

**REDRESS, JUSTICE, AND ACCOUNTABILITY FOR ANTI-LGBTI DISCRIMINATION:
USE, LIMITATIONS, AND ALTERNATIVES TO CRIMINAL LAW**

22-23 March 2022, Johannesburg

Meeting Report



#WeBelongAfrica
Inclusive Governance Initiative



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Background

Amnesty International, ARASA, and UNDP hosted an African regional consultation, to critically reflect on the appropriate use of criminal law, incarceration and punitive approaches to human rights violations related to sexual orientation and gender identity.

Human rights violations, including discrimination, harassment and violence are pervasive for LGBTI people in Africa. The use of the criminal law to punish incidents of violence are largely uncontested, however, there is less clarity regarding when the use of the law is appropriate in response to other harms, including prejudice and intolerance and when such actions/behaviour should be criminalised. States have an obligation to address harmful stereotypes and prejudice and should be implementing multifaceted / holistic responses to address harmful stereotypes, prejudice societal values. Rather than addressing root causes and investing in measures targeted toward transforming social structures and conditions that foster stigma and structural discrimination, states are increasingly resorting to criminalization and retributive justice as a tool to respond to social challenges. These punitive solutions often do not address social inequality problems and both personal and contextual issues that shape and impact people's experiences and daily lives.

This consultation therefore sought to proactively engage with human rights activists and contribute to a possible shared position on the ability and use of criminal law to address social issues, including exploring alternative approaches to achieving redress, justice, and accountability from the state for human rights violations.

Background and Overview of Aims

Scholars have cautioned against using criminal law to solve social problems and challenge structures that subordinate marginalized communities. Increasingly, these conversations are also playing out among human rights actors in different contexts and to varying degrees. Some human rights actors are grappling with whether and when to push *for* criminalization or harsher criminal penalties in their advocacy for accountability, justice, and redress from the state for human rights violations.

Globally, as there has been a move towards respecting and accepting the human rights of LGBTI persons, many of these movements are successfully pushing for more and severer criminal penalties in response to human rights violations such as discrimination, sexual and gender-based violence, hate speech, coercive or degrading treatment and targeted violence against LGBTI people - issues that have long been ignored or made invisible by states.

In South Africa, for example, some LGBTI advocates have pushed for harsher punishments or advocated for strengthening the current anti-hate speech law by enacting the Prevention and Combating of Hate Crimes and Hate Speech Bill [Hate Speech Bill]. According to the Hate Speech Bill, a person whose statements clearly intend to be harmful or incite harm can be sentenced up to three years imprisonment when publishing or sharing. This includes promoting or propagating hatred based on gender or gender identity; HIV status; sex, intersex; or sexual orientation. However, like similar broad legislation enacted in various parts of the world that seek to address and provide more robust legal protections against stigma and discrimination experienced by LGBTI persons, the Bill has been criticized for its vague and

broad definition of hate speech. Angola's 2019 new Penal Code, which criminalizes discrimination based on sexual orientation in employment and the provision of goods and services, is another revealing example where a state use criminal law to address human rights violations such as discrimination.

Though well-intentioned, there might be several unintended consequences of this approach. Several feminists and LGBTI advocates have therefore questioned this punitive and carceral approach in some or all contexts. For example, some scholars and activists note that these laws are often applied disproportionately or selectively against already marginalized groups. The criminal law itself may not meaningfully engage with the structural power and how certain groups are more vulnerable to harmful speech, stigma, and discrimination. In addition, they point out that creating new crimes or enhanced criminal penalties further reinforces a carceral state that already discriminates against LGBTI people, people living with HIV, people living in poverty, people with disabilities, indigenous and racial minorities, among others. Notably, instead, as a measure of last resort, criminal law is used as a tool for accountability even as the same actors in other settings are highly critical of the state's power and the role of the criminal law in enforcing inequitable workings of gender, race, class, and other privileges.

This discussion has regional relevance as many African countries, for example, continue to criminalize people's identities, behaviours, professions, or actions like consensual same-sex sexual activities, sex work and safe abortions. This unjust use of the criminal law has long been documented as a distinct barrier to states' ability to protect people's human rights and dignity. Therefore, human rights actors should be mindful of how advocating *for* criminal penalties in some settings might undermine movements' work on decriminalization by reinforcing the overreach of the criminal law that they are pushing back against and inevitably harm the very communities they are advocating for.

Human rights actors across Africa are pushing for decriminalization of identities, behaviours, professions, or actions and for policies and laws grounded on the protection of human rights. Drawing on the experiences and lessons from different countries and contexts, we, therefore, aimed to bring individuals and communities at risk of human rights violations and human rights actors together to start a conversation on how states can address human rights violations (driven by stigma, discrimination, and prejudice) beyond resorting to criminal law and punitive solutions. We aimed to create a safe space to engage meaningfully on the limits of the use of criminal law to address social inequality problems, including discussion with advocates for alternative forms of redress, and restorative justice.

Rationale

- There is a need to ensure that ongoing human rights violations, including prejudice, stigma, and discrimination against LGBTI persons are addressed and have consequences and accountability implications. The question is the extent to which these measures ought to be through criminal law. These are both principled and strategic questions for human rights movements about how to approach these issues and where they should be investing their time and energy.

- There is a need to develop sustained, long-term collaborative advocacy strategies and collective responses with affected communities to change social structures and consider meaningful reforms outside and beyond criminal law alone.

Objectives

The key objectives of the consultation include:

Short-term objectives

- To proactively engage with and solicit meaningful input from individuals and communities at risk of human rights violations and human rights activists on their experience of criminal justice processes of redress and accountability – what have been the challenges, successes, and learnings to be shared from different countries and contexts.
- To sensitize stakeholders on the implications of using criminal law as a tool for advancing sexual and gender rights and setting social norms.
- To establish the role of law in promoting protection, redress, accountability, and justice in response to stigma, prejudice, and discrimination
- To understand the circumstances and contexts when activists and rights holders want to call for punitive measures and what they hope to achieve.
- To consider alternative measures to reform society [and achieve LGBTI rights] rather than impose punitive solutions and carceral punishment as a measure of first resort, including restorative justice and the role of civil sanctions and their preventative powers.
- To create a platform to link conversations playing out in academic spaces with the experience and expertise of human rights actors working at community level.

Medium to long-term objectives

- To provide a platform for increased support for LGBTI individuals and communities to access justice in the context of widespread human rights violations, including stigma, discrimination, and prejudice.
- To foster regional and in-country partnerships for increased collaborative advocacy and campaigns for effective mechanisms to promoting protection, accountability, and justice in response to human rights violations such as discrimination.
- To consider states' due diligence responsibilities and explore ways to hold them accountable for the failure to alleviate conditions causing human rights violation driven by stigma, prejudice, and discrimination.
- To shift the human rights system's focus from a predominant emphasis on states' obligations to protect and punish, to a framework that places greater emphasis on the due diligence obligations to prevent, remedy and redress.

Methodology

The meeting involved presentations from academics, panel discussions and group information sharing and discussion. Individuals and communities at risk of human rights violations, including prejudice, stigma, and discrimination, were also among the resource persons. The meeting discussions and presentations were intended to contribute towards

developing an understanding for considering if, when, and under what conditions, recourse to criminal law is compatible with human rights, how to approach these issues, and where LGBTI movements should invest their time and energy. It was facilitated by Felicita Hikuam, Director, AIDS and Rights Alliance for Southern Africa (ARASA) and Melanie Judge, Senior Advisor, LGBTI Inclusion, Africa, UNDP.

