

LGBTI AND ACCESS TO INFORMATION IN AFRICA



How access to information can empower LGBTI people in Africa to promote and protect their rights.



ACKNOWLEDGEMENTS

The material in this booklet was developed by the Freedom of Information Programme at the South African History Archive (SAHA).

SAHA gives permission for this booklet to be used and reproduced for educational and non-commercial purposes, with acknowledgement, by all those seeking to better understand and utilise the right to information.

CREDITS:

Author – Tammy O'Connor

Design and layout – Rizelle Standard Hartmeier

Sector Liaison – Gay and Lesbian Memory in Action (GALA)

Production support – Senkhu Maimane and Nelson Dlamini

Front cover – GALA Images©

Photo (page 3) – GALA Images©

Photo (page 5) – Zamanguni Mzimela ©

Photo (page 7) – GALA Images©

Front back cover – GALA Images©

This guide was made possible through the generous support of the Open Society Foundation for South Africa and Atlantic Philanthropies.

The
ATLANTIC
Philanthropies



**OPEN SOCIETY FOUNDATION
FOR SOUTH AFRICA**



The Freedom of Information Project: Capacity Building in the Community-based Sector commenced in April 2008. For further information please contact:

The South African History Archive's Freedom of Information Programme,
foip@saha.org.za, www.saha.org.za, Tel: 011 717 1941, Fax: 011 717 1964

LGBTI RIGHTS IN AFRICA

In many African countries same-sex relationships are illegal. Lesbian, gay and bisexual people are treated as criminals. Even in countries where the laws do not prohibit same-sex relationships, many lesbian, gay and bisexual people are victimised. The concept of same-sex conduct as 'un-African' is dominant and repressive.

Transgender and intersex people are also victimised and gender identity or being intersex is often misunderstood as being related to sexual orientation.

The vast majority of lesbian, gay, bisexual, transgender and intersex (LGBTI) people are shut off from accessing their rights because of social isolation and cultural exclusion. This is compounded by the fact that African society is dominated by heterosexist and homo-prejudice sources of information and representation.



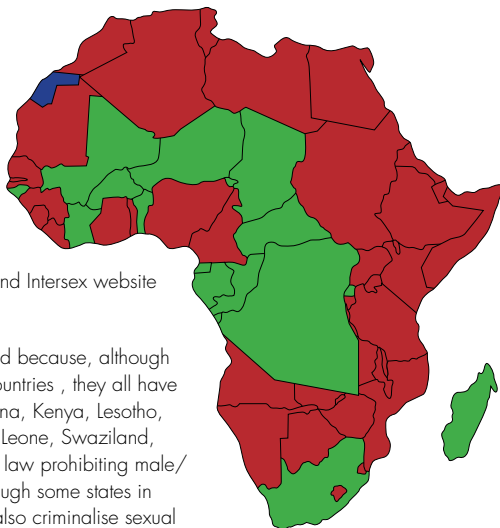
WHERE ARE SAME-SEX RELATIONSHIPS ILLEGAL IN AFRICA?

- same-sex relationships are illegal
- same-sex relationships are legal
- no data

1. Sources: Ottosson, D., The International Lesbian, Gay, Bisexual, Trans and Intersex Association, "Hate-sponsored homophobia – A world survey of laws prohibiting same-sex activity between consenting adults", May 2010

The International Lesbian, Gay, Bisexual, Trans and Intersex website – www.ilga.org

2. The following countries have been included in red because, although female/female sexual activity is legal in those countries, they all have laws prohibiting male/male sexual activity: Ghana, Kenya, Lesotho, Malawi, Mauritius, Namibia, Seychelles, Sierra Leone, Swaziland, Zambia and Zimbabwe. Nigeria has a national law prohibiting male/male but not female/female sexual activity, although some states in Nigeria have adopted Islamic Sharia laws that also criminalise sexual activity between women. In Egypt, male/male sexual activity is prohibited but the position in respect of female/female activity is unclear.



WHAT PROTECTIONS FOR LGBTI PEOPLE EXIST IN AFRICA?

While the number of states in which same-sex relationships are illegal in Africa is alarming, the work of LGBTI activists on the continent is increasingly leading to heightened global awareness of the issues faced by LGBTI people, fuelling demands for change. Slowly repressive laws and practices are breaking down and, in some countries, favourable legal protections are being implemented. In this respect, South Africa leads the way as one of only 7 countries in the world that allows same-sex marriage, one of only 10 countries in the world that allows same-sex adoption, and one of only 16 countries in the world that requires gender recognition after gender reassignment surgery. South Africa, Mozambique and Mauritius also have laws prohibiting discrimination against employees on the basis of their sexual orientation.

Source: Ottosson, D., The International Lesbian, Gay, Bisexual, Trans and Intersex Association, "Hate-sponsored homophobia – A world survey of laws prohibiting same-sex activity between consenting adults", May 2010

WHAT DOES THE RIGHT TO INFORMATION MEAN?

