

Ensuring **LGBTI** **Rights** and Protection as Human Rights

**HIV & Gender-Based
Violence Prevention
for LGBTI People**

*Advocating a
Rights-Based
Prevention
Approach!*



SAHAIDS

Southern Africa
HIV and AIDS Information
Dissemination Service



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1. Introduction

“Neither the existence of national laws, nor the prevalence of custom can ever justify the abuse, attacks, torture and indeed killings that gay, lesbian, bisexual, and transgender persons are subjected to because of who they are, or are perceived to be. Because of the stigma attached to issues surrounding sexual orientation and gender identity, violence against LGBT persons is frequently unreported, undocumented and goes ultimately unpunished. Rarely does it provoke public debate and outrage. This shameful silence is the ultimate rejection of the fundamental principle of universality of rights”

Louise Arbour, Former UN High Commissioner for Human Rights

This booklet aims to assist LGBTI rights defenders in Africa to speak out about human rights violations, when it is safe to do so.

The following content is covered:

- definitions of sexuality, sexual health, sexual rights and LGBTI rights;
- the human rights impacting the lives of LGBTI people in Africa;
- the violation of these rights;

- protection of human rights offered at international and regional level;
- how to protect yourself as a LGBTI and human rights defender;
- hate crimes and their psychological effects;
- where to go when psychological distress is experienced due to a hate crime and
- expanding safety by increasing tolerance and acceptance.

What is Sexuality?

‘Human sexuality’ is so much more than what is in ones pants and what you can do with it! Sexuality consist of biological aspects but also a much deeper understanding of gender constructions and their impact on how we view the world through a sexual lens. Add to that sexual identity formation, sexual practices and the lingering impact of the voices of the past - the voices that added fear and shame to the mix and which negatively impact on our ability to understand and be compassionate regarding individual sexual choices and practices.

According to the World Health Organization (WHO) the working definition of sexuality is:

“Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical and religious and spiritual factors.”

What is sexual health?

Sexual health includes all aspects of psychological and physical health that impacts the sexual wellbeing of an individual. Various factors influence an individual's optimal achievement of sexual health.

The WHO defines **sexual health** as:

"...a state of physical, emotional, mental and social well being related to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled."

What are sexual rights?

Sexual rights embrace human rights that are already recognised in national laws, international human rights documents and other consensus documents. These include the right of all persons, free of coercion, discrimination and violence, to:

- Seek, receive and impart information in relation to sexuality;
- Receive sexuality education;
- Have their bodily integrity respected;
- Choose their own partner;
- Decide to be sexually active or not;
- Have consensual sexual relations (not be forced to have sex through the use of violence or non-physical force);
- Consent to marriage;
- The highest attainable standard of health in relation to sexuality, including access to sexual and reproductive health care services;
- Be protected from the risk of disease such as HIV and other STIs;

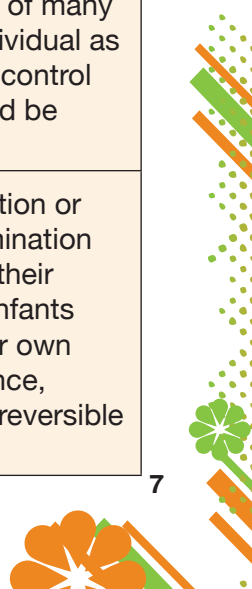
- Decide whether, and when, to have children;
- Pursue a satisfying, safe and pleasurable sexual life.

Rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people

So what are the rights at stake? The LGBTI community does not claim any ‘special’ or ‘additional rights’ but the adherence to the same rights as those of other human beings; rights that are basic, universal and preserved in the Universal Declaration of Human Rights (1948).

Lesbian, gay, bi-sexual, transgender and intersex people are denied – either by law or practices - basic civil, political, economic, health, social and cultural rights.

