DEVELOPING EVIDENCE FOR LGBT+ INCLUSIVE POLICY IN AFRICA:
A LITERATURE REVIEW

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INTRODUCTION

While research on same-sex sexualities and gender diversity in Africa has been accelerating over the past decade, with African researchers increasingly setting agendas, there are major gaps in baseline data. This suggests there is much scope for empirical research to contribute evidence to inform policy making. This paper presents a selection of literature utilised by a research team to develop understandings and approaches to undertaking research on lesbian, gay, bisexual, transgender and other sexual and gender diverse (LGBT+)[1] people in five African cities. The literature reviewed covers themes on: data collection and protection; inclusion in the Sustainable Development Goals; health and well-being; economic and business arguments; rights and activism and the regional legal context. The paper intends to fulfil the ambition of the *African Human Rights Policy Papers* of providing policy guidance and underscore the important role of evidence for policy making. The paper may also provide a resource for other researchers preparing to undertake empirical research and fill data gaps on LGBT+ people in Africa.

The paper present sections of a literature review originally developed for the 'Strong in Diversity, Bold on Inclusion' project, which was funded for co-creation by the United Kingdom Department for International Development (now the Foreign, Commonwealth and Development Office) in 2019-2020. A consortium of partners, coordinated by Hivos, conceived a development project aimed to improve socio-economic inclusion and enhance the well-being of LGBT+ people in five African cities. The research team, led by the Institute of Commonwealth Studies, School of Advanced Study, University of London, the Centre for Human Rights, University of Pretoria, and the School of Social and Political Sciences, University of Glasgow, designed a mixed-methods research agenda to evidence project objectives and develop deeper understandings of the factors of socio-economic inclusion, well-being, safety and security, leadership and organisational resilience and media representation. We aspired for research outcomes to be useful to LGBT+ individuals, community-based organisations, allies in their advocacy and communications with societal leaders and policymakers.

To formulate hypotheses, partners began with evidence that emerged from the Sexuality, Poverty and Law programme of Institute of Development Studies,[2] which demonstrates clear links between non-normative sexual desires, relationships and behaviour and the experience of poverty. A synthesis report by Hawkins et al (2014) asserts that LGBT+ people have fewer employment opportunities, are less engaged in the informal economy and face barriers to completing their education and accessing health care and other basic services. The authors note that LGBT+ people have been systematically excluded from development policy and practice and the exclusion is intersectional mediated by class, age, gender, nationality and disability. A review undertaken by Oosterhoff, Waldman and Olerenshaw (2014) was formative in provide recommendations for researchers undertaking studies on LGBT+ people in low- and middle-income countries. Importantly that research team acknowledged that the tone of much existing research about LGBT+ people across Africa, particularly in epidemiological and legal studies, has been problematic. Using well-worn tropes from the literature Matebeni (2014) asserts that misguided

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1   This paper primarily uses the acronym LGBT+ to comprise those who embrace lesbian, gay, bisexual, transgender identities as well as other sexually and gender diverse people who do not. The paper also uses the acronym LGBTI when discussing data intended to be explicitly inclusive of intersex people and other acronyms used by authors including LGBTQI or LGBTIQ that are also inclusive of people who identify as queer.

2   The programme was funded by the U.K. Department for International Development 2013-2016.

scholars have painted a particular picture: the 'gay' African victim. This imagined person, stripped of humanity and intersectional identities has been utilised to justify research and interventions. Matebeni's piece serves as a cautionary tale that stresses the importance of using language which maintains human dignity, reflects actual lived realities, and celebrates the diversity of identity and experience.

The methodology to identify relevant studies was grounded in a strategy to synthesise content to help frame qualitative and quantitative studies that would explore various aspects of socio-economic inclusion and well-being. The approach to identify content presented herein is not intended to represent a comprehensive review of these thematic issues. Along with peer reviewed literature, the review drew from 'grey literature' from international and African regional LGBT+ civil society organisations and outcomes of multilateral processes designed to contribute data to measure LGBT+ inclusion in development.

DATA COLLECTION AND PROTECTION

Efforts to undertake empirical research must take into consideration the significant data gaps about LGBT+ people throughout most of the world. The scarcity of data is described in a report to the United Nations (UN) Human Rights Council from the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Independent Expert) (UNHRC, 2019). The Independent Expert and the UN Office for the High Commissioner on Human Rights identified barriers to data collection created by 'criminalization, pathologization, demonization and stigmatization hinder accurate estimates regarding the world population affected by violence and discrimination based on sexual orientation and/or gender identity' (UNHRC, 2019: 5). Importantly the report asserts that 'policymakers are taking decisions in the dark, left only with personal preconceptions and prejudices … maintaining such a level of ignorance without

seeking appropriate evidence is tantamount to criminal negligence' (ibid). Civil society inputs into Independent Expert's consultation on the report identified 'multiple accounts of data being used for surveillance, harassment, entrapment, arrest and persecution by government officials in such contexts' (UNHRC, 2019:8). The need for a human rights approach to data collection is emphasised, including in relation to the right to privacy for LGBT+ people.