Participants

The meeting leveraged the wide reach and interdisciplinary strengths of Amnesty International, ARASA and UNDP to bring together participants of diverse backgrounds. With a focus on the African continent, it drew together leading feminists, women's and LGBTI rights activists, human rights activists, and academics to think about criminalization and the implications of using criminal law as a tool for advancing sexual rights and social change. About 30 participants participated in this forum from countries including Botswana, Kenya, Malawi, Namibia, South Africa and Zambia.

The Discussions

Opening and Expectations

In his opening remarks, Tashwill Esterhuizen, Legal Advisor at Amnesty International reminded the participants that we should be mindful about how advocating from a criminal justice lens might undermine advocacy for decriminalisation and may harm the communities that we are advocating for. He stated that as we are pushing for decriminalisation, we need to draw on experiences from different contexts. He highlighted the fact that the forum was meant to be a safe space to engage meaningfully on the limit and the use of criminal law to address social problems.

Monica Tabengwa, Programme Specialist: LGBTI Inclusion, Africa at UNDP stated that one of the ways that UNDP works is to engage CSOs and activists to talk about some of the difficult topics. She said that the forum is intended to go deeper around what has been happening, what will happen in future, and to make sure that we improve the ways in which we work. She encouraged the participants to think about criminalisation and the implication of using criminal law to advance sexual and gender rights so that when the law is used, it is used in the right way.

When invited to share expectations, participants expressed a desire to learn from one another, and from the different contexts in the space, about how to use criminal law to push for change. They looked forward to an open conversation and dialogue that would produce ideas that can be shared on the ground. They highlighted the fact that the meeting focused on issues where activists do not have consensus, therefore, they expressed the need for respectful disagreement. They wanted to know the roles that they would play as activists when it comes to working around litigation and criminal law. They also wanted to learn more about the criminal justice system and what alternatives exist to criminal law.

The facilitators then explained that the meeting would have inputs from different experts in the field including activists and academics. These inputs are meant to spark discussions that would lead to clarity on the ways forward.

A Critical Reflection on the Use of Criminal Law

Input by Sarai Chisala-Tempelhoff, Founder and Director of the Gender and Justice Unit in Malawi

Sarai was asked to share her experience as a social justice lawyer, mainly working with women's rights and gender equality at the intersection with law. In particular, she was asked to share critical insights and learnings about the uses and limitations of criminal remedies in tackling systemic issues of gender-based violence and gender inequality more broadly. She was also asked to reflect on what can be learned from feminist lawyering and activism to inform thinking around the increased turn to criminalisation to address LGBTI-related discrimination and injustice.

"There is a widespread fetishisation of the law, especially in Malawi, where we rush to develop a legal response to social injustices, which has played out in different ways." This however doesn't change the situation in the society. The main challenge society faces is that people often don't know what the law says. Legal illiteracy makes remedies that are available in law ineffectual. In most cases relating to GBV, women face both financial and information

restriction regarding access to the justice system. As a result, many women are unaware of the laws that relate to them and many of them are ignorant that some aspects of their realities amount to legally recognised injustice.

To address this challenge, legal empowerment tools were developed to let people know what pathways existed to achieving justice. These tools showed the legal pathways in a simple, easy to follow way. It is these pathways where people tend to miss out. An example the provision and use of mobile courts, where the victims are met at their place of need and where the community is shown the direct result of criminal behaviour. These courts not only serve the victim, but also the perpetrators.

For the criminal justice system to be more effective, there is a need to accompany the victims through the process and provide material support to keep the case going. For many victims and survivors, the cost of litigation is beyond their affordability. As we think of the justice system, we need to think about other supporting services like the provision of safe houses. There is very little that governments offer in terms of offering these services.

We need to bring test cases including reporting police abuses to the Independent Police Complaints Commissioner (IPCC). ARASA supported an effort to report the experiences of 18 Female Sex Workers (FSWs) who we assisted to lodge a complaint against police officers with the IPCC – the complaint was lodged last year, to date there has been no response from that office. This shows how the criminal justice system can often be violent to the victims, who constantly have to rehash their stories to different parties with different opinions and biases.

Criminal protections are often weaponised against the very communities they are meant to protect. For example, Beatrice Mateyo was arrested after an anti-GBV protest and charged with "insulting the modesty of a woman" for carrying a poster that declared "being born with a vagina is not a crime/sin, my pussy my pride".

There is a high level of disregard for the laws even from the highest office in the land. This can be seen from the number of women represented in high offices including Cabinet offices and the low representation in Parliament. At the police level, protection orders are convoluted and hard to enforce. Enforcement is a challenge for protective laws generally. The Prevention of Domestic Violence Act gives the police broad powers to investigate and prosecute domestic violence, but there is minimal knowledge or even enforcement. Police still uphold the patriarchal approach that what happens in the home is private business. This includes disregard for precedent-setting decisions by the courts that seek to improve social justice, for example, the incarceration of children or criminalisation of poverty through petty offences such as rouse and vagabond offences.

We need to understand the ways in which corruption whittles away the justice response at all levels, the formal and the informal. There is a need to incorporate efforts that tackle corruption in our advocacy and social justice efforts. It is impossible to achieve criminal justice if justice is only available to the highest bidder. For example, one of our minor clients was arrested for defilement (statutory rape) because the victim's uncle was a traditional leader in that village.

Litigation and the provision of legal services is expensive and often underfunded especially when seeking to support those who choose to engage with the criminal justice system to seek redress.

Criminal law and remedies have been vital tools in attaining social order and protecting individuals' legal interests. As a result, many legal systems have employed criminal remedies to deter human rights violations and as retributive justice to victims. However, when injustice is solely addressed through criminal law, vulnerable and marginalised populations are exposed to a justice system that is difficult to access and hardly delivers meaningful "justice" to victims or survivors. Further, the justice system narrows the avenues that a victim can use to seek redress.

One thing that is clear is that criminal remedies do not address all aspects of injustices and discrimination, for example, it has been identified that intimate partner violence is exacerbated by patriarchal norms, inequality, and poverty. Criminal remedies do not address these underlying social inequalities and structures that are the root cause of violence. Since intimate partner violence stems from inherent patriarchal norms, inequality, and poverty, the criminal law cannot effectively deter violence. The work that needs to be done is intersectional and transformatory and the law remains a blunt tool for bringing about social change and a shift in these damaging norms.

Hate crimes against LGBTI persons occur in the context of daily occurrences of prejudice and discrimination. LGBTI persons experience hostility and harassment in public and face discrimination at work, at school, and when accessing housing and health services. Some LGBTI persons experience harassment and even violence at the hands of the police. These experiences create barriers that stop LGBTI persons from reporting hate crimes to the police or cooperating with investigations and possible court proceedings. Common reasons for not reporting include the fact that victims do not think that the police will take their complaint seriously; their experience is that such incidents happen too frequently to report; or they fear repercussions from the perpetrators. This means that when investigating a hate crime against LGBTI persons, police officers need to be very careful to avoid re-victimisation.

The existence of criminal penalties does not translate to the protection of marginalised groups such as LGBTI persons. In Malawi, there are laws targeting discrimination, sexual and gender-based violence, hate speech, coercive or degrading treatment many of which have sanctions such as incarceration. This rich body of "protective laws" does not protect the LGBTI persons, as in Malawi, criminalisation laws exist that target LGBTI, labelling certain sexual practices as "unnatural offences". Individuals who identify as LGBTI are at disproportionate risk of ill-treatment and sexual violence in criminal justice settings, including in police custody and prisons, partly because the power imbalances in criminal justice systems are informed by those that persist in society more generally.