LGBTI Rights	In which way are these rights violated
<p>The right to equality in rights and before the law</p>	<p>In many countries the LGBTI community is denied the right to equality before the law through special criminal provisions or practices on the basis of sexual orientation. Often laws legalising same sex relations, where they exist, maintain a higher age of consent in comparison with opposite sex relations. The failure of many states to legally recognise the individual as the “right holder” with rights over control of their own lives and bodies could be interpreted as violating this right.</p>
<p>The right to non-discrimination</p>	<p>Denied by omitting sexual orientation or sex/gender identity in anti-discrimination laws, constitutional provisions or their enforcement. Denied to intersex infants by medical professionals and their own families who out of fear or ignorance, promote or consent to invasive, irreversible “corrective” medical procedures.</p>



<p>The right to freedom from violence and harassment</p>	<p>Denied by omitting sexual orientation and sex/gender identity and gender expression in anti-discrimination laws, constitutional provisions or their enforcement.</p>
<p>Right to free development of one's personality</p>	<p>Violated by the failure to recognise human diversity in all its forms and to develop legal protections for that diversity.</p>
<p>The right to life</p>	<p>Violated in states where the death penalty is applicable for sodomy. Denied by states which do nothing to curb a fear of difference that results in violence and death. The killing of intersex children is just one example of this.</p>
<p>The right to be free from torture or cruel, inhuman or degrading treatment</p>	<p>Infringed upon by police practices in investigations or in the case of LGBTI persons in detention. Forced stripping of transgender people in detention is unfortunately all too common a form of torture.</p>
<p>The right to protection from arbitrary arrest and illegal detention</p>	<p>Occurs in a number of countries with individuals suspected of having a homo/ bisexual identity. Detentions of dubious legal character are commonly carried out against transgender persons. Even where the law criminalises same-sex activity it can only be enforced if "caught in the act". Arresting someone on the presumption of their sexuality is to all intent and purposes illegal.</p>



The right to freedom of movement	Denied to bi-national couples by not recognising their same-sex relationship and by states' failure to issue identity cards according to "chosen" sex/gender identity.
The right to a fair trial	Often affected by the prejudices of judges and other law enforcement officials.
The right to privacy	Denied by the existence of 'sodomy laws' applicable to LGBTI persons even if the relation is in private between consenting adults. Denied to transgender and intersex people by the continued "over-medicalisation" of their "condition".
The right to freedom of expression and freedom of association	Either denied explicitly by law, or LGBTI community may not enjoy them because of the homo/transphobic climate in which they live.
The right to freedom of practice of religion	Usually restricted in the case of LGBTI persons, especially in the case of the clergy advocating against them.
The right to work	The most affected among the economic rights of LGBTI community, many LGBTI persons are fired because of their sexual orientation and sex/gender identity or discriminated against in employment policies and practices.

<p>The right to social security, assistance and benefits</p>	<p>Where social welfare systems exist, they are very often geared toward preserving the family unit without giving adequate recognition to the LGBTI community.</p>
<p>The right to physical and mental health</p>	<p>Found to be in conflict with discriminatory policies and practices is some physicians' homo/transphobia. The lack of adequate training for health care personnel regarding sexual orientation, transgender or intersex issues can negatively impact on this right. Denied to intersex persons whose physiology/ bodily make-up is altered without their consent at birth. A "simple" issue like the lack of sex/gender neutral public toilet facilities can often deny people the right to physical and mental health.</p>
<p>The right to form a family</p>	<p>This is denied by governments by not recognising same-sex families and by denying the rights otherwise granted by the state to heterosexual families who have not sought legal recognition, but still enjoy several rights. Where transgender men and women are allowed to obtain citizenship in their identified gender, families can often be recognised by the law. Yet LGBTI couples and individuals are often not allowed to adopt a child, despite that child being of their same or opposite sex partner. Surgeries imposed at birth in order for the child to conform to the sex binary can leave people sterile, violating their right to form a family.</p>



<p>The right of protection against separation from parents</p>	<p>Children can also be denied this right based on a parent’s sexual orientation and/or sex/gender identity or gender expression. In a sense this right can be violated when intersex children are rejected by their parents because of ignorance and fear.</p>
<p>The right to education</p>	<p>LGBTI students may not enjoy this right because of prejudices and violence created by peers or teachers in schools. The high rate of school drop-out amongst LGBTI youth is a direct consequence of bullying and discrimination. “Sexed” or “gendered” toilets in educational establishments again can contribute to denying LGBTI youth their rights to education.</p>
<p>The right to defend these rights</p>	<p>Violated by states’ failure to protect LGBTI defenders, repeal laws that are used to discriminate against LGBTI organisations and which prevent organisational activities from being carried out.</p>

