

# **“They See Us As How We Have Sex, Not As Who We Are”**

The experiences of lesbian, gay, bisexual, transgender, intersex and queer persons interacting with the justice system in Lesotho

Executive Summary  
November 2024

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® **“They See Us As How We Have Sex, Not As Who We Are”: The experiences of lesbian, gay, bisexual, transgender, intersex and queer persons interacting with the justice system in Lesotho – Executive Summary**

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## **EXECUTIVE SUMMARY**

### **Background**

Access to justice is a fundamental right as well as a prerequisite for the protection and promotion of all other human rights. It encompasses the right to a fair trial, including equal access to and equality before competent, independent and impartial courts, and the right to seek and obtain just, timely and effective remedies for human rights violations. In the Kingdom of Lesotho, marginalized persons, such as lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) individuals often struggle to access justice on an equal basis with other people in the country for a wide range of reasons.

Lesotho is a party to several international human rights instruments that guarantee the rights to equality, non-discrimination and access to justice and effective remedies for all persons without discrimination, including:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- The African Charter on Human and Peoples' Rights (ACHPR);
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).

Notwithstanding the country's international human rights law obligations and commitments, LGBTIQ+ persons in Lesotho face many different forms of prohibited discrimination, including structural barriers to exercising their human rights, as well as harassment and abuse because of their real or imputed sexual orientation, gender identity, gender expression and/or sex characteristics (SOGIE-SC). The stigmatization, shame, social and economic exclusion, violence and abuse to which LGBTIQ+ persons are subjected stem from discriminatory, heteronormative and patriarchal societal norms that are pervasive in Lesotho.

Despite some efforts by the government of Lesotho to protect the human rights of LGBTIQ+ persons and combat discrimination – including through amendments to domestic violence legislation in 2022 and the decriminalization of consensual same-sex sexual relations in 2012 – LGBTIQ+ individuals in Lesotho report that they continue to experience significant predicaments when interacting with and attempting to access the justice system. They complain that the situation hinders their ability to seek effective protection from and redress for violations of their human rights, especially their right to lead a life free from discrimination and violence.

### **Key Findings:**

Based primarily on a series of online and in-person interviews with lawyers and human rights advocates; focus group discussions co-organized by the People's Matrix Association; previous engagements with Lesotho judiciary on the human rights of

LGBTIQ+ persons; as well as desktop research, the International Commission of Jurists (ICJ) reports the following findings:

**Violations of the human rights of LGBTIQ+ persons are not reported to the police and other authorities:** Many LGBTIQ+ persons in Lesotho do not report discrimination or violence committed against them due to fear of exposure as an LGBTIQ+ person, retaliation and further victimization. Bias against LGBTIQ+ persons on the part of police officers and their lack of sensitization to the human rights of LGBTIQ+ persons often exacerbate their plight, with police officers reportedly responding to LGBTIQ+ individuals with a general attitude of being biased and, at times, downright homophobic or transphobic. As a result, many LGBTIQ+ people feel that reporting is futile, and many cases never reach the courts.

**Cases are not identified as LGBTIQ-related cases or are registered inaccurately:** The lack of proper identification, recording and classification of cases as LGBTIQ-related on the part of law enforcement agencies hinders the gathering of accurate data on the extent of violence and discrimination against LGBTIQ+ individuals in Lesotho. The absence of adequate data collection systems makes matters worse. Moreover, the absence of legal gender recognition for transgender and intersex persons can lead to denial of appropriate medical and support services or result in incorrect identification in police reports and court proceedings.

**Inadequate laws and policies protecting LGBTIQ+ persons from discrimination and violence:** While the Lesotho Constitution and a number of domestic legislative provisions and policies guarantee the right to equality before the law and prohibit discrimination generally, there remain significant legislative and policy gaps that leave LGBTIQ+ individuals exposed to an increased risk of violence and discrimination.

**Discrimination perpetuated by confusing laws regarding consensual same-sex sexual activity:** Lesotho decriminalized consensual same-sex sexual activity but there is still some ambiguity and confusion around the common law offence of sodomy, which may perpetuate discrimination against LGBTIQ+ persons. The Sexual Offences Act of 2003 does not explicitly criminalize consensual same-sex sexual activity, but it does not specifically repeal the common law offence of sodomy either. Moreover, Schedule 1, Part II of the Criminal Procedure and Evidence Act of 1981 still lists sodomy as an offence for which people may be arrested without a warrant. In the context of social stigma and continued discrimination against LGBTIQ+ persons, the existence of such laws may lead to their discriminatory application and reinforce harmful stereotypes, even if, in recent times, they have not led to criminal convictions.