Recognising that there is very little data with which to analyse government inclusion of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, the UN Development Programme (UNDP) led the development of a composite index to measure factors of socio-economic inclusion. The LGBTI Inclusion Index provides a concept and tool to analyse five priority areas of: economic well-being; education; health; personal security and violence; and political and civic participation. Utilisation of this concept

could be useful to identify data trends and gaps and provide evidence to help advance social policy and development programming to overcome exclusion of LGBTI people. In a UNDP report authored by Badgett and Sell (2018) a set of 51 indicators aligned to the five priority areas are presented and detailed. The indicators were developed through a consultative process that included LGBTI civil society and there are synergies with the SDG global indicator framework. There is scope for civil society actors and researchers to utilise this tool and draw from the indicators in new data collection and secondary data analysis.

The lack of adequate research on the lives and challenges faced by LGBTI people it is crucial to set priorities to fill knowledge and data gaps. Badgett and Crehan (2017) identified potential research priorities to further LGBTI inclusion priorities based on a review of reports on research needs, consultations with researchers and LGBTI activists from many countries, and the

outcomes of the consultation processes to develop the UNDP LGBTI Inclusion Index. They recommend research be structured around the five priority areas of LGBTI Inclusion Index and identified that there are cross cutting themes to consider in relation to these priority areas which are: participant safety and ethical concerns; an intersectional approach to uncover multiple factors of vulnerability; disaggregating data in sub-populations of the LGBTI acronym; alternative experiences as well as identities embracing indigenous language. New research initiatives could take more advantage of data that is unused or underused and support should be provided for LGBTI data in new research projects. Badgett and Crehan caution that LGBTI related research efforts will take longer to achieve and necessitate the involvement of more researchers and a more robust research infrastructure. The authors call for investment in research as well as government commitment to the collection of data on LGBTI people.

Concerned about a persistent lack of routine data collection on sexual orientation and gender identity Baker, Durso, and Ridings (2016) developed guidance on collecting more and better data about LGBT people

in the United States. They note that there are a variety of ways to design and ask questions about sexual orientation, gender identity, and related concepts, and the questions should be specific to the type of data being collected. In the U.S. context they recommend LGBT demographic questions in population surveys outlined in two expert consensus reports: *Best Practices for Asking Questions about Sexual Orientation on Survey* (Badgett et al, 2009) and *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys* (Badgett et al, 2014). While the terminology and themes of this guidance might not be highly relevant to studies undertaken in Africa the questions outlined may offer a good starting point for researchers planning data collection among sexual and gender diverse people who are rarely included in demographic surveys in African countries.

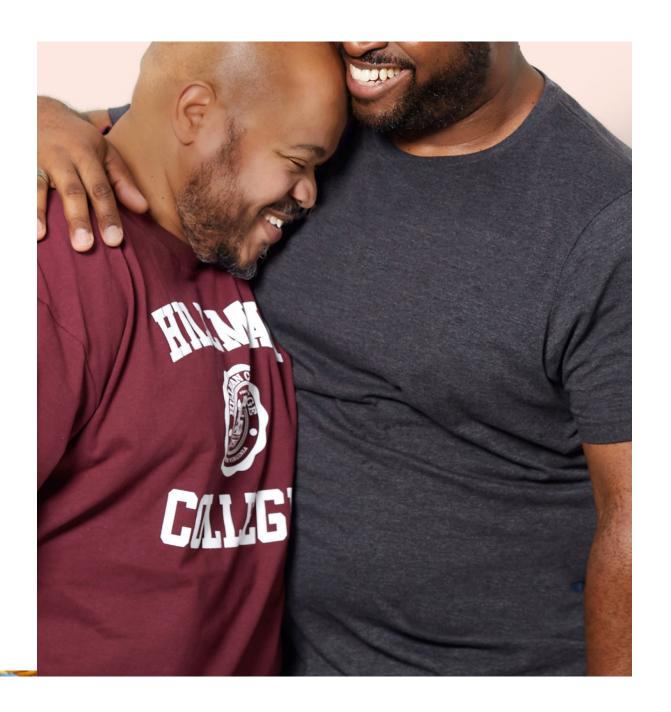## INCLUSION IN THE SUSTAINABLE DEVELOPMENT GOALS

Since the Sustainable Development Goals (SDGs) were endorsed by the UN General Assembly in September 2015 they have shaped development partnerships and advanced policy initiatives in Africa and beyond. Research that intends to utilise the SDG as a framework for contributing evidence for policy making should be cognisant of efforts to ensure inclusion of LGBT+ people in the benefits of development. Agenda 2030 for Sustainable Development encompasses a set of targets which are both more holistic as well as more inclusive than previous global development compacts and emphasises a new approach to development that aspires to 'leave no one behind' (UNGA, 2015). Advocates on behalf of LGBT+ people ensured that the agreed text of Agenda 2030 included terms such as 'other status' which ostensibly embrace people marginalized because of their sexual orientation, gender identity and expression and sex characteristics (SOGIESC).