Source: Protection Manual For LGBTI Defenders published by Protection International, 2010



The Universal Declaration of Human Rights, as one of the international human rights laws, guarantees everyone the right to freedom of sex, sexual orientation and freedom from sex/ gender identity discrimination:

“All human beings are born free and equal in dignity and rights... Everyone is entitled to ... rights ... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status... Everyone has the right to life, liberty and security of person... No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment... All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination... No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks... Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family... Everyone has the right to freedom of thought, conscience and religion... to freedom of opinion and expression; this right includes freedom to hold opinions without interference... Everyone has the right to freedom of peaceful assembly and association... Everyone ... is entitled to the realisation ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality... Everyone, without any discrimination, has the right to equal pay for equal work..."

Source - Universal Declaration of Human Rights, Articles 1, 2, 3, 5, 7, 12, 16, 18, 19, 20, 22, and 23

On Friday, 17 June 2011, the United Nations Human Rights Council (UNHRC) passed a resolution on human rights violations based on sexual orientation and gender identity. This is a groundbreaking achievement for upholding the principles of the Universal Declaration of Human Rights. What is even more revolutionary is the fact that South Africa was the presenter, with Brazil and 39 other co-sponsors, of the resolution. In terms of the rest of Africa, unfortunately the following countries voted *against* the resolution: Angola, Cameroon, Djibouti, Gabon, Ghana, Senegal and Uganda. There were two abstentions: Burkina Faso and Zambia, thus advancing the resistance against changing their laws which criminalise homosexuality.



On an African regional level, protection is provided through the African Charter on Human and Peoples' rights:

This treaty was adopted by the Organisation of African Unity (now African Union) in 1981 and is the most widely accepted regional human rights instrument, having been ratified by more than fifty countries. It condemns discrimination and provides for certain rights, but so far, its monitoring and enforcing body - the African Commission on Human and Peoples' Rights - has not yet officially dealt with sexual orientation or sex/gender identity and gender expression.

Summary of LGBTI Laws and Rights in Southern African Countries

Country	Law on male to male relationship	Punishment by Law	Law on female to female relationship	Law on same sex marriage
Angola	Not Legal	Fines or restrictions or penal labour	Not Legal	No Law
Botswana	Not Legal	Imprisonment of less than 10 years	Not Legal	No Law
Lesotho	Not Legal		Legal	No Law
Malawi	Not Legal	Imprisonment of 10 years or more	Legal	No Law

Country	Law on male to male relationship	Punishment by Law	Law on female to female relationship	Law on same sex marriage
Mozambique	Not Legal	Fines or restrictions or penal labour	Not Legal	No Law
Namibia	Not Legal		Legal	No Law
South Africa	Legal and Protected by SA Constitution	No	Legal and Protected by SA Constitution	Civil Union Act
Swaziland	Not Legal	Imprisonment of less than 10 years	Legal	No Law
Uganda	Not Legal	Imprisonment of 10 years or more	Not Legal	No Law
Zambia	Not Legal	Imprisonment of 10 years or more	Legal	No Law
Zimbabwe	Not Legal	Imprisonment of less than 10 years	Legal	No Law

<http://ilga.org/ilga/en/countries/>

2. LGBTI People and Hate Crimes

What is a hate crime?

Any action against a person based on their race, ethnicity, sexual orientation, gender, religion or political convictions that intend to harm or intimidate that person. It may vary from verbal abuse to murder.

What is hate speech?

Speech intended to degrade, intimidate, or provoke violence or harmful action against a person or group of people based on their race, gender, age, ethnicity, sexual orientation, gender identity, etc and any other distinction that might be considered by some as libel.

