

HUMAN RIGHTS BOOKLET

Other
THE OTHER FOUNDATION



HANDS ON YOUR RIGHTS

ABOUT HUMAN RIGHTS

Human rights are based on the principle of respect for the individual Human.

THE LGBTI COMMUNITY



The **LGBT** community faces a disregard of their human rights therefore it is high time you get your Hands on Your Rights to know what you deserve as a Swazi citizen.

IMPORTANCE OF KNOWING YOUR RIGHTS

- You must know your rights to protect your rights.
- In order to overcome the legacy of our past and embrace a new and accepting society.
- Lack of understanding and personal values resulting in intolerance can be met with knowledge and empowerment gained from knowing your rights.

GLOBAL HUMAN RIGHTS BACKGROUND

Globally the theory of human rights is an age-old one but due to the civil rights and human rights movement especially in the United States of America led to the adoption of the Universal Declaration of Human Rights in 1948 by the UN General Assembly.

HUMAN RIGHTS IN THE CONTEXT OF SWAZILAND

equality **The right to equality**

Section 20(1) provides that all persons are equal before the law.

Section 20 (2) The Equality Clause, provides that a person shall also not be discriminated against on the grounds of gender, race, colour, ethnic origin, socio-economic standing, age or religion...

As productive members of society and citizens of Swaziland, LGBTI persons should enjoy the full benefit of this fundamental right to equality.

There is no specific listing of protection from discrimination based on sexual orientation so a person complaining of homophobic or transphobic behaviour would need to rely on these broad constitutional rights.



The right to freedom from violence and harassment

As an LGBTI person, you have the right to safety and security inherent to human dignity. This right is protected under the constitution to be implemented by law enforcement officials (police, judges, attorneys, etc.) as stated in Section 57 (2). They must respect and protect human dignity in the performance of their duties irrespective of one's SOGI.



The right to non-discrimination

In Swaziland, the Sodomy Law enshrined under Roman-Dutch Common Law enacted in 1907 and still currently enforceable denies this right. Punishment/sentencing for the crime of two males having consensual sexual relations is handed out at the discretion of the court.

This right is further denied by the omission of sexual orientation and gender identity in anti-discrimination clauses such as the Equality Clause.



The right to life

Denied by the country, which does nothing to curb a fear of difference that results in torture or cruel, inhuman or degrading treatment. Infringed upon by police practices in investigations or in the case of LGBTI persons in detention. As well as health workers, refusing to provide care. These must be reported.



The right to form a family

The requirements stated by The Marriage Act 1967 in order to commit to a lawful union act as a hindrance for LGBTI to engage/commence in a civil union or marriage with their partner.

The government further denies this right by not recognizing same-sex families and by denying the rights otherwise granted by the country to heterosexual families who have not sought legal recognition, but still enjoy several rights.

LGBTI couples and individuals are 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.



The right to education

LGBTI students also deserve the equal right to education and prejudices and violence created by peers or teachers in schools should be reported and addressed to avoid school dropouts. School dropout amongst LGBTI youth can be a direct consequence of bullying and discrimination.

The right to protection from arbitrary arrest and detention

Detentions of dubious legal character have been carried out against transgender persons. The law does criminalize same-sex activity but even then, it can only be enforced if “caught in the act”. Arresting someone on the presumptions of their sexuality is to all intent and purposes illegal.



The right to privacy

Everyone has the right to lead a private life without being scrutinized. Denied by the existence of the Sodomy Law applicable to LGBTI persons even if the sexual relations were in private between consenting adults. Denied to transgender and intersex people by the continued “over- medicalization” of their “condition”.



The right to work

LGBTI persons have a right to find work according to the required experience irrespective of their SOGIE. LGBTI people have been known to lose their employment because of their sexual orientation and sex/gender identity or discriminated against in employment policies and practices.



The right to physical and mental health

This right is more important as LGBTI face horrible circumstances, which may lead to depression. It is denied to intersex persons whose physiology/ bodily make-up is altered without their consent at birth



The right to freedom of expression and association

Although under the protection of the Constitution Section 24 & 25, these rights are not enjoyed by the LGBTI community because of the homo/transphobic climate.

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UNIVERSAL PERIODIC REVIEW IN RELATION TO LGBTI RIGHTS IN SWAZILAND

The UPR is a unique process whereby UN member states review the human rights records of other member states. Each state declares what actions they have taken to improve the human rights situations in their countries

Regarding sexual orientation, the Swaziland delegation stated that the country does not deny access to services based on an individual's sexual orientation. They indicated that though there would be no effort at this stage to decriminalize same-sex relations Swaziland did not persecute anyone for engaging in consensual same-sex relations.

In complete contradiction to statements made by the delegation, LGBTI community members face regular discrimination based on sexual orientation, which has often resulted in obstacles in accessing public services, including but not limited to health services.

The Honourable Mr Edgar Hillary Minister of Justice and Constitutional Affairs had the following to say to the international community regarding the state of same-sex marriage in Swaziland

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“would also like to talk about the issue of decriminalizing same-sex marriage in Swaziland, it is not even criminal, it is the same common law marriage that is used on anybody else to get married to his or her partner, it is the same marriage for same-sex, even the last weekend there were couples of the same-sex who got married, it is open, it is not criminal, so I wanted maybe to remove that perception that this is criminalized”

One of the recommendations rejected by Swaziland was the decriminalization of same-sex relations which leads to the hypocrisy of stating same-sex marriages are permitted yet male same-sex relations remain criminal under the law.

