

The Role of National Human Rights Institutions in Implementing Resolution 275

Project Assessment Report of the Network of African National Human Rights Institutions (NANHRI)



Copyright

The content of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the Network of African National Human Rights Institutions.

ISBN: 978-9966-1765-7-8

©2019 Network of African National Human Rights Institutions - NANHRI

This report is published by:

The Network of African National
Human Rights Institutions
2nd Floor, CVS Plaza, Lenana Road
P.O Box 74359-00200
Nairobi-Kenya.

Website: www.nanhri.org

Email: info@nanhri.org

Twitter: @NANHRI40

Facebook: Network of African National Human Rights Institutions.

#NANHRISOGIEProject

The Role of National Human Rights Institutions in Implementing Resolution 275

Project Assessment Report of the Network of African National Human Rights Institutions (NANHRI)

Period Under Review 2017 – 2018

By Marie Ramtu, NANHRI Secretariat



Table of Contents

PREFACE.....	v
ACKNOWLEDGEMENT.....	vii
ABBREVIATIONS.....	viii
CHAPTER ONE: INTRODUCTION.....	1
EXECUTIVE SUMMARY.....	2
CHAPTER TWO: FINDINGS AND ANALYSIS.....	12
CHAPTER THREE: RECCOMENDATIONS AND CONCLUSION.....	24
ANNEX: QUESTIONNAIRE	31

Preface



*Mr Gilbert Sebihogo
NANHRI Executive Director*

Following the adoption of Resolution 275 during the 55th Ordinary Session of the African Commission on Human and People’s Rights (2014) in 2014, the Secretariat of the Network of African Human Rights Institutions (NANHRI) initiated a project to strengthen the capacity of African National Human Rights Institutions (NHRIs) to respond to violence and discrimination faced by LGBT persons. The adoption of this Resolution paved the way for a proactive approach towards addressing violence meted on persons because of their real or imputed sexual orientation and/or gender identity. Hence, the NANHRI SOGIE Project was initiated in 2016, with an aim to build the capacity of African NHRIs to institutionalise SOGIE-related responses. It is recognized that the Res. 275 may not specifically be addressing issues related to sexual characteristics. However, NHRIs as stipulated in the Paris Principles have an obligation to be pluralistic in carrying out their mandates.

Further, the Paris Principles encourage NHRI-CSO collaboration in carrying out their mandates. One of the strengths that the NANHRI SOGIE Project has presented is to consciously and consistently collaborate with CSOs. It is anticipated that the relationships forged will translate to greater impact at expanding the protection space for LGBT persons. Importantly, the NHRI-CSO symbiotic relationship is to ensure that NHRIs carry out effectively their duty to monitor, conduct investigations, document and report appropriately the situation of LGBT persons in their respective countries.

This Project Assessment Report presents key findings of NHRIs of Kenya, Uganda, Ghana, Malawi and South Africa in advancing their work towards protection of LGBT persons. Some notable achievements were made during the assessment period of 2017 – 2018. While these steps are commendable in the larger context of addressing economic and social rights of LGBT persons, this is just but scratching the surface. There is still a lot more that can be done by continuously taking advantage of the opportunities and mechanisms that exist at the international, regional and national levels.

At the Secretariat level, we commit, within the parameters possible, to continue supporting the efforts of our members as they carry out this important work. We are grateful for the contribution made by partners in making this a success. We hope that the collaboration leads to greater coordination and effectiveness in implementing Res. 275.’



Gilbert Sebihogo

Executive Director, NANHRI

Acknowledgement

The Secretariat of the Network of African National Human Rights Institutions (NANHRI) wish to acknowledge the feedback, responses and contributions of Commissioners, policy makers and technical staff from the following NHRIs: Kenya National Commission on Human Rights, Uganda Human Rights Commission, Malawi Human Rights Commission, South African Human Rights Commission and Commission on Human Rights and Administrative Justice, Ghana.