Examples of LGBTI hate crimes

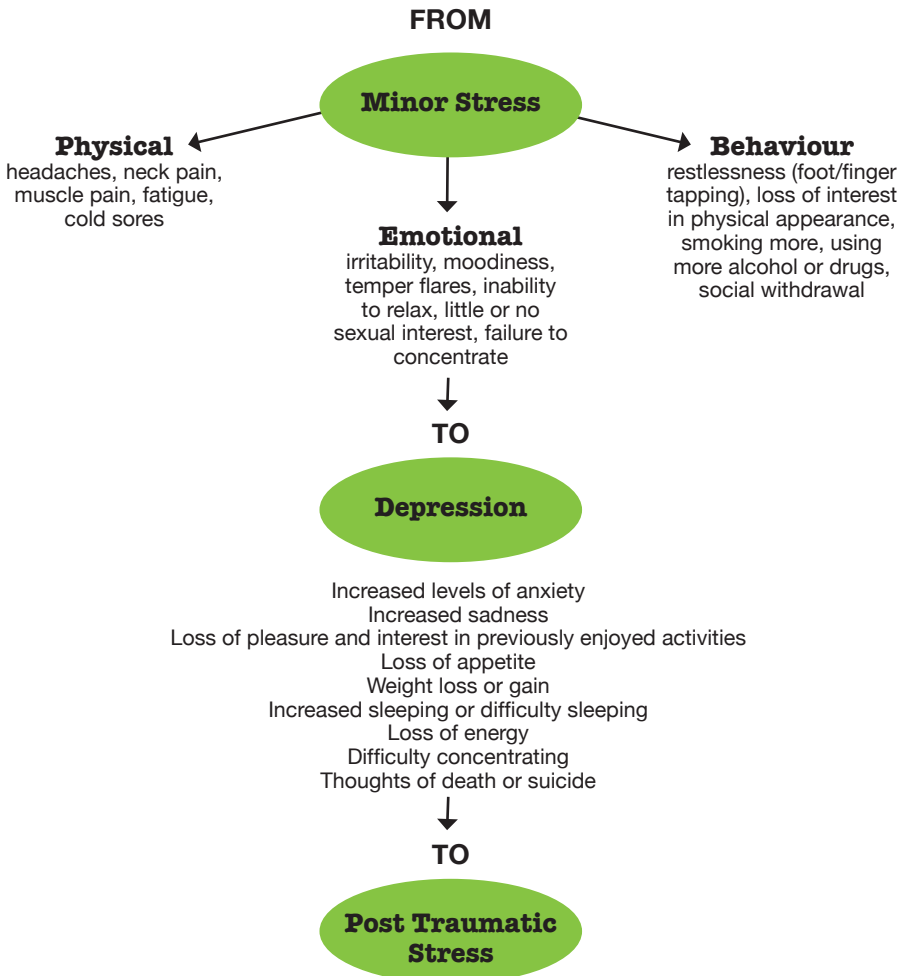
- Rape and murder of black lesbian women, especially in South African townships
- Rape and murder of trans women
- Transgender women being beaten up by their partners after being “found out” as trans
- Effeminate young schoolboy being bullied physically and emotionally by classmates
- Gay man beaten up in a bar by a group of men to whom he is known in the community

The psychological effects of hate crimes based on sexual orientation

Like many Africans, LGBTI (lesbian, gay, bisexual and transgender) people are targets of general violence and crime. However, because they are stigmatised for their perceived sexual and/or gender ‘deviance’, LGBT people in South Africa are also frequently discriminated against, through criminal acts, because of their sexual orientation and/or gender identity (Nel & Judge, *Acta Criminologica* 21(3) 2008).

Research suggests that lesbian, gay, bisexual and transgender survivors of hate crimes showed significantly more signs of psychological distress than did LGBTI survivors of comparable non-bias-motivated crimes. These feelings can last up to five years for LGBTI victims of hate crimes, especially if the person does not receive psychological help.

Psychological distress can vary from individual to individual:



All of the above, plus

- nightmares and flashbacks
- feeling distressed
- increased heart rate and sweating
- avoiding thoughts, feelings or conversations about the event
- avoiding places and people who remind one of the event
- difficulty remembering important parts of the event
- loss of interest in previously important activities
- feeling distant from others and experiencing difficulties in having positive feelings - such as love or happiness
- feeling “on guard” most of the time
- feeling jumpy or easily startled

Factors that may contribute to more severe psychological impact of LGB people specifically,

- less availability of family support
- disruption of the LGB identity and coming out processes
- intrusion into romantic relationships
- damaged expectations of how one will be viewed and treated as a LGB person in the world
- a generalised sense of anger about the victimisation, and
- secondary victimisation

Self-assessment checklist

If you have experienced any violence, or had violence directed towards you as a result of your sexual orientation or gender identity, let's check how you are doing at the moment:

Do you currently experience the following:			
		Yes	No
1	Increased levels of anxiety		
2	Difficulty sleeping and/or nightmares		
3	Loss / increase of appetite		
4	Feeling tired most of the time		
5	Difficulty concentrating		
6	Recurrent thoughts of death or suicide		
7	Frequent upsetting thoughts about the event		
8	Flashbacks of the event		
9	Feeling distant from others		
10	More irritable with outbursts of anger		
11	Making an effort in avoiding thoughts, feelings, places or people that remind you of the event		
12	Difficulty having positive feelings e.g. love or happiness		
13	Being jumpy or easily startled		
*****If you identify with 5 or more of the above, speak to a professional*****			

Impact on family, loved ones and community

Although those close to the victim share some of the long-term effects, there are some impacts that are typical to those closest:

- Feelings of **guilt** as a result of not being able to protect their LGBTI loved ones.
- Some family members may **feel isolated** or **helpless**.
- Their **effectiveness** at work, home or school may be affected.
- If the perpetrator is not arrested and convicted, they may **lose faith** in the justice system.
- Light sentencing may cause further **disillusionment**.
- Depending on the crime, there may be **expenses**, e.g. repairs, medical costs or even a funeral which need to be covered.
- Trials and court appearances can **prolong the grieving process**. Due to media coverage of hate crimes, the loved ones may find themselves having to deal with intensely personal issues very publicly. (Letsike, M. 2009)

Where to go for support when you or a loved one experiences any of the mentioned symptoms

If the symptoms experienced are minor, talk to a friend or loved one. If the symptoms persist and tend to be more severe, talk to a professional for psychological support and referral.

You can contact one of the institutions below:

Place	Name	Services	Contact
Pretoria, South Africa	OUT Wellbeing	LGBT Psychosocial Support, Health Services, Clinic, Research, Advocacy, Peer Education & Sensitisation Training	+27 12 430 3272 Helpline 0860 688 688 (OUT OUT) info@out.org.za www.out.org.za 1081 Pretorius Str, Hatfield, Pretoria

Soweto, Johannesburg South Africa	Simon Nkoli Centre for Men's Health	Men's (MSM) Health Services & Peer Education	+27 11 989 9865 info@health4men.co.za www.health4men.co.za First Floor, New Nurses Home, Chris Hani Baragwanath Hospital, Soweto, Johannesburg
Durban, Kwazulu-Natal, South Africa	Durban Lesbian & Gay Community & Health Centre	LGBT Psychosocial Support and Health Services, Advocacy & Sensitisation Training	+27 31 301 1245 info@gaycentre.org.za www.gaycentre.org.za 320 West St Durban
Pietermaritzburg, Kwazulu-Natal, South Africa	Gay & Lesbian Network	LGBT Psychosocial Support, Health Services, Research, Advocacy & Sensitisation Training	+27 33 342 6165 info@gaylesbiankzn.org anthonyw@telkomsa.net 185 Burger St Pietermaritzburg
Cape Town, South Africa	Triangle	LGBT Psychosocial Support, Health Services, Clinic, Research, Advocacy & Sensitisation Training	+27 21 448 3812 Helpline: +27 21 712 6699 info@triangle.org.za www.triangle.org.za Unit 29, Waverley Business Park, Dane Street, Mowbray Cape Town
Cape Town, South Africa	Gender Dynamix	Transgender Advocacy, Support & Sensitisation Training	+27 21 633 5287 info@genderdynamix.org.za www.genderdynamix.org.za Saartjie Baartman Centre Klipfontein Road Athlone, Cape Town



Cape Town, South Africa	Intersex SA	Intersex Advocacy, Support & Sensitisation Training	Tel: +27 (0)82 788 4205 begin_of_the_skype_ highlighting +27 (0)82 788 4205 www.intersex.org.za PO Box 12992 Mowbray 7705 Cape Town, South Africa
Cape Town, South Africa	Ivan Toms Centre for Men's Health	Men's (MSM) Health Services, Peer Education & Sensitisation Training	+27 21 447 2844 +27 21 421 6127 info@health4men.co.za www.health4men.co.za Top Gate, Woodstock Hospital, Victoria Walk Road, Woodstock, Cape Town
Harare, Zimbabwe	GALZ (Gays & Lesbians of Zimbabwe)	LGBT Psychosocial Support, Health Services, Research, Peer Education, Advocacy & Sensitisation Training	+263 (4) 741 736 info@galz.co.zw 35 Colenbrander Rd Milton Park, Harare
Lilongwe, Malawi	CEDEP (Centre for the Development of People)	LGBT & Sex Worker Support, Resource Centre, Men's Sexual Health, VCT Clinic, Research, Peer Education & Advocacy & Lobbying	www.cedepmalawi.org