Contact with the criminal justice system imposes a range of additional risks to individuals that are perceived to be, or who identify as, LGBTI. This is irrespective of whether they are brought into contact with the law as victims, witnesses, or individuals accused or proven as having committed a crime. Studies show that LGBTI persons are at increased risk of physical and sexual violence. In most cases, sexual orientation and gender identity are a key factor in the perpetration of the abuse. In cases where homophobic or transphobic acts of violence and

discrimination are reported to law enforcement officials, LGBTI victims encounter many violations, ranging from negligence by police officers, failure to register crime reports, inappropriate classification of acts such as not registering hate crimes as such or registering physical attacks as minor offences, and secondary victimisation due to the prejudiced and discriminatory attitudes of officials at the investigation, prosecution and trial stages.

Alternative approaches used to address GBV and gender inequality that may be used to address human rights violations against LGBTI people include advocacy, research lobbying efforts, community outreach programs, etc. However, it is crucial to recognise that criminal remedies are only a starting point in addressing human rights violations. The protection, promotion and tangible realisation of the human rights and dignity of LGBTI people requires an approach that centres the experiences and wishes of victims and intentionally addresses the root cause of such violations.

Discussion and questions

We often run to law as our first and in some cases only port of call. In these cases, remedies must matter materially to those who are at the knife edge of the violence. We need to understand where the criminal justice system places the victim. It is often perpetrator driven, and often the enforcement structures are part of the problem which means that people don't necessarily report violations.

A question was asked about some of the alternatives that have worked and what they could be. It was noted that the law is a very blunt tool when it comes to social justice issues. We need to find ways to place the victim at the centre. A victim centred; victim led approach would be most beneficial. All the while, understanding that what the victim requires will be very different on a case-by-case basis.

Another question was asked on the difference in the efficacy between civil and criminal law when dealing with social justice issues. It was noted that, like the criminal justice system, civil systems are also problematic. The court system is dominated by men and patriarchy plays a big role in the system. The cost of engaging with the civil justice system also often makes it financially inaccessible to most people.

There are a lot of response mechanisms that are in the rural areas. The first question that is asked is "was blood shed?" yet we know that the type of the violence faced by individuals are so varied. There is an idea that criminal law is strong and sends a strong message, however the violent thrusting of people's lives into the spotlight becomes another form of violence.

On the issue of the use of customary law as an alternative to the formal criminal justice system, it was noted that we haven't spent enough time as lawyers to ensure that we get the same level of constitutionality in the customary space. The reality in Malawi is that if you go to the traditional justice system for a response, the victim will need to pay for the traditional justice leaders to meet creating more financial strain on the victims. The same was noted from other contexts.

Intersectional Perspectives on the Impacts of Criminalisation

Input by Mandi Mudarikwa, Martin Zimba, and Michaela Clayton

This session was a roundtable discussion structured around pre-defined questions related to how criminalisation affects people in intersecting ways.

In answering the question of how the work they do has been impacted by criminal law and how the use of criminal law plays out in their contexts, Mandi Mudarikwa who was asked to focus on gender and LGBTI issues, gave a brief history of criminalisation of homosexuality in South Africa and stated that decriminalisation did not do away with the negative social attitudes towards LGBTI people.

Martin Zimba from the Zambia Sex Worker Alliance who was asked to focus on sex work issues stated that the law in Zambia criminalises living off or gaining from the proceeds of sex work. The lack of clarity in this law creates a situation where the police arbitrarily arrest sex workers and charges them with loitering or “indecent dressing”. These charges are often difficult to validate. The police get away with not enforcing laws that are meant to protect individuals and due to the laws being unclear, clients also get away with not paying the sex workers. Criminal law does not exist to remedy the violence that sex workers face. As a response, the Zambia Sex Worker Alliance have brought law enforcement together and use the public health approach to express their experiences.

Michaela Clayton explained that HIV criminalisation means the unjust application of the law on people living with HIV only by virtue of their living with HIV. In Sub Saharan Africa, there are 28 countries that criminalise HIV exposure and non-disclosure with Zimbabwe being the most recent country to decriminalise. The use of criminal law in the context of HIV to stop transmission doesn't work because it stops people from getting tested. Most of the laws around HIV are very broadly drafted which makes them ambiguous. This makes it such that women in relationships are not able to enforce safer sex decisions. Women are often the first to know their HIV status while attending clinics and are therefore the most adversely prosecuted by these laws. Criminalisation of HIV transmission is bad from a public health perspective and due to its disproportionate application on women, it is bad from a human rights perspective.

In further discussion with the participants, it was raised that sex workers are often marginalised because they are sex workers. They are also marginalised further because of their sexual orientation and gender identity. There is an intersecting vulnerability especially for transgender sex workers.

In the context of identity, intersectionality is an analytical framework that recognises that the human experience is layered. It aims to detangle how individual experiences vary. Within an identity framework, there is a social construction that target the population. The marginalisation does not only get experience from a personal perspective but also seeps into all the other frameworks of life. The social construction as a criminal creates a scenario where people are either deserving/undeserving or important/unimportant.

Criminalisation therefore creates a box that says that this is what we expect as a society and anyone who does not fit into the box is operating outside of the society's views. It then creates a situation that socially stigmatises people who then experience discrimination in all aspects

of life. The social construction of identity does not only remain with the individual but seeps into societal attitudes.

Trying to fit in the society's box removes people's ability to be who they are. It denies humanity, personhood, womanhood, and existence while creating negative social constructions of identity for people and links that with criminality. Criminality is associated with non-deserving of human rights.

Discussion

It was noted that criminal law does not have a role to play in issues around HIV transmission and exposure, sexual orientation, gender identity or sex work. Governments need to be held accountable for human rights violations and they should not be targeting sections of the population.

The panellists talked about societal perceptions about the LGBTI community and it being an important issue that leads to criminalisation. To meaningfully change society's perceptions, the work we do needs to be accompanied by community-led interventions. There is a need for knowledge and understanding of issues, for example sex work and the right to choose work. We can push for the decriminalisation agenda, but we need conversations on how we live with it in Africa.

Laws on their own do not determine social attitudes. Repeal of laws on their own does not change social attitudes. For law reform to be anywhere on the cards, you must work on changing hearts and minds. There is a need for a comprehensive community based and led intervention to change community attitudes.

South Africa is an example of why decriminalization alone is not enough. Communities still exist that are highly religious, highly cultural, and discriminatory. Trans and intersex persons are still struggling to get identity documents. We are not doing enough to change community perceptions. Decriminalisation should come with robust legislative reforms, community engagement and having people understand the law.

Fig 1: Survey Results on Pushing for stronger penalties

In some environments there is a push for stronger criminal penalties when advocating for accountability, justice and redress for human rights violations. What are your views on this?

10 responses



Experiences of the criminal justice system and approaches to accountability and redress

The facilitators introduced this section by asking, how do we engage with criminal law as a potential tool to protect ourselves, get justice for rights violations against LGBTI populations?

In introducing the group work, the facilitator stated that a restorative approach would help us to address the double violations that see the use of law for direct and indirect criminalization of marginalized populations. Also, though – LGBTI people are historically in conflict with the law. Discrimination is a wide concept. What is the role of other forms of law? The first step is to repeal the laws that discriminate against LGBTI, before they can be used.