The right to information refers to the right of ordinary people to have access to information held by the government or private entities that may affect them or their communities.

Corrupt governments and private entities thrive on secrecy as it allows human rights abuses to remain hidden.

Good governments and private entities rely on openness to keep people informed and to ensure that people participate in making decisions that will affect them.

Information is not a privilege, it is a right!



WHY IS HAVING ACCESS TO INFORMATION IMPORTANT?

Having access to information allows you to participate in the government of your country, which is your democratic right. This, in turn, can help to ensure that LGBTI people are recognised and protected by your government. You can participate in your democracy by using your right to information to ask government questions about:

- the decisions they make that affect LGBTI people
- their plans to eliminate discrimination against LGBTI people and promote equality
- how they will protect LGBTI people from violence

Having this information will allow you to push for the recognition of your rights as LGBTI people. The more we know as citizens, the more we can do to better our lives by helping to make change happen.

You can use your right to access to information to inform evidence-based advocacy campaigns to bring about change for LGBTI people in your country. Campaigns to end the criminalisation of same-sex conduct, campaigns to introduce laws to protect LGBTI people from discrimination, campaigns for equal rights for LGBTI people and campaigns to improve the everyday experience of LGBTI persons will all be improved by having access to information.

We must demand our right to live in a society where government is accountable to all the people it serves!

WHAT LEGAL RIGHTS TO INFORMATION EXIST IN AFRICA?

The African Union recognised the right to information in 1981. That year it adopted the African Charter on Human and Peoples' Rights (the Charter), which came into force in 1986. All African states that have signed the Charter committed to adopt legislation or take other measures within their country to give effect to the rights in the Charter. Those rights include the right to information.

Article 9(1) of the Charter states that *"every individual shall have the right to receive information"*.

In order to make sure the rights in the Charter are put into practice, the Charter established the African Commission on Human and Peoples' Rights (the Commission).

In 2002 the Commission expanded on the right to information in the Charter in its Declaration of Principles on Freedom of Expression in Africa 2002 (the Declaration).

Article 4 of the Declaration states that:

1. *“Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.*
2. *The right to information shall be guaranteed by law in accordance with the following principles*
 - *Everyone has the right to access information held by public bodies*
 - *Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right.”*

Ten African countries have passed laws that give effect to the right to information: Angola, Ethiopia, Guinea, Liberia, Niger, Nigeria, South Africa, Tunisia, Uganda and Zimbabwe.

Some African countries have recognised the right to information in their constitutions: Cape Verde, Ghana, Kenya, Madagascar, Malawi, Morocco, Mozambique, South Africa, Tanzania and Uganda.

More information on these laws and organisations that can assist you in obtaining access to information is contained in page 11.

The right to information is gaining momentum in Africa. Many of the laws and constitutional provisions recognising the right have been passed in the last few years. A number of other African countries are considering access to information legislation within their parliaments, or are close to doing so.

It is an important time for the right to information on the continent!



HOW CAN ACCESS TO INFORMATION ASSIST LGBTI PEOPLE

My government makes a relationship with a same-sex partner illegal.

If your government has made same-sex relationships illegal then you may want to advocate for changes to the law. Having access to information can strengthen your campaign by making it evidence-based.

For example, you could ask your government for:

- research or policy documents that led to the making of the law;
- documents that relate to the decision-making process of government in introducing the law, such as minutes of meetings, memorandums or directives; and
- documents about the implementation of the law, such as policy documents of the police or national prosecutors about how they enforce the law and statistics on the number of people arrested, prosecuted and convicted under the law.

Having this information would empower you to expose prejudices within government that led to the law and expose how the law is affecting the liberty of LGBTI people in your country. It may also expose any myths or false beliefs on which the law is based and allow you to focus your advocacy work on breaking down those myths.

The law says the hospital cannot refuse to treat me because I am intersex but the nurse refused to help me.

If a nurse refused to treat you, you would want to know whether his or her behaviour was supported by the hospital, or whether the nurse was acting against the instructions of their employer. You would also want to know how you could complain about the way you had been treated.

To assist you in working this out, you could ask the hospital for:

- policies or practices of the hospital about the treatment of intersex people or that are aimed at preventing discrimination;
- records of your interaction with the nurse; and
- how you could make a complaint.

Having this information would empower you to deal with the discrimination you suffered. It would tell you how employees of the hospital are supposed to behave, so you would know whether the nurse's behaviour was supported by the hospital or not. It would provide you with evidence that the nurse discriminated against you and allow you to make a complaint to the hospital about the way you were treated. You could also make a complaint to court in line with any law protecting you from discrimination.

The assault of transsexuals is a big problem in my community and I want to know what the government is doing to stop it.

Verbal and physical assaults against transsexuals because of their gender identity is a problem in many African countries.