In Swaziland the general impression ranges from active persecution such as the Sodomy Law under the Common Law of Swaziland, criminalizing same-sex relations between males to disregard in the form of lack of data or any legislation protecting this marginalized population from the daily discrimination they face.

RECOMMENDATIONS SUPPORTED BY SWAZILAND



These are recommendations given to Swaziland by the international community, which the country alludes to have been implemented already, or in the process of implementation.

108.4. Prohibit discrimination based on sexual orientation and gender identity particularly concerning the enjoyment of the right to health (Slovenia)

108.5. Ensure and guarantee non-discriminatory access to health services, education, justice and employment for all persons, irrespective of their actual or perceived sexual orientation or gender identity (Spain)



RECOMMENDATIONS THAT DID NOT ENJOY THE SUPPORT OF SWAZILAND

These are recommendations relating to the LGBTI community that the country rejected from the onset and refused to consider

110.13. Decriminalize same-sex relations.

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INTERNATIONAL CONVENTIONS ENDORSED BY SWAZILAND

Universal Declaration of Human Rights

Its purpose is to set a common standard for all people and all nations on the fundamental human rights to be universally protected. To LGBTI persons it means everyone has the right to freedom of sex, sexual orientation and freedom from sex/ gender identity discrimination:

The African Charter on Human and Peoples Rights (ACHPR) 1981

This charter protects the freedoms and human rights of all African citizens. By extension, this would include the right to non-discrimination for the LGBTI community as well.

The most relevant to the purpose of this booklet are on Economic, Social and Cultural Rights: Principles 12-18 highlight the importance of non-discrimination to LGBTI in the enjoyment of economic, social and cultural rights, including employment, accommodation, education and health.



EVERYONE HAS A RIGHT TO

- 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 realization ... 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..."

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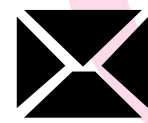
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HARASSMENT

If you are experiencing harassment of any kind, you can report the perpetrators to THE ROCK OF HOPE, which has a team of reactors who document and address stories of human rights violations.

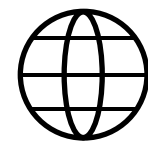
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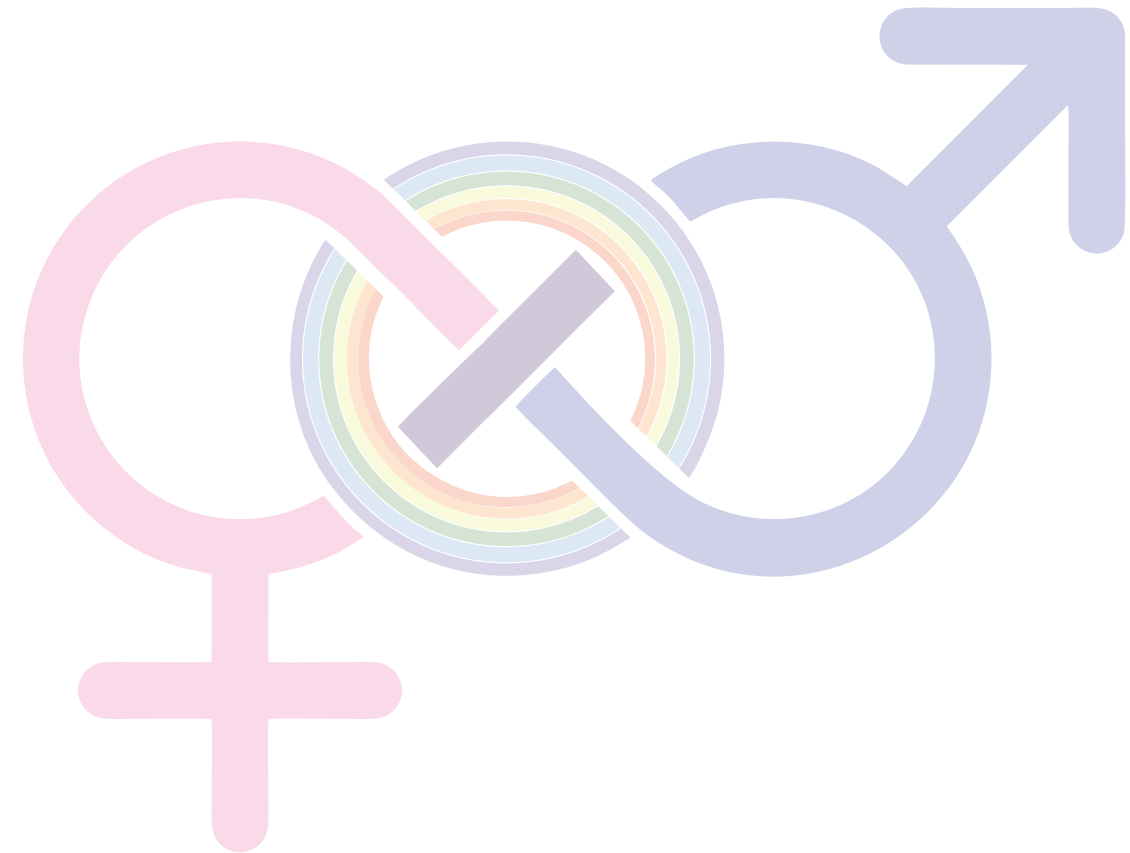
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