Group Work

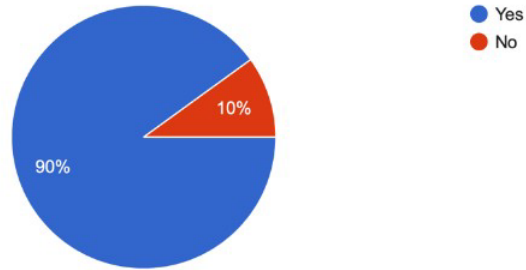
This session focused on lived experiences of the criminal justice system and implications for thinking about how we approach accountability and redress. Considering the ongoing criminalisation and linked to that, the decriminalisation, the ongoing intersectional oppression and how we engage with criminal law as a potential to face justice.

In answering the questions, participants shared their encounters with the criminal justice system (both as targets and as rights-bearers seeking protection/redress etc.). This is the context for discussing how people have been impacted by criminal law and what that means for the approaches activists have taken in seeking redress and accountability for anti-LGBTIQ discrimination.

Fig 2: Relevant responses from pre-workshop survey

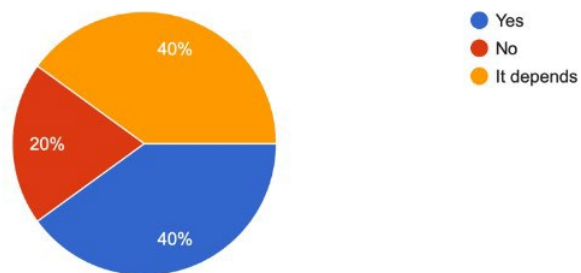
Have you or your organisation turned to the law (criminal or otherwise) to seek redress and justice for anti-LGBTI discrimination?

10 responses



Do you think the criminal law is helpful for providing redress and justice for anti-LGBTI discrimination?

10 responses



Some responses

- Sometimes it's necessary **as a deterrent and to send a message** that behaviour is unacceptable but other times more nuance needed.
- It helps to charge those that actually perpetuate violence against LGBTIQ+ people. However, **little has been done to use the law in redressing and seeking justice** for anti LGBTI discrimination.
- A **restorative approach would help address double violations** that have seen the use of law for direct and indirect criminalisation of vulnerable pops including LGBTI persons.



- In the context of **LGBTQI+ people being in conflict with the law** , a criminal law that is in tune to the realities and needs of trans and gender diverse persons can more fully recognise and uphold human rights standards of detention.
- **'Discrimination' is a very broad concept** . When it manifests in violence, I expect criminal law would be an appropriate tool in response. But in most cases of discrimination, civil remedies, mediation or some other responses would be more appropriate.
- There are so many laws that are discriminatory in nature against LGBTI person. **First step is to repeal such laws and then bring in laws that can protect LGBTI persons** from discrimination.

The facilitators asked participants a series of questions about their experiences with the law. The following are some of the responses received.

Question 1: What are the experiences of LGBTIQ people on the “bad side” of the law (ie as targets, criminals, outside of the law etc)?

- The existence of laws criminalising consensual adult same-sex conduct was widely seen as a challenge. In Uganda, LGBTIQ shelters were raided in 2019 and 2020. LGBTIQ people are not recognised to give input in civil spaces. The theoretical frameworks and foundations of the law that are perceived good tend to create an environment with persistence instances of stigma and discrimination.

- The September case in South Africa where a trans person was put in solitary confinement highlighted the double violations in prison spaces with regards to detention and lack of dignity for trans people. There were good gains for the transgender prisoner in this case, but it was also a lost opportunity for highlighting the issues.
- In Zambia, trans women are charged with impersonation but these cases do not go to the end because of lack of evidence. The judicial application of laws that do not necessarily directly criminalise individuals.
- Uganda is looking to decriminalise petty offences which are often used to hold LGBTI people. Laws haven't been designed or shaped to target any social justice and the exclusion that they have perpetuated. They often run alongside patriarchy and homophobia, and they have different impacts depending on who a person is on a societal level.
- The challenge is that if we don't know that the law is there and how it operates, it can be difficult to find out how to use it in the criminal justice system. Criminal laws justify the ongoing systemic discrimination both in the direct and indirect ways problematising the concept of the criminal justice system.

Question 2: What are the experiences of LGBTIQ people on the "good side" of the law (ie as rights-bearers turning to law for protection and redress)

- The new constitution in Zimbabwe provides for the right against discrimination. Labour laws in the country also stipulate that there should be no discrimination based on sexual orientation and gender identity. Laws criminalising unnatural offences are not easily evidenced and the authorities have used petty offences to hold LGBTIQ people. In South Africa, legal recognition in the constitution of LGBTIQ people is seen as being on the good side.
- The use of the law based on lived experiences in Kenya working on decriminalising abortion by leveraging other ways including advocacy and not necessarily the court. The trend that we have seen in the supreme court in the USA on affirmation of LGBTIQ persons in conflict with the freedom of religion. The law should not be used against us. We need to be cognisant of that and be able to rationalise the use of law in our advocacy.
- Where the law is used for the good is often separate to criminal justice. They have often leant on the right to privacy or dignity and have not framed the criminal justice.

Question 3: What are the implications of these experiences for how we turn to the law for accountability, redress, and justice in the face of anti LGBTIQ discrimination?

- There is a need to set up coalitions with the aim of to decriminalising petty offences because authorities are using these a lot. We also need to make sure that courts mandate wholistic justice.
- There is a need to reframe the concept of justice and to make sure that the rulings are not made in isolation.

In summing up the discussions above, the facilitators stated that increasingly, law is starting to speak to lived experience. As one turns to criminal law, one runs the risk of balancing rights i.e., how different freedoms that might be pitted against each other. The criminal justice system has been an important area of advocacy. We need to find ways of including it in our advocacy toolbox.

We need to form coalitions to understand how we might use the law to seek holistic justice. We also need a bigger framing of justice. what we want from state and through legal and policy mechanisms, so that everyone can be recognized in dignity and diversity, and have equal claims on rights, redress.

[Covid realities: Rights-based responses & overreliance on criminal law](#)

Input by Louise Carmody from Amnesty International

Louise spoke on key issues from the COVID-19 briefing, highlighting the risks of criminal law related to Covid regulation and securitisation.

COVID 19 and Unjust Criminalisation

The research draws on 28 countries and 54 civil society organisations.

Many organisations have been doing research on these issues and the Amnesty research is building on the work already done. The social measures were instrumental in trying to keep the pandemic in check. These included, among others, lockdowns, school closures, curfews and mandatory isolations.

Most governments opted to rely on punitive laws to ensure compliance with the measures. This created the environment for unjust criminalisation. The impact of these responses was falling heavily on marginalised communities.

Criminal law should be used as a last resort. The criteria that states must use are,

- Legality
- Legitimate aim or purpose
- Necessity
- Proportionality
- Non-discrimination

Partners were reporting increasing surveillance and arrests. COVID-19 prevention measures were being used specifically to increase the stigma and discrimination that was meted on marginalised groups. Law enforcement was playing too large a role in what was supposed to be a health issue. Giving them more power to exercise excessive use of force.

Recommendations

- States should not enact or implement criminal sanctions to enforce or achieve public health goals.

- Ensure that communities have access to universal medical health care and essential services for their protection
- Address drivers of marginalisation and exclusion, including unjust criminalisation.
- Recognise the work that organisations have done to support their communities. Organisations have not been part of the policy making response and that has driven the exclusion.