A comprehensive review by Mills (2015) of empirical literature on sexuality, gender and development, including primary research conducted within the Sexuality, Poverty and Law programme at the Institute of Development Studies, identifies strategic entry points that could be used to promote the rights of LGBT people to sustainable development. Mills mapped these findings against the SDG framework to highlight gaps and stress the importance of development that is inclusive of sexual orientation and gender identity and expression (SOGIE). Mills argues that if the global commitment to eradicate inequality for *all* people is truly unequivocal, implementation of the SDGs by development actors at international and national levels needs to take into account the voices of those people who, because of their SOGIE have historically been excluded from the benefits of development policies and programmes.

Wondering what development compacts can deliver for LGBTI people in Africa, Poku, Esom and Armstrong (2017) explore how LGBTI inclusion could be advanced through implementation of the UN Agenda 2030 and the *Africa Union Agenda 2063: The Africa We Want*. Poku, Esom and Armstrong identify that both these development frameworks emphasise poverty reduction and improvement in health and prosperity which could allow advocates to demonstrate how the social exclusion of LGBTI people is linked to poverty, poor health outcomes and seriously compromised quality of life and to argue that achieving social inclusion of LGBTI people contributes towards the attainment of health and wealth overall for African societies. They also reflect that both development frameworks aspire to achieve gender equality, which allows for examples of the ways LGBTI people are excluded through harmful gender norms and the policing of gender non-conforming behaviour and expression. As the frameworks are concerned with reduction of violence these provide links to the threats faced by LGBTI people and concerns in the general population about justice, the rule of law and state-sanctioned threats to individual safety and security. The authors urge that 'the domestication of the SDGs and the Agenda 2063 into regional and national level social and economic policies and commitments…signals for the broader constituency of development actors and governments the need to address all dimensions of LGBTI exclusion if the vision of sustainable development that '*leaves no one behind*' is to be realised for the African continent' (Poku, et al, 2017:439).

HEALTH AND WELL-BEING

Over the past several decades health data collection in Africa has expanded at a rapid pace in relation to a number of priority health concerns. Across the globe data regarding LGBT+ health is woefully incomplete and should be a priority for new research efforts to support evidence informed health policy. A literature review conducted by Daly, Leonelli and Bourne (2017) in preparation for the UN High Level Political Forum on Sustainable Development review of SDG 3: Good Health and Well-Being identified that available data on: HIV/AIDS; mental health; drug and alcohol use demonstrates that health of LGBTI people is consistently poorer than the general population and these disparities are driven by social marginalization. The authors call on governments and researchers to collect accurate and complete health data, disaggregated by SOGIESC, in order to implement SDG 3 in an inclusive way that helps overcome the health disparities of LGBTI people.

The imperative to reach key populations vulnerable to HIV, including gay and bisexual men and other men who have sex with men (MSM) and trans women has led to a huge corpus of epidemiological and socio-behavioural data being collected worldwide, and throughout Africa.[3] Despite considerable progress gay, bisexual men and other MSM and trans women continue to bear disproportionate burden of HIV in all contexts worldwide, including in Africa. In part, this is due to entrenched structural barriers including: anti-LGBTI violence (The Global Forum on MSM & HIV, 2015) criminalization of consensual same-sex behavior and forms of expression which impede access to health services (World Health Organization, 2015). Thus, there are important considerations for policy development that decriminalizes and destigmatizes LGBT+ people in order to overcome structural barriers to universal health coverage.

Oosterhoff, Waldman and Olerenshaw (2014) found certain themes dominate literature on sexuality and poverty, wherein about a quarter of the articles identified in their search were about the HIV pandemic, and they identify the relative invisibility of lesbian and bisexual women and trans men across all themes. It has proved difficult to undertake new data collection, particularly in low- and middle-income countries, on about the health and well-being of LGBT+ people beyond HIV without an enabling environment or a well-funded research agenda. Several studies covering broader considerations about LGBT+ health concerns follow.

Global stakeholders for the promotion of sexual health and rights are increasing recognizing that the needs of LGBTI people extend beyond HIV and other STIs. The report of the Guttmacher-Lancet Commission on Sexual and Reproductive Health and Rights acknowledges that people with diverse SOGIESC have been neglected in efforts to advance sexual and reproductive health, including through research, and this has held back progress among wider populations (Starrs, *et al*, 2018). The Commissioners[4] stress that researchers should assess and improve existing questionnaires, explore different data collection approaches, and include standardised questions on sexual orientation and gender identity on more population-based surveys. They also caution

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3   See UNAIDS Key Population Atlas http://www.aidsinfoonline. org/kpatlas/#/home. Global and country level data is available for MSM and transgender people.