**Many LGBTIQ+ persons are not accessing legal services:** LGBTIQ+ persons in Lesotho struggle with accessing legal services due to financial barriers, fear of being outed as LGBTIQ+, and their own limited knowledge of where and how to seek redress for human rights violations. The legal aid system also has a large backlog of cases and remains centralized in the capital city of Maseru to the detriment of the

rest of the country. The Legal Aid Office in Maseru, the capital, lacks the human and financial resources to expand beyond the city, which further limits access to legal aid services for marginalized communities, especially in rural areas.

**Cases are not investigated and prosecuted properly or may not reach the courts due to dysfunction in police departments or in the court system:** inefficiencies at police station level – such as lost case files, slow investigations, and administrative mismanagement – prevent many cases from reaching the courts. Focus group participants emphasized that these dysfunctions also carry over to the court system sometimes, highlighting that without NGO intervention, deserving cases may not be investigated.

**Bias or perceptions of bias in the judicial system:** With respect to the few instances in which some cases made it to courts, LGBTIQ+ individuals reported facing bias from court staff, such as security guards, manifesting, for example, as unwarranted scrutiny of their outward appearance, including their manner of dressing. Some focus group participants also complained that they had experienced invasive questioning about their sexual orientation, gender identity and gender expression in court settings, especially in courts located in rural areas.

### **Recommendations:**

Lesotho is failing to comply with its international and regional human rights obligations, requiring the authorities to take measures to ensure that LGBTIQ+ individuals enjoy and may exercise their human rights without prohibited discrimination, including their rights to equality and non-discrimination, dignity, privacy, legal representation and legal aid and freedom of expression. Based on the findings detailed above, and Lesotho's international and domestic legal obligations, the ICJ recommends that the Lesotho authorities take the following measures:

#### **To the Ministry of Law and Justice:**

- Implement more effective awareness-raising initiatives about the human rights of LGBTIQ+ persons, addressing in particular access to justice barriers.

To address widespread stigma and discriminatory attitudes towards LGBTIQ+ persons, it is imperative that the authorities, primarily through the Ministry of Law and Justice, fulfil their obligations to conduct awareness-raising activities and ongoing public education to foster acceptance of such persons. Awareness-raising initiatives should generally cover human rights and issues related to sexual orientation, gender identity, gender expression and sex characteristics and the obstacles preventing LGBTIQ+ persons from accessing courts and effective remedies for violations of their human rights.

In this regard, the relevant government departments should work with civil society organizations, such as the People's Matrix, the local media and development partners to carry out ongoing awareness-raising activities within community settings that are aimed at changing the general public's attitudes towards LGBTIQ+ persons.

- Provide access to information to all persons on where to obtain legal aid services and the procedures for accessing judicial services.

It is imperative to provide clear, comprehensive and accessible information to all individuals regarding the availability of legal aid services and the procedures for accessing judicial services to ensure that LGBTIQ+ persons may access legal representation, including through legal aid, and engage in court proceedings. In this context, information should be disseminated in various formats and should be readily available to all persons at key locations frequented by the general public, as well as at police stations and within court buildings, including courts in rural areas, as well as at hospitals and clinics.

The Ministry of Law and Justice, alongside the judiciary, and in partnership with legally-focused non-governmental organizations and civil society organizations advocating for the rights of LGBTIQ+ persons, should carry out information campaigns.

- Implement ongoing training for law enforcement officials on the human rights of LGBTIQ+ persons and violations of human rights on the basis of SOGIE-SC.

Continual training programs for law enforcement officials, including police officers and police station staff, on the human rights of LGBTIQ+ persons and on human rights violations based on SOGIE-SC are essential to ensuring that LGBTIQ+ persons feel comfortable to report violations of their human rights or approach the police to resolve a dispute. These training sessions should emphasize sensitivity towards LGBTIQ+ individuals and respect for their human rights. Delivering these training sessions on a regular basis and incorporating such sessions as part of the main police training programs will also ensure that newly appointed police officers are not left out.

The State should also support current ongoing trainings for police officers carried out by civil society organizations and collaborate with these organizations to reach a wider range of police officers in districts across the country.

- Conduct sensitization workshops and training for chiefs, traditional leaders and adjudicators of local courts.

To address the systemic barriers faced by LGBTIQ+ individuals in accessing justice at the community level, the government, through the Ministry of Law and Justice and other relevant ministries, should conduct sensitization workshops and training sessions for chiefs, traditional leaders and adjudicators of local courts. These workshops should aim to enhance awareness and understanding of the human rights of LGBTIQ+ individuals and the challenges they encounter within the justice system and should cover: the right to a fair trial; understanding diverse sexual orientations and gender identities; the human rights of LGBTIQ+ persons; and the interpretation of laws in a manner consistent with international laws and standards.