Valuable feedback was also provided by representatives from the following civil society organizations: Intersex Persons Society of Kenya, Gay and Lesbian Coalition of Kenya, National Gay and Lesbian Human Rights Commission, Kenya Human Rights Commission East African Trans Health Advocacy Network, Centre for Popular Education and Human Rights Ghana, Hope Alliance Foundation, Solace Foundation, Sisters of the Heart, Innovations for Change, Nyasa Rainbow, MANERELA, Centre for Development of People, Civil Rights Advocacy Centre, Ivy Foundation, LITE, MANGO Network, IRANTI, AIDS and Rights Alliance for Southern Africa, Foundation for Human Rights, African Men for Sexual Health and Rights, Parents, Families and Friends of South African Queers, Human Rights Watch, Sexual Minority Uganda, Defend Defenders, Human Rights Awareness and Promotion Forum, Freedom and Roam Uganda, Foundation for Human Rights Initiative and the National Coalition of Human Rights Defenders-Uganda.

Data for this report was obtained by Marie Ramtu and Lawrence Mute. Marie is Program Officer at the NANHRI Secretariat, who oversees the implementation of the SOGIE Project. Mute is consultant who is a lecturer at the University of Nairobi, School of Law. He is also a former Commissioner at the Kenya National Commission on Human Rights. He also served as the Deputy Vice Chairperson of the African Commission on Human and Peoples' Rights.

The SOGIE Project aims to strengthen the capacity of African national human rights institutions to respond appropriately to violence towards LGBT persons. It is supported by the Arcus Foundation and Wellsprings Advisors.

Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
CHRAJ	Commission on Human Rights and Administrative Justice
CSO	Civil Society Organization
IDAHOBIT	International Day against Homophobia, Biphobia and Transphobia
HR	Human Resource
KNCHR	Kenya National Commission on Human Rights
LGBT	Lesbian, Gay, Bisexual and Transgender
MHRC	Malawi Human Rights Commission
NANHRI	Network of African National Human Rights Institutions
NHRI	National Human Rights Institutions
SAHRC	South African Human Rights Commission
SOGIE	Sexual Orientation, Gender Identity and Expression
UHRC	Uganda Human Rights Commission
UPR	Universal Periodic Review

Chapter One: Introduction



**Resolution
275**

Executive Summary

This is an abridged report of key findings from five NHRIs following an assessment to measure the extent they are implementing Resolution 275¹ of the African Commission on Human and Peoples' Rights (ACHPR). The five NHRIs from Kenya, Uganda, Malawi, Ghana and South Africa are part of the NANHRI SOGIE Project² being implemented by the Secretariat of the Network of African National Human Rights Institutions (NANHRI). The aim of the project is to increase the capacity of national human rights institutions (NHRIs) to execute their protective mandate towards LGBT persons.

The key findings presented were obtained as a result of a technical follow up, months after an in-country workshop on SOGIE and Human Rights was held in each of the five countries. During the in country workshops, the NHRIs solidified strategies that would ensure protection of the rights of LGBT people.

The NANHRI Secretariat sought to establish how the NHRIs from Kenya, Uganda, Malawi, Ghana and South Africa have been applying the Res. 275 to integrate SOGIE-related responses within their institutions. The results obtained are to be utilized to measure future progress within each respective NHRI. The period under assessment is 2017 – 2018.

This Project Assessment Report is in three chapters. Chapter one unpacks Res. 275 and outlines the contextual environment in each of the five countries. It further provides the methodology, objectives and limitations of the baseline survey. Chapter two presents the key findings from each of the NHRIs and feedback from CSOs interviewed in each of the five countries. The last chapter concludes with general and specific recommendations made to the individual NHRIs.

It is recognised that each country context may have drastically changed since the collection of primary data that was concluded in September 2018. Subsequent reports for each of the NHRIs progress post assessment are found on <https://www.nanhri.org/resource-centre/reports/>

1. 275 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 - ACHPR/Res.275(LV)2014 <https://www.achpr.org/sessions/resolutions?id=322>

2. Information on the NANHRI's SOGIE Project: <http://www.nanhri.org/our-work/thematic-areas/sogie-project/>

This section begins by providing a brief overview of Resolution 275³ of the ACHPR. It also provides a brief introduction of the NANHRI SOGIE project. It also lays out the operational context of NHRIs in Kenya, Uganda, Ghana, South Africa and Malawi. Additionally, it provides the objective and the methodology utilized for the baseline assessment.