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4   Including officials from the Ministry of Health of Senegal and academics from the African Population and Health Research Center, Nairobi, Kenya and the School of Public Health, University of Witwatersrand, Johannesburg, South Africa.

researchers to "recognise the range of behaviours and identities grouped together under umbrella terms such as LGBTQI and sexual minorities. Although they have some health challenges in common, individual subgroups might have unique and varying health-care needs' (Starrs, *et al*, 2018:35).

A ground-breaking mixed methods research programme among women who have sex with women in Botswana, Namibia, South Africa and Zimbabwe was conducted by LGBT community-based organisations (Sandfort, *et al*, 2013). Quantitative analysis demonstrated that 9.6% of 591 women participants from the four countries were HIV positive and the transmission route for 31.7% of those women living with HIV could not be explained by injection drug use or consensual or forced sex with men. Thus, this study established the possibility of female-to-female HIV transmission within hyper endemic contexts of Southern Africa. Associated qualitative research explored the lived reality of 24 lesbians living with HIV in Namibia, South Africa and Zimbabwe of which 20% reported female-to-female HIV transmission (Matebeni, *et al*, 2013). These remarkable findings led the authors to assert that HIV and STI risk factors for lesbian and bisexual women in Southern Africa 'necessitates more research, health information, awareness and culturally sensitive programmes and

interventions to address the issues and risk factors involved' (Matebeni, et al, 2013: S45).

Much of the existing literature about young people's sexual and reproductive health and rights in Africa and elsewhere assumes that adolescents identify as heterosexual, and exclusively engage in sexual activity with partners of the opposite sex/gender. Muller, Spencer, Meer and Daskilewicz (2018) are concerned that this results in little knowledge about the sexual and reproductive health needs of what they term 'sexual and gender minority' adolescents. The authors analysed data from fifty in-depth qualitative interviews with representatives of organisations working on sexual and reproductive health and rights with adolescents and sexual and gender minorities in Malawi, Mozambique, Namibia, Zambia and Zimbabwe. They found that sexual and gender minority adolescents in these countries experience barriers to accessing LGBT organisations wary of serving underage clients and that simultaneously they are also excluded from heteronormative sexual and reproductive health services provided to adolescents in part due to criminalisation of consensual sexual behaviours between partners of the same sex/gender. Furthermore, the authors assert that age-related stigma regarding sexually active adolescents leaves sexual and gender minority adolescents with little, to

no, information required to protect their sexual health nor the ability to access sexual and reproductive health services.

A study from the Southern and East African Research Collective on Health provides compelling data on the intersections of violence, mental health and well-being of LGBTI people in Botswana, Eswatini, Ethiopia, Kenya, Lesotho, Malawi, South Africa, Zambia and Zimbabwe. This is the first cross-sectional study to describe levels of mental health specifically among sexual and gender minority people in East and Southern Africa. The summary report presents findings from a survey responded to by 3,796 people across the nine countries that provides insights into what the authors consider the precarious state of LGBTI people's mental health and well-being in East and Southern Africa (Muller *et al*, 2019). The findings show that in the East and Southern African region discrimination, stigma and marginalisation related to sexual orientation, gender identity and gender expression place LGBTI people at higher risk for high levels of verbal harassment, physical and sexual violence, compared to the general population, higher levels of depression, anxiety, suicidality, and substance use, and barriers to healthcare.
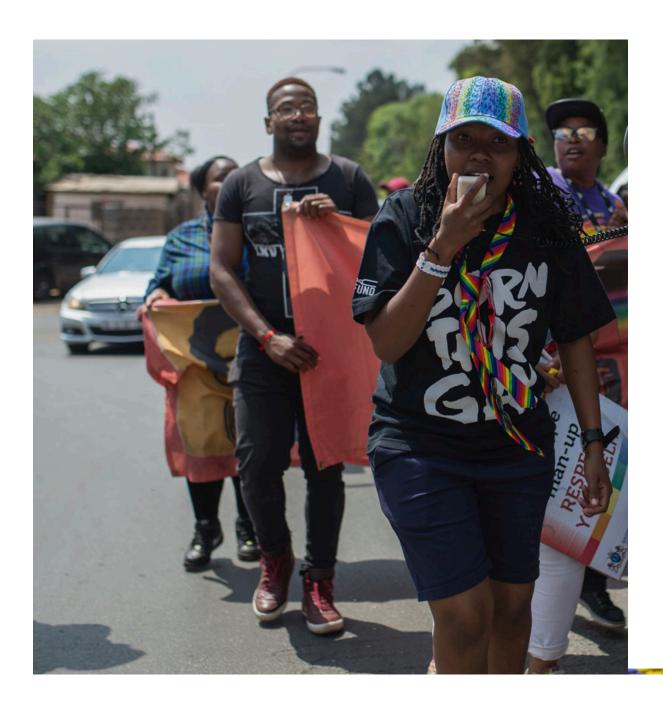
ECONOMIC INCLUSION

A growing body of research presenting economic arguments and a 'business case' for inclusion of LGBT+ people in workplaces and wider economic activity have proven persuasive among policymakers. This is due in part because in many settings the utilisation of human rights discourse to overcome criminalisation, discrimination, exclusion and violence against LGBT+ people have had significant limitations and thus advocates are seeking pragmatic approaches to make their case in a way that might garner the attention of policymakers. Additionally, in some contexts there are incentives for multilateral corporations demonstrating a business case for social responsibility through enhanced engagement with historically excluded groups in their workforce as well as among their consumers.