- Decentralize legal aid services provided by the Legal Aid Office beyond the capital city to rural areas to ensure a wider range of individuals can access lawyers.

The government of Lesotho must fully implement the Legal Aid Act by devising and implementing a plan, as well as allocating resources from the national budget towards establishing multiple legal aid offices in all 10 districts across the country to ensure wider accessibility to such services beyond the urban centres. There should also be an increase in resources provided to the legal aid office to employ additional lawyers to enhance capacity to take on cases.

#### To the Ministry of Health and the Ministry of Gender, Youth, and Social Development

- Strengthen support services for victims of gender-based violence, particularly LGBTIQ+ individuals

It is critical that victims of violence have equal access to comprehensive support mechanisms and services, regardless of SOGIE-SC. Such support mechanisms would include reporting to the Children and Gender Protection Units within the Lesotho Mounted Police Service. To address the needs of LGBTIQ+ persons who are survivors of violence, harassment and abuse, the government should establish or allocate more resources to specialized support mechanisms tailored to the unique needs and experiences of LGBTIQ+ survivors.

Such comprehensive support services should include various forms of psychosocial support, medical assistance and safe housing for survivors of violence, harassment and abuse, where necessary. The government should also collaborate with relevant stakeholders, including civil society organizations, police officers, social workers, counsellors and health professionals, to further develop and implement these support services in line with international human rights laws and standards.

#### To the judiciary:

- In a similar manner to the rules created in 2023 for enhancing access to justice for persons with disabilities, the relevant authority within the judiciary could develop judicial rules and guidelines for enhancing the ability of LGBTIQ+ individuals to navigate courts and ensuring sensitivity in court proceedings. These rules should be created in collaboration with NGOs advocating for the rights of LGBTIQ+ persons, legal experts, the Ministry of Law and Justice, and relevant judicial bodies. These guidelines should address issues, such as sexual orientation, gender identity, gender expression, sex characteristics, gender markers, attire at courts, and sensitivity to the needs of LGBTIQ+ persons in court proceedings.



- Continue sensitization of public prosecutors, court administration staff, court security staff, court researchers and judicial officers on the rights of LGBTIQ+ persons with respect to a range of issues. Given the success of previous engagements with the Lesotho judiciary on the rights of LGBTIQ+ persons that have been led by non-governmental and civil society organizations, such as the ICJ and People’s Matrix Association, the judiciary should aim to conduct, or collaborate with these organizations, human rights experts and the relevant government ministries, to conduct sensitization workshops targeting not only judges and magistrates, but also court administrators and prosecutors. The workshops should cover, in detail:
  - The obstacles impeding access to judicial services for LGBTIQ+ persons.
  - Sensitivity to issues of sexual orientation, gender identity, gender expression and sex characteristics of LGBTIQ+ individuals, including through manner of dressing.
  - Impartiality and the independence of judges in judicial proceedings.
  - Respectful treatment of LGBTIQ+ individuals by adjudicators and court administration staff throughout judicial proceedings and providing equal access to justice without discrimination.
  - Identifying cases that may have a SOGIE-SC-bias element.
  - The implementation and use of the potential rules and guidelines to ensure that judges and court staff are not only knowledgeable about LGBTIQ+ issues but can promote fair and respectful treatment in the justice system.

To the legislature:

- Explicitly include SOGIE-SC as prohibited grounds for discrimination under section 18 of the Constitution.
- Amend the Sexual Offences Act to expressly repeal the common law offence of sodomy and repeal the provision in Schedule I, Part II of the Criminal Procedure and Evidence Act 1981, listing sodomy as an offence.
- Amend section 22 of the Registration of Births and Deaths Act, which provides for “change of sex of child,” to include a provision that allows adults specifically to change their assigned sex at birth to their self-determined gender in the births register.
- Amend section 12 of the National Identity Cards Act to include “gender of the bearer” in the list of information that identity documents will bear and provide for other gender marker options beyond the binary gender framework of “male” and “female”.
- Provide clear guidelines for the implementation of the Registration of Births and Deaths Act and National Identity Cards Act to ensure that gender markers in identification documents accurately reflect the bearer’s self-determined gender identity.
- Conduct a comprehensive review of all laws and policies in the country to ensure that they explicitly affirm and protect the human rights of LGBTIQ+ persons, including the right to equality and equal protection before the law. The legislature and relevant government departments, such as the Ministry of

Law and Justice, should conduct this review in consultation with civil society organizations, lawyers, LGBTIQ+ persons and other stakeholders advocating for the human rights of LGBTIQ+ persons.

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