Discussion – Lived Experiences

In discussion, participants then shared examples of the impacts of criminal law during COVID-19 and in certain country contexts

Malawi: Case for protection of the rights of citizens

Even though there was no lockdown in Malawi, COVID-19 related mandates were put in place. This created a situation where law authorities arbitrarily enforced these mandates in a way that did not align with health measures. There was a lot of room for abuse and corruption. The responses were unequal. People of lower means found themselves being harassed by law enforcement.

Botswana: State of Emergency

During the state of emergency, parliament decided to throw out the law-making process. The community didn't know whether the religious/cultural fundamentalists would use this to introduce discriminatory laws. There was a fear that the country was becoming a police state with a lot of militarisation and shrinking of civic spaces.

Over criminalisation and abuse of the criminal justice system was rife during the early days of COVID-19 prevention measures. We can regulate discrimination against LGBTI people when we know that criminal law can be used in this way by ensuring that we change the systems to make them more participatory and make them more inclusive for marginalised groups.

South Africa: Housing

Emergency housing was implemented all over the country, but Cape Town was the highlight. The emergency housing showed us how fractured the system is in South Africa. There were cases of rape, transphobia, and homophobia. The regulations showed that in South Africa the laws showed the inequalities that exist in this country even today. The food packages were not accessible to some of the people. There was also a rise in hate crimes during the pandemic.

Zimbabwe: Public Health

The Ministry of Health was able to come together with all key populations and developed a standard operational plan. The brutality from law enforcement however increased. Militarising of the state increased. The court handed a judgement that police were not expected to bring such force.

We are quick to use criminal law as a solution to some of the public health issues that we encounter. COVID-19 measures were however used specifically to increase the stigma and

discrimination that was meted on marginalised groups. We need to address drivers of marginalisation and exclusion, including unjust criminalisation.

Using law to tackle LGBTI-related discrimination across various sectors & contexts

Input

Linda Baumann on GBV laws in Namibia: Why is the inclusion of same sex/gender relationships in such laws the right way to go?

Using the law to tackle LGBTI discrimination across various sectors from a Namibian context. The foundation of our engagement in advocacy was based on Human rights. We are more into litigation. In Namibia we don't have a human rights programme that inducts young people to know what their rights are. The foundation we need to go back to as a movement should ensure that civic education allows people know their rights and affirm their rights. In Africa, there are human rights defenders' coalitions but there is no human rights defenders programming that we have cultivated.

We have a problem of not including intersecting identities that exist. We need to find out what we need to prioritise in the long term. We need to address the internal politics of identities this way, we can build a movement that can tackle the laws and then get the rights.

There is a need to have a diverse human rights defenders database that expands to services in the region. People want to get into litigation, but we do not prepare them around the issues that they are going to face in terms of the time that the litigation is going to take. We need to think of the people around us. Unpack all the threats that exist in our lives. Our movement does not consider those realities.

There have been some successful cases in the country. These have had to do with what is in the constitution but also the interpretation of the constitution. The reliance on the constitutional preamble which states, "...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice, and peace." should have been the starting point.

We don't have enough case law in the country which are determinants to the cases that we are having that would change the supreme court's judgements. This speaks to the importance of the comparative laws that exists.

We need to be able to strategise as a movement to capture the low hanging fruit and at the same time, we need to ensure that any engagement includes the voices of the people for us to strengthen our work and advance the justice system.

There is a need to invest in the follow up to the reports that have been submitted to the regional and international instruments. The movement needs to be conscious that our agenda is set by others. To remedy this, we must ensure that our movement building is intersectional.

On the question of whether inclusion of same sex couples in the GBV bill apply for wholistic justice, it was noted that GBV happens in every person's life. They want us to demonstrate proof that there is violence in our relationships. When we go into that space as LGBTI leaders, we don't speak with one voice. There is a need to highlight the importance of co-ordination and talking to each other. Holistic justice will only happen when we've done greater sensitization. We need to conduct civic education for our movements so we can get victims to report to the police and get their case numbers. Women are being impacted with the very laws that are supposed to protect them.

LGBTIQ+ people just need to be recognised. Once we are recognised, the system changes. This gets all the other spaces of inclusion opened and dialogue opened and finally mainstreaming. The movement has made us look special when we ask for equality. We need to denounce the fact that we are special. We need to have people affirm that and recognise that we are equal. We need to move people out of our bedrooms and back into the board rooms.

A person who is a victim of GBV in a same sex context should have the same access to the redress as cis people. In Namibia this excludes protections for same sex people. As a country and as a movement we need to prioritise which areas of legislation we need to move forward on. The domestic violence act has pulled the definitions of family out of the constitution and the marriage act making it difficult to include same-sex couples.

Liberty Matthyse on hate crimes legislation in South Africa: What are the strengths and weaknesses of this type of legislation for substantive and systemic redress and accountability?

South Africa has had a very poor record regarding hate crime for LGBTIQ+ people. The legal protection doesn't really help the community. The country needs to deal with the deeply rooted inequalities that exist. Have we been included by the way or is the actual intention for this bill is to criminalise racism and xenophobia?

At different intervals during lockdowns, we saw an increase in hate crime in the country. Deeply rooted issues of inequality that would not be addressed through law.

What does it mean to create a society that is free from violence vis a vis a society that allows us to thrive? How do we look at the hate crime law as a political tool vis a vis the law as a tool for transformation? What is the status of the victim versus the broader community?

The way in which law and society has been structured has been based on cis heteronormative ways. The third competing right is that of the perpetrator. How is the perpetrator as the product of a society that upholds the systems that exist? If the law is not specifically purposed to address social justice. How do we then integrate queer consciousness into law?

In principle, as LGBTI people, we should be very opposed to hate crime because of our histories with law. When we conflict with the law, we see how our own human rights are not covered. We have every right to be sceptical of the law. Legal justice is a form of justice that is not available all the time.

Different contexts may require different responses to violence. Our geopolitical, legal, and socio-economic context applies. The Prevention and Combating of Hate Crimes and Hate Speech Bill is very much based on an intersectional approach in being able to understand the diverse ways in which we experience violence and crime. Looking at a penalty that can recognise that a crime was formed by a very particular aspect of a person's political and social identities.

There are other measures that must be put in place to send a powerful message. The hate crimes bill is not a violence prevention strategy. It may be a deterrent but not prevention. What needs to be done is to change minds. What does it mean to change the way children are taught to deal with SOGIESC issues? How do we ensure that we are recognised for who

we are as trans and gender diverse persons? How are we situating ourselves? Law is inherently limited in what it can achieve, and it is a blunt instrument.

The law is so broad into what it seeks to criminalise almost getting into people's private communication. Every person has the right to freedom of speech which can be limited under certain circumstances. It is limited in contexts where it amounts to hateful, hurtful, and harmful speech. Going beyond the realm of civil remedies and going into criminalisation is not right because the curtailment of freedom of speech starts being weaponised against us. We will be unable to push our human rights agenda.

Criminalisation of hate speech is a slippery slope. There is a need to balance needs of survivors and victims in crimes along with other tools. Criminalization of hate crimes is limited in impact. Educating the public, socially re-engineering society is key. State must work on other strategies which can be critical, key enablers for combatting crimes. We need to put the onus on state to ensure conscious of LGBTI in prosecutions.

Discussion

Crime against the public rather than crime against individual.