Mozambique	Lambda	LGBT Support, Health Services, Research, Peer Education, Advocacy	+258 41 62 66 www.lambda.org.mz
Gaborone, Botswana	LeGaBiBo (Lesbians, Gays & Bisexuals of Botswana)	LGBTI Support, Research, Advocacy & Lobbying	+267 393 2516 bonela@botsnet.bw www.legabibo.org.bw Botswana Network on Ethics, Law and HIV/AIDS (BONELA) end_of_the_skype_highlighting Plot 50662, Medical Mews, Fairground Gaborone, Botswana
Windhoek, Namibia	Outright Namibia	LGBTI Advocacy, Lobbying, Evidence Based Interventions & Movement Building	+264 61 245556 +264 81 252 8259 / +264 81 142 1514 info@outrightnamibia.org outrightnamibia@gmail.com 49 Pasteur Street Windhoek West Windhoek - Namibia This e-mail address is being protected from spambots. You need JavaScript enabled to view it
Outjo, Kunene, Namibia	Namibia Stand Up 4 Gays and Lesbians Network	Gay and Lesbian Friendly Services	+26481311408 ioxurub@yahoo.com P.O Box 37, 0000 Outjo, Namibia

Maseru, Lesotho	MATRIX NGO	LGBTI, MSM & WSW Support Group	+266 22324120 Matrix Support Group Christie House P.O. Box 1471 Maseru 100 Lesotho
Tanzania	CCPS (Community Peer Support Services LGBTI in Tanzania)	LGBTI Rights Advocacy & Lobbying	cpss91@yahoo.com
Zambia	FOR Friends of Rainka	Advocacy, Information Dissemination, Legal Reform, Research and Direct Service Provision	(+260) 09 77 989 240 lundumazoka@gmail.com



3. Expanding Safety By Increasing Tolerance and Acceptance

LGBTI work may affect the objectives or strategic interests of someone who does not care much about human rights, leading to a hostile working environment for them. In order to gain acceptance, or at least consent, for LGBTI work, it is important to limit the confrontation to a necessary minimum.

Some suggestions for how to do this:

- Sensitise the wider society and stakeholders to the concept of universality and that respect for LGBTI rights is basically the respect of human rights and fundamental freedoms enshrined in international law. LGBTI people are not asking for extra rights, they just want to enjoy those rights that everyone else benefits from.
- Provide information and training about the nature and legitimacy of LGBTI work. Government officials and other actors may be more inclined to cooperate if they know and understand the work and the reason for undertaking it. It is not enough just for higher officials to be aware of what they do, because LGBTI activists and rights defenders' daily work usually involves many levels of officials in different government bodies. There should be a continuous effort to inform and train officials at all levels. Clarify the objectives of LGBTI work. This will reduce misunderstandings or unnecessary confrontations that may stop you from achieving your aims.

- Limit your work objectives to match the political space of your work. When your work affects an actor’s specific strategic interests, the actor may react more violently and with less consideration for their image. Some types of work make you more vulnerable than others, so you have to make sure your objectives match your situation and protection capacities as much as possible.
- Allow space in your strategies for “saving face”. If you have to confront an actor about human rights abuses seek a way for them to gain credit for taking action to address the situation.
- Establish alliances widely with as many social sectors as possible. Find a balance between transparency in your work, to show that you have nothing to hide, and the need to avoid giving out information that could compromise your work or security. (Source: *Protection Manual For LGBTI Defenders* published by Protection International, 2010)



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Plot No. 4, Lukasu Road, Rhodes Park, Lusaka, Zambia. Tel: +260-125-7609 Fax: +260-125-7652 E-mail: safaids@safaids.co.zm

Country Office - Mozambique:

Av. Paulo Samuel Kankomba n.2051, R/C Maputo, Mozambique, Telefax +258-213-02623, Email: safaids@teledata.mz

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