One of the first studies to attempt to cost LGBT exclusion was authored by Badgett (2014) in which she presented clear evidence of stigma and exclusion of LGBT people in India and argued that the effects are potentially costly to the Indian economy. Badgett developed a conceptual model linking exclusion of LGBT people with economic development through the factors of: lower productivity and lower output as a result of employment discrimination and constraints on labour supply; inefficient investment in human capital because of lower returns to education and discrimination in educational settings; lost output as a result of health disparities linked to exclusion; and social and health services required to address the effects of exclusion that might be better spent elsewhere. Estimates using the model suggest that just the two factors of exclusion of LGBT people - health disparities and workplace discrimination – could lead to a loss of 0.1% to 1.4% of India's GDP.

Another study by Badgett, Park and Flores (2018) identified that in every country that has been studied the violence, discrimination, and social stigma experienced by LGBT people limit their access to jobs, schooling, health care services, political participation, and participation in their families. They assert that these barriers limit full participation in the economy for LGBT people, which could also reduce economic output more generally. They found positive correlations between LGBT inclusion and GDP per capita in three different measures of inclusion: a *Legal Count Index* that counts the number of LGBT-supportive laws; a *Legal Environment Index* that measures patterns of adoption of laws in countries; and a *Global Acceptance Index* estimated from public opinion data. They present evidence that the number of legal rights and the degree of public acceptance reinforce each other and underscore that which this analysis does not prove causality but indicates a strong statistical association between LGBT inclusion and higher GDP per capita.

In their inception report making the 'business case' for LGBT Inclusion for the Open for Business coalition of multinational corporations, Miller and Parker (2015) analysed the economic opportunities associated with improving LGBT inclusion and found that at a macro-economic level inclusion bolsters economic performance demonstrated by stronger growth and higher levels of entrepreneurialism. At a corporate level they contend that inclusion leads to superior performance and innovation and at the level of the individual LGBT employee leads to enhanced employee productivity. They also summarise what they believe to be the risks for business operating in countries that criminalise LGBT people and have high legal levels of discrimination in society such as: threats to employee safety and security including criminal conviction, harassment and violence; compliance concerns when business codes conflict with national law; and brand and reputational risks including negative opinions held by employees and consumers; and the possibility of activism against businesses such as boycotts.
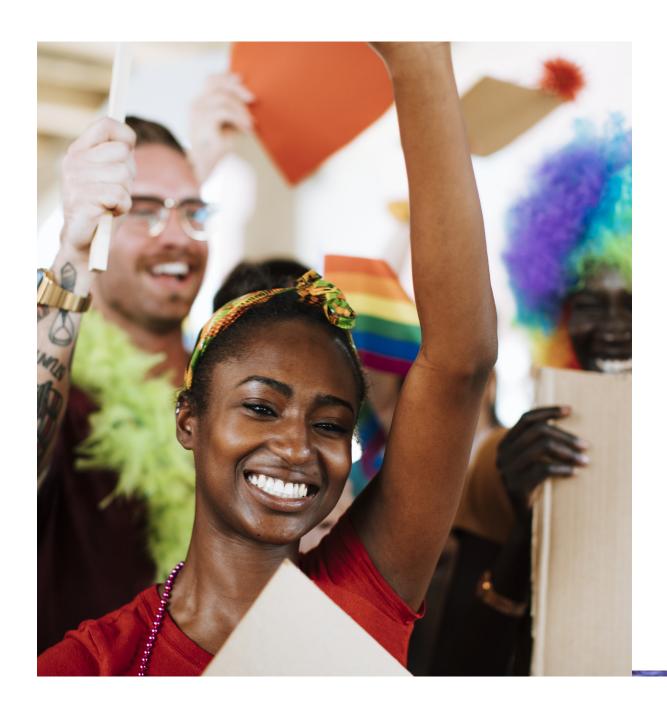
A subsequent report from Open for Business updates the data to strengthen the business case and introduces ratings of 121 cities around the word which assesses the degree to which cities are 'open for business' (Miller and Parker, 2018). The report presents evidence demonstrating that 'open' and diverse cities that include LGBT people are more competitive and better able to serve as hubs for the operation of leading businesses. Miller and Parker assert that LGBT+ inclusion signals that 'a city has a tolerant, dynamic cultural life, and that it is a globally integrated place to do business (Miller and Parker, 2018:4). Open For Business' report presenting an economic case for LGBT+ inclusion in Kenya (2019) presents evidence that estimates that discrimination against LGBT+ people costs Kenya's economy a loss of 1.7% - 0.2% of Gross Domestic Product per year. The cost is due to poor health outcomes, reduced tourism and lower productivity. Open for Business stressed that LGBT+ inclusion can support Kenya's realisation of its national economic development strategy Vision 2030.