There is a discomfort with addressing violations against the queer community only through criminal system. Restorative justice more than just being a witness in own case. Restoration of actual victim is often ignored, focus on punishing perpetrator. Crime is defined as being against the public and not just individual. We therefore need to reflect on the restorative justice component. How do we centralise victim and survivor? What are some of the other aspects within the criminal justice system that needs to be looked at, and strengthened?

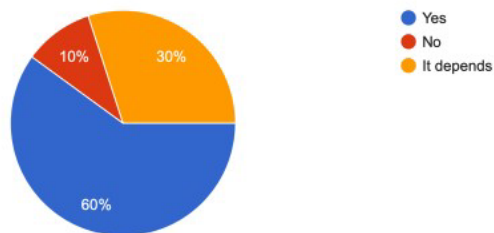
Perpetrator being a product of our society.

There is a cycle perpetuated in society where nothing is done to deal with root causes of the crime. The perpetrators of crimes are often also victims of our society. How do we deal with this? Civil remedies already address issues around hate speech without criminal penalty sending a strong message. In the application of the hate speech legislation, people from rural communities who have been taught conservative ways of understanding the world will be ultimately criminalised. This is a real risk that we need to guard against. There is a need to do a lot of work with government to deal with high levels of poverty. Other cases that can be made around how LGBTI can find safety within gangsterism too. When we look at working with perpetrators of violence, we need to define how we can support perpetrators, to support opportunity for unlearning and relearning. If victim and perpetrator want to connect, restorative justice will be achieved.

Different forms of discrimination; murder and rape we may treat differently to e.g. hate speech.

Do you think forms of discrimination against LGBTI people like 'conversion therapy' and hate speech should be criminalised (ie. made an offence under criminal law that is punishable)?

10 responses



Explain

- *Hate speech leading to commission of a hate crime, most definitely. Conversion therapy **leading to injury or some harm** , most definitely.*
- *If such are criminalized, it may **enhance the security** of the LGBTIQ+ people*
- *Criminalizing conversion therapy and hate speech in a country like Uganda would be misinterpreted as “promotion of homosexuality” by the Government... As such, enacting a law that directly protects the rights and livelihood of LGBT+ people, is something that **requires more mind-set change and societal evolution than law** .*



Insights and Challenges

Insights

I. *Proceed with caution: The law is not the “be all and end all” / There is a need for deeper & broader interventions that impact on cultural / social norms and ensure real redress, justice, and accountability:*

- Criminal law can sometimes not change societal perceptions.
- Decriminalisation on its own is not enough.
- Using the law only to address social justice is not going to work. We need comprehensive inclusive strategies
- How criminal law does not solve the issue. Instead, it creates bi-issues (social level).
- Changing societal mindsets is pivotal to hate crimes and hate speech -not criminal law
- Criminal law may not be the answer towards longer term impact and change #SRHR4All
- We need to invest in civic education.
- Change of law does not always equate to change in situation. Even in cases where laws are conducive, a lot still needs to be done to effectively see change.
- Need for more investment into community organising for effective coordination of in-country LGBTIQ+ change agendas.

II. *The need for restorative justice*

- Perpetrators of discrimination and prejudice are a product of society.
- The need to consider what should be done about the perpetrators being products of the society.
- To consider perpetrators of LGBTIA hate crimes as possible victims of circumstance and imagine solutions that factor in those circumstances – so think outside the penal law.

III. *Victim centred justice / approaches can ensure redress and accountability:*

- These discussions need to focus heavily on victims and their likely experience of criminal justice systems
- Criminalisation tends to forget the victim.

IV. *We are not all lawyers/legal experts*

- God, the language can get very technical in here. Redress, undress all of those.

Challenges

I. *Proceed with caution:*

- It is very difficult to discuss uses and limitations of law to protect LGBTI+ people in contexts where it is overwhelmingly used to oppress LGBTI+ people.
- The criminalisation of hate speech can be a harm within itself for the queer community.
- Law is necessary in realisation of queer rights. But it is a blunt (and limited) tool.

- The law can be a blunt instrument when addressing social justice.
- Not having a clear stand on whether criminal law is good for us or not. Too contradictory.
- Criminal law can be a barrier and decriminalisation alone is not enough.
- Aspirational justice v. lived realities / implementation.
- Attitudes, mindsets change of a society is a big challenge.
- Whose role is it to change mindsets? Govts want quick / swift solutions like criminalisation rather than thoughtful measures that require effort, time and resources.
- The classification of hate crimes as criminal cases, as crimes against the state, minimises and diverts attention away from a survivor of the crime and therefore the impact of the violation.
- Criminal law does not always address attitudes and inequalities.
- Understanding the journey of the movement in law advocacy vs social rights advancement + equal into protection.

II. We're in this together

- Moving forward despite different views;
- Our varying contexts and progression around SRHR will significantly impact on our use of criminal law in contribution to justice.
- Balancing different rights in context of law and criminal justice in diverse Southern African contexts.
- How to balance competing interests.
- Getting our community to coordinate and jointly develop a national / regional strategy is a much bigger challenge than it should be!

III. Reality check

- Presentations weren't really reflective of all countries. Difficult to contextualise.

Discussion

There is a necessity for all of us to have a much more nuanced understanding of the way the justice system works. This understanding is important for how we craft strategy. We need to be sensitive to different contexts and how that plays out in different contexts. It is important to be sensitive to what communities want. LGBTI people are part of society that see redress as a way for perpetrators to be taken to task. There is a need to give the opportunity to the victim to feel seen and heard.

Alternative approaches: Thinking beyond criminal law

Input

In introducing this section, the facilitators stated that there is a turn to increased punishment but there is also a lack in proper enforcement. There is a discriminatory application of criminal law such that it is not applied equally which means that certain groups are remarginalized by the state. There isn't a lot of evidence that shows that criminalisation prevents discrimination. There is a need for a range of interventions and strategies that can change the structures of power that cause the discrimination. There is a strong and critical obligation by the state to address discrimination and a need for restorative and wholistic approaches.

During the pre-workshop survey, the participants were asked if there are alternative approaches and mechanisms to dealing with anti-LGBTI discrimination that are important to consider. All the respondents said that these alternative approaches exist. The following are some of the responses.

- Strengthening movements championing the human rights of LGBTI and sex workers... Strategic advocacy on the decolonisation of harmful laws that infringe on human rights of citizens, and domestication of international treaties and agreements.
- Active involvement of relevant stakeholders such as Human Rights Commissions.
- The law can act as a deterrent but is limited as does not automatically shift hearts and minds at a community level. Awareness-raising, sensitisation training and education are key components.
- First target institutions - police, parliament, schools. Invest in a strong campaign to sensitize and cause policy change in how such institutions interact with LGBT+ persons.
- Creating more visibility for LGBTQI concerns and violation, and law reform on discrimination.
- There may be more opportunities to use civil remedies, for example, in response to housing or employment discrimination. I would like to learn more about experiences with mediation and reconciliation processes.
- Taking advantage of the existing laws for the protection of LGBTI person.

Linda Wanjiru Kroeger - on the HIV tribunal in Kenya.

The HIV Tribunal in Kenya has contributed significantly to reinforce justice. It is a quasi-judicial mechanism whose rulings are recognized within law, established by statute, constituted by actors within HIV space who are not necessarily judicial officers and who actively apply to Tribunal. The aim of the HIV Tribunal is to give PLHIV quick and immediate redress for human rights violations or criminalization.

At the onset of the tribunal, it was quite progressive. It was a new area for colleagues to leverage on in terms of the delays that we have in the judicial system. There have been emerging trends on criminalisation, however. Perpetrators are leveraging on non-conventional laws to bring about cases against people living with HIV.

