reports as required by the committee, usually every four years.
Website: http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx			
Committee on Economic, Social and Cultural Rights	ICESCR	18 independent experts elected by state parties for four years	States must report within 2 years of ratification and after that, every 5 years
Website: http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx			
Committee on the Elimination of Racial Discrimination	CERD	18 independent express elected by state parties for four years	States must report with one year of ratifying the treaty, and after that, every two years.
Website: http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx			
Committee on the Elimination of Discrimination Against Women	CEDAW	23 experts elected for a period of two years	States must submit an initial report within one year of ratifying CEDAW and after that, every four years
Website: http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx			
Committee on the rights of the child	CRC	18 independent experts elected for a period of four years	The first report must be submitted within two years of ratifying the CRC, and after that every five years
Website: http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx			
Committee Against Torture	CAT	10 independent experts elected every four years	States must report within 1 year of ratifying CAT, and then every four years
Website: http://www.ohchr.org/EN/HRBodies/CAT/Pages/Membership.aspx			
Committee on the Rights of Persons with Disabilities	CPRD	18 independent experts elected for a period of four years	States must report within two years of ratifying the CPRD and after that, every four years.
Website: http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx			

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