In response to the significant legal, social, and economic challenges of LGBT+ people there is a growing impetus that the private sector should be more responsive to these issues by actively promoting the well-being of LGBT+ employees and consumers. One important method that has emerged is benchmarking in the form of workplace equality indices that track and promote corporate policies of diversity and inclusion. Crehan, Daly, Fletcher and Pichler (2021) provide a cross-country analysis of these measurements outcomes of corporate practices to promote inclusion of LGBT+ workers. Their analysis includes the South African Workplace Equality Index (SAWEI), the only existing such index across the entire Middle East and Africa region which benchmarks LGBT+ inclusion in South African workplaces. The SAWEI measures progress on using a framework based on previous indices used in the U.K. and U.S. Since 2018 SAWEI has provided an assessment of a small, but growing, group of South African private sector employers with a majority of respondents from multinational firms in the legal and professional services sectors. While the 1996 Constitution of South Africa prohibits discrimination based on race, gender and sexual orientation and subsequent employment legislation[5] ensures employees have the right to fair and equitable treatment on all three protected grounds, companies are only legally obligated to track statistics relating to race, gender and disability. SAWEI is a tool that fills this gap by helping companies measure their progress in ensuring their workplace is free from discrimination and harassment against LGBT+ people and determine if they are actively creating a more LGBT+ inclusive working environment.

Similarly, Mania (2015) examined how multinational companies translate LGBT+ workplace inclusion policies are put into practice when operating in the Kenyan context. Findings of a survey of 10 multinationals showed 48.9% of respondents rated their business poorly in terms of LGBT diversity and 38% of respondents had little or no awareness of their own company's own Diversity and Inclusion policies. Besides constraints posed by the Kenyan legal context other challenges to implementation of LGBT+ inclusion among workplaces surveyed include negative attitudes which shape perceptions of risks to the brand and expectations that staff should project a heteronormative image when dealing with customers.

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5   South Africa's Employment Equity Act of 1998, Basic Conditions of Employment Act 1997, Labour Relations Act 1998, and Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 prohibit discrimination on the basis of race, gender and sexual orientation.

RIGHTS AND ACTIVISM

A limited body of literature reflects on the operational contexts and strategies of civil society organisations that advance LGBT+ people's human rights and can contribute to progress in social policy. Lack of ability to legally register is key barrier to the ability of LGBT+ civil society organisations to pursue human rights advocacy and provide services to LGBT+ people. In *The Global State of LGBTIQ Organizing: The Right to Register* Daly (2018) presents findings of survey of 194 countries which identified that only 109 countries permit LGBT+ organizations to legally register and that in 55 countries, LGBT+ organizations exist but disclosing an intention to serve LGBT+ people sets up a barrier to legal registration. Daly identified that many organizations pursue registration using more neutral language about their aims and objectives that do not identify that they work with LGBT+ people. Legal analysis for the study further identified that in certain countries, the law does not explicitly deny the existence of LGBT+ organizations but authorities still find ways to reject registration applications and deny equal rights of recognition. The report provides case studies from 10 countries, including Nigeria and Tanzania, reflecting the experiences of LGBT+ organizations wherein lack of registration is perceived as a barrier to reaching maximum capacity to effect change and serving people. Many LGBTIQ organizations that cannot legally register may be less credible within broader civil society coalitions and not be seen as legitimate by potential donors and thus have limited sources of funding for their advocacy and services.

A contextual analysis and mapping of LGBT+ movements in West Africa undertaken by Armisen (2016) considers the challenges these civil society organisations face in sustaining their efforts, particularly in Francophone countries. Over the last two decades the focus on MSM in the response to HIV and AIDS provided initial organizing space for gay and bisexual men in West Africa and subsequently they began to form their own organisations. This trend shifted with awareness of the limitations of addressing sexual rights within public health programming and concern about the marginalization of lesbian, bisexual and queer women and transgender people. Armisen found West Africa now has a number of organisations led by of lesbian, bisexual and queer women and emerging transgender organisations. Strategies employed by LGBT+ organisations in West Africa include: working with religious and traditional leaders and the media; documentation of human rights violations; working with law enforcement, lawyers and judges and undertaking litigation and campaigns for decriminalization; offering safety and security training to LGBT+ community members and as well as providing direct services such as health services, and support through safe houses and family mediation. She notes key gaps and laments very little collaboration between LGBT+ organisations in Anglophone and Francophone countries.