If there has been a lot of cases of assault against transsexuals in your community and you want to know what the government is doing to stop it, you could:

- request details of the number of assaults against transsexuals reported to the police. This would allow you to measure the extent of the problem within your community;
- request details of prosecution rates in instances of assault against transsexuals and other assault cases. This would allow you to assess whether the government is giving priority to cases where the victim is not a transsexual or whether they are working hard to stop assaults against transsexuals by putting the perpetrators in jail; and
- ask government what policies, plans or strategies it has to address the problem of assaults against transsexuals and how much money they are spending on it. If they have policies, plans or strategies you can assess whether those are appropriate and monitor their implementation. If they have no policies, plans or strategies then you know they are doing nothing to address the problem and you need to lobby for action.

CASE STUDY

Christien is a South African transsexual working for the government. When Christien was initially employed by the government she dressed and presented as a male. However, Christien later came out to her employer as a transwoman. Christien began dressing and presenting as a female at work and taking hormones.

After Christien came out, her manager removed her from her ordinary duties and made her undergo a psychological assessment. Her manager said she had to do this so they could check that the hormones she was taking did not affect her ability to do her job.



Even though the psychological assessment confirmed that Christien was able to do her ordinary work, her manager did not let her return to it. Her manager was discriminating against her for being a transsexual, which is against the law in South Africa.

SAHA met Christien and decided to request information from the government under South Africa's access to information law. SAHA requested information about:

- what policies and practices the government body that employed Christien had in place to protect LGBTI employees from discrimination;
- how employees could complain about discrimination;
- the counseling services available to support employees that had been discriminated against; and
- how many complaints LGBTI employees had made about discrimination in the last five years.

After receiving the request for information the head of the government body sent an email to all staff telling them they must not discriminate against other employees. He then took steps to make sure Christien went back to her ordinary work. Christien's manager is now facing disciplinary action for discriminating against Christien and may be dismissed.

Though as at 29 February 2012 the public body has not responded to SAHA's request for information, the action in submitting the request reminded the body that its actions are subject to public scrutiny and that it would be held accountable for the way it treats its employees.

Christien believes the right to information is a powerful tool for LGBTI people: "Being aware of my right to information has helped me a lot. It has given me more avenues to access my rights and to hold my employer accountable for the way it treats me."

The right to information can help you too!

ACCESS TO INFORMATION LAWS IN AFRICA

ANGOLA – Law on Access to Administrative Documents, 2002

ETHIOPIA – Law on Mass Media and Freedom, 2008

GUINEA – Organic Law on the Right of Access to Public Information, 2010

LIBERIA – Freedom of Information Act, 2010

NIGER – Law on Access to Public Information and Administrative Documents, 2011

NIGERIA – Freedom of Information Law, 2011

SOUTH AFRICA – Promotion of Access to Information Act, 2000

TUNISIA – Access to Administrative Documents in Public Organisations, 2011

UGANDA – Access to Information Act, 2005

ZIMBABWE – Access to Information and Protection of Privacy Act, 2002

Copies of these laws are available on the Right 2 Info website – <http://right2info.org/laws>

ORGANISATIONS WORKING IN ACCESS TO INFORMATION IN AFRICA

INTERNATIONAL

Article 19 – www.article19.org

Commonwealth Human Rights Initiative – www.humanrightsinitiative.org

Open Society Justice Initiative – www.soros.org/initiatives/justice

REGIONAL

Africa Freedom of Information Centre – www.africafoicentre.org

Media Institute of Southern Africa – www.misa.org

COUNTRY SPECIFIC

Centre for Media Studies and Peace Building (Liberia) – www.cemesp-liberia.org

Citizens Governance Initiatives (Cameroon) – www.citizens-governance.org

Comité des Droits de l'Homme et Développement (Democratic Republic of Congo) – www.codhod.blogspot.com

Foundation for Human Rights Initiative (Uganda) – www.fhri.or.ug

Human Rights Advocacy Centre (Ghana) – www.hracghana.org

Human Rights Network (Uganda) – www.hurinet.or.ug

International Commission of Jurists (Kenya) – www.icj-kenya.org

Media Council of Tanzania – www.mct.or.tz/mediacouncil

Media Foundation for West Africa – www.mediafound.org

Media Rights Agenda (Nigeria) – www.mediarightsagenda.net

Open Democracy Advice Centre (South Africa) – www.opendemocracy.org.za

Right to Know (Nigeria) – www.r2knigeria.org

Right 2 Know (South Africa) – www.r2k.org.za

Society for Democratic Initiatives (Sierra Leone) – www.sfdi-sl.org

This guide is designed to assist persons in the LGBTI sector to recognise the important role that access to information can play in the achievement of their advocacy goals and the protection of their human rights.



The material in this booklet was developed by the South African History Archive (SAHA) through its Freedom of Information Project: Capacity building in the Community-based Sector.

The South African History Archive's Freedom of Information Programme,
foip@saha.org.za, www.saha.org.za, Tel: 011 717 1941, Fax: 011 717 1964