The tribunal remains an opportunity, but the situation has forced the community to rethink how criminalisation looks in the SRHR landscape. We need to dissect and look at the root causes and look at the intersectionality in the sector, there is an anti-gender philosophy that is showing. There is a need to figure out how we identify criminalisation and use that to reflect on an intersectional approach. To better inform us on what we do right and what we need to do better to ensure that criminalisation is addressed in a wholistic way. Leveraging on intersectional approaches to be able to create a comprehensive SRHR advocacy strategy.

A key catalyst that made us take a step back was the opposition. Anti-gender and anti SRHR entities. Mapping the last few years, we have identified that Kenya is an epicentre of these groups. These groups have spaces in Kenya, but their activities are not just applied in Kenya. The court re-affirmed these anti-gender ideologies in their ruling of the repeal 162 case challenging the criminalization of same sex conduct.

When looking at the new face of criminalisation, we need to have an intersectional lens in looking at how we approach advocacy. We have reached a place where we are developing joint strategies together. The lessons we learnt from repeal 162 have shown us how we should work towards the decriminalisation of abortion. Adopting new ways of working is becoming increasingly important.

Nyasha Chingore - on National Human Rights Institutions

National Human Rights Institutions are independent bodies which have a constitutional or legislative mandate to protect, monitor and promote human rights in a country. Some countries also have gender commissions. They have a protection and promotion function. By human rights promotion, they create a national culture of human rights where equality and tolerance thrive. In their human rights protection function, they help to identify and investigate human rights abuses, seek justice and redress for victims and advice on remedies for human rights violations.

In 2012, the Kenya National Commission on Human Rights (KNCHR) instituted research on SRHR. The inquiry confirmed the systematic nature of the violations of SRHR especially against women and key populations. They worked at an institutional level to ensure that the structure within the commission understood the issues they were working on. They ensured that there was a department within the commission that dealt with SRHR issues. Dealing with hearts and minds issues with regards to staff.

They engaged in institutionalisation of responses regarding violence and hosted a situation room at the commission and were very public in terms of making statements around calling for an end to violence in the Kenyan space for sexual and gender minorities. The commission has not shied away in engaging in litigation around decriminalisation. They have been clear on the importance of protecting rights.

Peer learning between NHRIs in the ARASA and NANHRI regional dialogues resulted in the Malawi Human Rights Commission (MHRC) and KNCHR forming a tight relationship. Prior to one of the meetings, MHRC had announced that it would hold a public inquiry on LGBTI issues in Malawi. Civil society had boycotted the inquiry, warning that it could endanger LGBTI populations. As part of the regional meeting, KNCHR led a discussion on how to host effective public inquiries without having to place vulnerable populations in any danger. Soon after this

training, MHRC announced that it would cancel the public inquiry, instead replacing it with a situational study on the lives of LGBTI persons in Malawi, a move that was welcomed by civil society and key populations in Malawi.

MHRC initiated linkages with the police to resolve incessant complaints of harassment and violations against key populations including sex workers and LGBTI individuals. The MHRC also established a legal aid bureau that represented LGBT people in court - There was the initiation of the legal aid.

Opportunities that exist in engagement with national human rights institutions include using the promotional mandate to address community awareness and engagement. Investigative powers and capacity to do thematic reports present an opportunity to direct recommendations at multiple stakeholders. The process should be more friendly than the formal court process. There is also an opportunity for NHRI's to be creative with redress and for civil society to inform what this could look like even in individual cases- Use the promotional mandate to address community awareness and engagement.

Sophie Carol - on comprehensive approaches to combatting SGBV

Criminal law is prone to misinterpretation. Criminalisation tends to uphold people who are in power and those that are privileged and excludes those who are poor. It is not the law alone that results into discrimination and violence but also societal and cultural practices. This shows that criminal law is playing its own role in increasing the violence.

Given the harm caused by criminalisation through the years, it is important to question whether we want to mobilise the same system to protect our rights in the long run. If human rights violations are to be addressed, the root causes of these violations need to be addressed to be wholistic. At the heart of acknowledging this analysis, intersectional approaches need to be dealt with. Most countries in Africa that have not decriminalised homosexuality are in denial. States are failing to address violations of LGBTI people. There have been community members who have been violated but the community and the state do not do anything about it. The system doesn't support people who are part of the society.

"Carnal knowledge against the order of nature" has been used a lot in the community. The language that are being used in the law needs to be looked at because they are often misinterpreted.

We need to create advocacy spaces and create continued efforts to find the loopholes and misinterpretations in the laws. For justice to be effective, there is a need to lobby for wholistic justice by provide victims or survivors with psychological and financial support. There is a need to allocate sufficient resources to ensure that victims can access the criminal justice system. And we must collect data that can influence laws and policies.

Discussion

NHRIs also give advice to courts and governments

Human rights commissions can receive individual complaints and how they operate is by mediation and conciliation. They cannot resolve issues; they refer them to a court of law for a more enforceable judgement. Mediation has challenges but we need to recognise that it is a powerful way of dealing with cases in some instances.

Independence of Commissions

The president in most cases, chooses the human rights commissioners. This makes it difficult sometimes to figure out whether to engage the commission due to the political nature of its establishment. The commissions therefore often react to situations. However, governments have curtailed the power of the commissions. A lot of times we rely on social capital in the commissions, and when the people move out of the commission, there is a change.

Human rights commissions are complicated by issues of independence. The independence of human rights commissions should be a part of any work that we as civil society do on NHRIs.

An example of the kind of issue that would go to an HIV tribunal.

The tribunal is set up by statute. It deals with discrimination issues based on one's HIV status. They go through a full hearing process, and they give a judgement that can be implemented. It contributes towards making the addressing the discrimination of persons living with HIV. We need to figure out how to address the criminalisation or find out how we can expand the mandate of the tribunal.

The system isn't broken, it was built this way. There are teams of bodies on the ground who have access to victims of the human rights violations, and they provide the spaces for that. The institutions often are burdened by the same challenges that civil society has. People believe that human rights commissions have a lot of power. But they are shackled by government funds and are also driven by donor funding.

Divergences and common ground

Having discussed the challenges, lessons learned, issues faced by communities on the ground and the impact of laws, the facilitators noted that given the different contexts that existed in the room, there may be points at which we diverge while others at which we have common ground. It was important to state these points before concluding the meeting.

What are the points around which we diverge?

The divergences that were highlighted were strongly based on the diversity in the room.

- Hate speech (criminalisation) how do we define what speech is being criminalised? There is a need to build consensus.
- The role of criminal law in context of punishment and redress. Addressing broader social justice issues that we are grappling with. Some felt that criminal law cannot be used to redress. Focusing on penal codes. How do we explore issues around reconciliation beyond criminal law as alternatives to achieving justice?
- Victim centred approach vs the perpetrator approach. Finding ways to centralise the victim in seeking justice in criminal law. The need for prevention before stepping into punitive measures.
- The roles of NHRIs as alternatives to criminal law. The vigilance that civil societies have. The lack of independence and resources that support the work. Many NHRIs come across as toothless in terms of what they can achieve. What is the role of communities as accessing channels for NHRIs?

- Colonial laws: It was felt that we are not the intended beneficiaries of colonial legal systems. Why should we turn to these laws? Many of our constitutions are archaic and we need to explore what other comparative models we could utilise in order to shape what freedom from violence looks like.

What do we want to know or think more about?