1.1 Resolution 275

The Resolution 275 was adopted in the 55th Ordinary Session of the ACHPR in 2014. The purpose of this resolution was to call upon State Parties to stop violence and other human rights violations against persons who identify as either gay, lesbian, bisexual or transgender (LGBT). Resolution 275 established four essential sets of issues. First, it explained the normative context within which sexual orientation and gender identity are prohibited grounds of discrimination:

- a) That all individuals are, in spite of their sexual orientation or gender identity, protected from discrimination (Article 2 of the African Charter)
- b) That all individuals are entitled to equal protection of the law (Article 3 of the African Charter)
- c) That every individual has entitlement to respect of their life and the integrity of their person (Article 4 of the African Charter); and
- d) That every individual is entitled to protection from torture and other cruel, inhuman or degrading treatment or punishment (Article 5 of the African Charter).

Second, Resolution 275 raises concerns in respect of acts of violence, discrimination and other human rights violations which continue to be committed against individuals across many parts of Africa because of their actual or imputed sexual orientation or gender identity. Manifestations of such violence includes “corrective rape”, physical assaults, torture, murder, arbitrary arrests, detentions, extrajudicial killings and executions, forced disappearances, extortion and blackmail.

Third, Resolution 275 raises concerns in respect of the incidence of violence and human rights violations and abuses by state and non-state actors targeting human rights defenders and civil society organisations working on issues of sexual orientation and gender identity.

3. Resolution 275: Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity

The Resolution, finally, addresses the spectre of the failure by law-enforcement agencies to diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their real or imputed sexual orientation and gender identity.

Resolution 275 makes the following three declarations in relation to violence perpetrated on persons on the basis of their real or imputed sexual orientation or gender identity:

- a) It condemns incidence of violence and other human rights violations on persons on account of their real or imputed sexual orientation or gender identity, including the situation of systematic attacks of such persons by state and non-state actors.
- b) It calls on states to end all acts of violence and abuse, whether committed by state or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their real or imputed sexual orientation or gender identity.
- c) Finally, it urges states to ensure that human rights defenders work in an enabling environment free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities.

1.2 NANHRI SOGIE Project

As a result of adoption of Res. 275 of the ACPHR in 2014, with an aim to addressing violence and discrimination amongst lesbian, gay, bisexual, transgender (LGBT), the NANHRI Secretariat initiated a SOGIE Project⁴ in 2017. This project aims at strengthening the capacity of five NHRIs from Kenya, Uganda, Ghana, South Africa and Malawi in responding to SOGI-related violence and discrimination. Representatives from the five NHRIs were taken through an online course on SOGI and Human Rights. This was subsequently followed by a face to face training to bridge the learning gaps from the online course. At the end of the face to face workshop each NHRI developed implementable action plans, which are to be integrated into their overall institutional strategy. National level workshops were held with each of the five NHRIs to address

⁴ Information on the NANHRI's SOGIE Project: <http://www.nanhri.org/our-work/thematic-areas/sogie-project/>



NANHRI Peogramme Officer Marie Ramtu makes a presentation during the KNCHR staff training workshop in Naivasha, Kenya, in April 2019. The incountry workshop aimed at increasing the knowledge of the staff for integration of the SOGIE in the operations of the KNCHR. Photo: Secretariat.

specific country context issues.

All activity reports are available on <https://www.nanhri.org/resource-centre/reports/>.

1.3 Context in Kenya

The Constitution of Kenya (2010) protects all Kenyans. As such, its protection covers Kenyan LGBT persons. Article 27 prohibits direct or indirect discrimination of a person by another person or by the State on grounds such as race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Significantly, Kenya’s High Court has determined that the right to equality and non-discrimination applies to ‘every person’, and that an individual, human being, regardless of his or her gender or sexual orientation, is a ‘person’ for the purposes of the Constitution.

However, legal and practical hurdles continue to undermine the exercise of human rights by LGBT individuals in varied spheres of life. Sections 162 and 165 of the Penal Code criminalise consensual same-sex conduct. LGBT persons continue to face social stigma manifested in violations of their rights including to health, housing, education and work.

Following the promulgation of the 2010 Kenyan Constitution, policy and judicial interventions have expanded the spaces for the exercise of rights by LGBT persons. Notably, based on a recommendation made by Sweden during Kenya's second review under the Universal Periodic Review (UPR) process in 2015, Kenya agreed to adopt a comprehensive anti-discrimination law affording protection to all individuals, irrespective of their sexual orientation and/or gender identity. Simultaneously, the Judiciary has handed down significant decisions facilitative of the rights of LGBT individuals. Notably such decisions include the Court of Appeal quashing the use of anal testing as a way of collecting evidence of same-sex conduct between adult consenting male persons contrary to Section 162 (a) and (c) and 165 of the Penal Code⁵.