Analysing spaces for LGBTI activism in Southern Africa Mark Gevisser (2016) proposes that 'how our societies treat LGBTI people is symptomatic of the dangers facing all people who are excluded in some way or another in our societies' (Gevisser, 2016:3). Gevisser argues that LGBTI campaigns are more effective when they are engaged in broader social movements and have built alliances with other interest groups. He analyses public discourse in countries throughout the region and suggest that in those countries where public opinion about LGBTI people has shifted, particularly Namibia and Botswana, a key factor of progress is a more sympathetic media, often sensitised by LGBTI

organisations which have also undertaken advocacy and strategic litigation and built alliances with other human rights stakeholders and strengthened relations with state institutions. He also finds that increasing acceptance of sexual and gender diversity is developing due to: the focus on key populations in the HIV response, including gay and bisexual men and other MSM and transgender women; the spread of digital technology and urbanisation; and states' self interest in being seen to be 'modernising' particularly to remain in favour and eligible for Official Development Assistance.

Analysis of the strategies of LGBT+ advocacy movements in Africa was provided by Jjuuko who outlined 'the incremental approach' to rights-claiming taken by the Sexual Minorities Uganda coalition and allies in the Uganda context (Jjuuko, 2013). This analytical approach can be summarised as a critique of straightforward top-down human rights universalism; without questioning the normative basis of human rights, the approach offers and social and political analysis emphasising the need for LGBT+ movements to make strategic choices about when and where to

claim rights, particularly in law. Rich accounts of struggles and strategies that show LGBT+ movements grappling with such dilemmas in Botswana (Tabengwa and Nicol, 2013) and Malawi (Mwakasungula, 2013). Comparative analysis across the Commonwealth by Lennox and Waites (2013) draws out insights from these and other studies, noting for example how a focus on decriminalisation of same-sex sexual acts can lead to insufficient focus on the situation of women and transgender people (Lennox and Waites, 2013:522-523). Alliances with wider human rights and civil society movements and organisations, beyond LGBT+ organisations, emerge as important factors in the success of movements in African contexts.

Taking a longer historical sociological perspective, Gomes da Costa Santos and Waites (2019) in their comparison of Mozambique with Kenya have highlighted the specificities of Portuguese empire as a key factor in Mozambique's decriminalisation in 2015. The particular combination of racism and Catholic education under colonisation, with an emphasis on 'civilisation' of Africans through work rather than education, meant religious morality about family and

homosexuality was not so influentially internalised as in a British colony such as Kenya with its Protestant missions. This left less fertile ground for more recent transnational evangelical church interventions than has been seen elsewhere. In this light, recent differences in decriminalisation might be less due to current modernising state projects and more due to different colonial histories.

REGIONAL LEGAL CONTEXT

Policymakers have direct experience with the mechanisms that can be used to claim human rights and there is a growing body of literature on African regional approaches to claiming human rights of LGBT+ Africans. Murray and Viljoen's (2009) article is an initial attempt at outlining how the African Charter on Human and Peoples' Rights, which has been ratified by 53 of the 54 members of the African Union, regards the issue of gay and lesbian rights and how those working in this area can make use of the mechanisms available through the African Commission on Human and Peoples' Rights (African Commission). Ndashe (2010) provides details of the African Commission's fledgling engagement with Sexual Orientation and Gender Identity (SOGI) issues over the period 2016 to 2010, including the refusal by the African Commission to grant observer status to the NGO Coalition of African Lesbians (CAL). Subsequent articles built on these initial attempts, and pursued some elements in greater depth (Rudman, 2015; Ibrahim, 2015). These contributions emphasise a grassroots and ground-up approach wherein international law on LGBT rights is used for its discursive value at the societal, national and regional levels; it is argued that activists should temporarily refrain from bringing LGBT cases to the African Commission since a detrimental decision, which was extremely likely at the time, can cause serious and long-term problems. Following earlier work making similar contextual strategy arguments in Uganda (Jjuuko and Tumwesige, 2013), Jjuuko (2017) has made similar contextual strategy arguments in relation to the African regional level.

An insightful comparison between the African and European human rights systems (Johnson, 2013) explores what those seeking to develop gay and lesbian rights in Africa might usefully learn from the historical evolution of similar rights under the European Convention of Human Rights; and argues that despite differences between the substantive rights in the foundational treaties they share a common history of rejecting human rights complaints from homosexuals. Although the contemporary jurisprudence of the European Court of Human Rights on SOGI-related issues may contrast sharply with that of the African Commission, it is the early history of the two systems that are similar.

Through comparative analysis of the legal contexts for the human rights of LGBT+ people in Uganda and South Africa and analysis of rhetoric against used across the continent Devji (2016) explores whether there could be an 'African' way of realizing LGBT+ rights. Reflecting on two country cases she raises a key question about whether legal changes can actually result in social attitudinal change. Her pan-African analysis includes concerns about prevalence of transphobia within certain queer communities and the othering of all LGBT+ people within societies in general which leads to scapegoating, particularly during times of economic and other national stress. She asserts that no African country has offered an example that can be followed by others and there are limited incentives given that few countries in the region have updated their laws. She concludes by focusing on the importance of LGBT civil society organisations and argues for 'increasing the visibility of queer groups across the continent, in both urban centres and smaller communities, which should be achieved alongside eradicating explicit legal barriers that would interfere with further movements in pursuit of queer rights' (Devji, 2016:363).