- Situational analysis on what is working and what is not working in the current criminal laws per country. In the different contexts. How does criminal law work against other alternatives that exist?
- Collaboration, looking at regional engagements and positioning to understand alternatives to criminal law. Understanding the tools in the toolbox.
- The devolvement of the tools that can be used in the engagements to create social change. Enabling people to have enough capacity to disseminate the information and empower the community to know why this is important.

What are the things we agree on, the common ground, for further engagement/action?

- Structural inequality and criminal law do not achieve anything there is need of a co-ordinated human rights agenda.
- Co-ordinated human rights agenda that builds intersectionalities, on national, regional, and individual level, plus joint efforts. There is a need to use criminalization of SRHR as a strategy
- Addressing gaps, understanding of the justice system, and mapping legal opportunities
- Identify and address root causes of discrimination, human rights violations that lead to hate crimes and establish victim friendly responses.
- Civic education is important

Where to From Here? Taking the Discussion Forward

Plenary discussion on 'what now?' based on emerging common ground and divergences.

The intention behind this meeting was to start the conversation around alternatives to criminal law. To make sure all of us start from the same premise with regards to content then we are empowered to make better and informed decisions. UNDP/ARASA and Amnesty are committed to ensuring that the work goes on. To think beyond the work that we usually do.

The first step is to conduct a situational analysis. What does it mean in our countries first? Situational analysis of the use of criminal law in relations to anti LGBTI discrimination. A shared strength that we have is that we might be doing work on this matter in different contexts. Seeing what work is already being done, then put the puzzles together to come up with a wholistic process.

There are a lot of us that are already doing work that has content that can build on to this conversation. Some of the content can fill in the gaps. How do we identify those to keep the

conversation going? The questions that we want answered per country needs to be a bit clearer. There is a lot of complementarities in the work that we are doing for example on decriminalisation.

What's coming up as something important going forward is being deliberate about creating a connection between the queer movement and the women's movement. Some of the work done in SRHR can create language that influences how can we continue to have that conversation as a joint conversation without endangering queer organisations.

To shift our vocabulary to law and justice. What are our law reform and justice strategies? Law reform has a role in contributing to justice but is limited. This is going to force us to ask ourselves what we need to do to enforce justice.

Coordination from regional level and in country level. Who is to take the issue forward? How to be very honest in terms of the regional work. The partners that exist in regional level. We need to think through in terms of thinking about who is going to be on the table.

The relationship between trans and gender rights movements. The right to gender self-determination. Decriminalisation of sex work. As we think about who to bring into the content, one of the key important people or persons or institutions is the NHRIs.

Looking beyond the law in terms of the framework and thinking about policies. Sometimes policies are way ahead of the laws.

As we map stakeholders, it would be important for us to look beyond law enforcement but look at religious leaders. In Zambia, there are a lot of barriers. There was a whole conversation about the comprehensive sexual education. Our strategy needs to include religious leaders. They are also getting a lot of funds to ensure that we don't push our agenda.

What does the content mean for me and the people at home? How does the way forward build at a national level? What brand are we putting out there?

There is diversity and representation in this space in terms of countries. There is a basis that has been started here of talking to each other at country level. There is therefore a need to distil the conversations that have been had here at country level. It would be good to consider the representation of countries around here.

When we do stakeholder mapping, critically include opposition mapping. Don't forget those.

Some of the Key Points:

- Key questions we want to raise at country level, may be different for each country
- Making sure terms are accessible and make sense
- Relationship between law and justice thinking beyond the law
- Who are the stakeholders we want to engage with, identifying them and their roles
- Link with regional level work

The co-hosts will take initiative to reconvene, distil report, then volunteer another 3 people in room to get us to next step, kickstart conversation around working groups, broader conversation etc.

Everyone in the room has a responsibility to think about how they will take the conversation forward, perhaps not action plan at this point but a 'Think tank' meeting. Perhaps this loose group needs to recognize this, it is still a loose conversation at this point. Co-hosts need to take forward. This way, we don't lose the momentum and we don't lose the conversation.

Volunteers:

- Liberty Mathysse - Gender Dynamix
- Flavian Rhodes - Positive Vibes
- Linda Wanjiru Kroeger – KELIN

Annexure 1: Attendants List

Name	Surname	Email	Organisation	Country
Tashwill	Esterhuizen	tashwill.esterhuizen@amnesty.org	Amnesty International	South Africa
He-Jin	Kim	hejin@arasa.info	ARASA	South Africa / Namibia?
Linda	Kroeger	kroeger@kelinkenya.org	Kelin	Kenya
Liberty	Matthyse	director@genderdynamix.org.za	Gender Dynamix	South Africa
Felicita	Hikuam	felicita@arasa.info	ARASA	Namibia
Gift	Trapence	gtrapence@yahoo.co.uk	Centre for Development of People	Malawi
Flavian	Rhodes	flavian@positivevibes.org	Positive Vibes	South Africa
Monica	Tabengwa	monica.tabengwa@undp.org	UNDP	South Africa
Martin	Zimba	mzimba34@gmail.com	Zambia Sex Workers Alliance	Zambia
DK	Dlamini	lindelwa.d@therockofhopesd.org	Rock of Hope	Eswatini
Melanie	Judge	melanie@justcommunication.co.za	Just Communication	South Africa
Caine	Youngman	caine@legabibo.org.bw	Legabibo	Botswana
Linda	Wanjiru Kroeger	lkroeger@kelinkenya.org	KELIN	Kenya
Deyonce	Naris	deyoncenaris89@gmail.com	SATF	Namibia
Njeri	Gateru	njerygateru@gmail.com	NGLHRC	Kenya
Nyasha Chingore-	Munazvo	nyasha@arasa.info	Arasa	Namibia
Felicita	Hikuam	felicita@arasa.info	Arasa	Namibia
Thuthukile	Mbatha	thuthukile@arasa.info	Arasa	Namibia
Sisanda	Mavimbela	sisanda@eswatiniminorities.org	Eswatini Sexual and Gender Minorities	Eswatini
Samuel	Matsikure	progs@galz.co	GALZ	Zimbabwe
Eric	Ssali	ericasalli90@gmail.com	Mbarara Rise Foundation	Uganda
Sophie	Wanyenze	wanyenzecarol@gmail.com	FEM Alliance	Uganda
Linda Reanate	Magano Baumann	lbaumann82@gmail.com	Namibia Diverse Women's Association	Namibia

Sarai	Chisala-Tempelhof	sarai@genderandjustice.org	Gender and Justice	Malawi
Anna	Mmolai-Chalmers	annam@salc.org.za	SALC	South Africa
Jeffrey	O'Malley	jeffrey.omalley@undp.org	UNDP	South Africa
Melanie	Judge	melanie@justcommunication.co.za	UNDP	South Africa
Kitty	Grant	Kittybgrant@gmail.com	UNDP	South Africa
Mwangala	Matakala	Mwangala.matakala@amnesty.org	Amnesty International	South Africa
Louise	Carmody	louise.carmody@amnesty.org	Amnesty International	South Africa
Sean	Reggee	sean@transbantu.net / seanreggee@gmail.com	TransBantu	Zambia
Jade	Jacobs	Jade@iranti.org.za	Iranti	South Africa
Ntuthuzo	Ndzomo	ntuthuzo@iranti.org.za	Iranti	South Africa
George	Hopkins	ghkjr0690@gmail.com	Nyasa Rainbow Alliance (NRA)	Malawi
Anthony	Oluoch	Anthony.oluoch@undp.org	UNDP	South Africa