In the International Commission of Jurists (ICJ) study on SOGI for practitioners, a limited part is devoted to the African human rights system (ICJ, 2009:41-43). Kerrigan (2014) *Getting to Rights: The Human Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Africa*, from the Danish Institute for Human Rights, is a study that provides an extensive human rights-based view of African states, non-state actors, individuals, communities, and cultures towards SOGI-related issues. Dealing only to a limited extent with the African human rights system, it contends that mainstream African human rights NGOs have gradually become more open to LGBTI issues and some members of the African Commission have been supportive. It concludes that, even if progress has been slow, the African Commission is an important forum for discussion of LGBTI rights issues, and that African civil society organizations have matured in their approach to LGBTI issues through work in this forum.

In preparation for the first joint dialogue between African Commission, Inter-American Commission on Human Rights and United Nations human rights bodies, the Centre for Human Rights convened,

and subsequently published a report on, the *Ending violence and other human rights violations based on sexual orientation and gender identity* meeting. The report contains a summary of the key points discussed during the dialogue as well as four briefing documents prepared for the meeting on the norms, case law and practices related to human rights, sexual orientation and gender identity, including in the African rights system. (see especially: 'Norms, case law and practices of sexual orientation and gender identity in the African human rights system', 29-42). In order to provide background to the African Commission (2014) Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, the Centre for Human Rights published an informational booklet in partnership with African Men for Sexual Health and Rights (Centre for Human Rights, 2018).

A review of measures to advance the human rights of LGBT+ people in utilising global regional and national mechanisms by Mbaru, Tabengwa and Vance assert that 'the visibility of African scholars, activists and human rights defenders has greatly contributed to dispelling the perception that non-normative gender expression and/or same-sex behaviour is 'un-African'' (Mbaru *et al*, 2018:180). They find that the African Charter on Human and People's Rights, provides LGBT+ human rights defenders with a basis for their advocacy as it is 'the treaty responsible for promotion and protection of human rights and freedoms in Africa' (Mbaru *et al*, 2018:186). They also review litigation in Botswana, Kenya, Mozambique and Uganda intended to protect and promote the human rights of LGBT+ people and assert that 'exposing injustices through the courts has brought hope to parts of Africa, especially in stemming state-sponsored homophobia' (Mbaru *et al*, 2018:201). They urge LGBT civil society to ensure that strategic litigation is part of broader campaigning to generate visibility and systemic change.

The consequences of the African Union Executive Council's directive to the African Commission to reverse its 2015 decision of granting observer status to CAL are analysed by Viljoen (2017) setting out options to defuse the potential for conflict between the Executive Council and African Commission. More recently, Viljoen (2019) has advocated that, following the Commission's reversal in 2018 to reject CAL's observer status, the only way for the organisation to regain its credibility is to build on its existing practices of advancing sexual minority rights. Viljoen argues that in doing so, the Commission should draw strength from encouraging developments within a growing number of African states. Another consideration of the 2018 exclusion of the Coalition of African Lesbians by Tabengwa and Waites (2019) suggests that this is entwined with wider politics in the African Union, underpinned by differences in colonial social and legal legacies, and highlights this rejection as a significant constraint on activism and rights-claiming at the African regional level.

CONCLUSION

The literature reviewed herein covers a range of factors - economic well-being, health, political and civic participation - foregrounded by researchers and UNDP as among the priority areas where inclusion of LGBT+ people should be advanced in order to 'leave no one behind'. While the review is not exhaustive the limits of available evidence suggest that greater investment in research that explores the lived reality of LGBT+ people should be facilitated in Africa and beyond. Persistent data and knowledge gaps are a human rights concern given that 'policymakers are taking decisions in the dark' (UNHRC, 2019: 5) when they are unable to access evidence about LGBT+ people. The results of studies reflected on herein can serve as a resource for policymakers as well as encourage researchers to build on and diversify what we know about sexual and gender diversity in Africa.

In conclusion, the following recommendations should be considered by researchers, civil society, and policymakers in Africa:

Reduce the gap in the availability of LGBT+ data through funding and conducting cross-cutting and intersectional research that factors in participant safety and vulnerabilities.

Address particular evidence gaps, such as health and well-being data, and ensure LGBT+ inclusion, with attention to different subgroups, in existing research efforts.

Commit to the implementation of the SDGs for all persons including LGBT+ people.

Collect and report data disaggregated by SOGIESC, to demonstrate that the SDGs are leaving no one behind.

Recognise the intersections between the treatment of LGBT+ people and wider socio-economic exclusion.

Recognise that criminalising LGBT+ people generates high legal levels of discrimination and violence in society.

Recognise that criminalising LGBT+ people reduces the impact of investment while LGBT+ inclusion, including within the workplace, signals a dynamic and productive business environment.

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A LITERATURE REVIEW

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