The Kenya National Commission on Human Rights (KNCHR)⁶ is a constitutional body established in terms of Article 59 of the Constitution of Kenya (2010) and enabled by the Kenya National Commission on Human Rights Act (No. 14 of 2011).

1.4 Context in Uganda

The rights of LGBT persons in Uganda are protected pursuant to Article 21 (1) of the Constitution (1995), that stipulates:

'All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.'

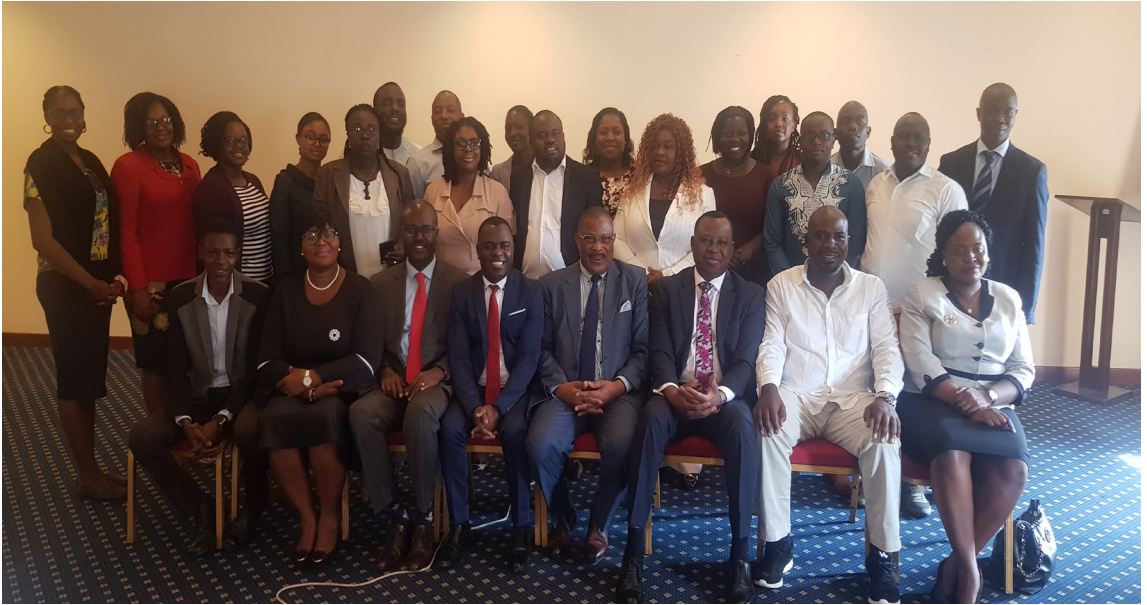
Apart from this generic affirmation of equality before and under the law, the Constitution's articulation of protection from discrimination uses exclusive rather than inclusive language that could be interpreted to include LGBT individuals. The Constitution specifies in Clause 2 of Article 21 that:

'Without prejudice to Clause (1) of this Article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.'

Consequently, due to the above constitutional ambivalence, legal and practical hurdles continue to undermine the exercise of human rights by LGBT individuals in varied spheres of life. Individuals could be prosecuted under Section 145 of the Penal Code, which criminalises having carnal knowledge against the order of

5. Petition 51: C O L & another v Resident Magistrate - Kwale Court & 4 others [2016] eKLR-<http://kenyalaw.org/caselaw/cases/view/123715/>

6. About KNCHR - <https://www.knchr.org/>



Uganda Human Rights Commission hosts the five NHRIs for the Complaints Handling, Investigations and Documentation workshop on July 23-25, 2019.

nature. This situation was compounded by the enactment of the Anti-Homosexuality Act, 2014, which, inter alia, created the offense of homosexuality, the offense of aggravated homosexuality, the offense of advocacy and funding of activities related to homosexuality, and gave immunity to individuals who committed crimes while 'protecting themselves from homosexuality.'⁷ In August 2014, the statute was declared unconstitutional on a technicality.⁸

The Uganda Human Rights Commission (UHRC)⁹ is a constitutional body established pursuant to Article 51 of the 1995 Constitution of Uganda and enabled by the Uganda Human Rights Commission Act, Cap. 24. The functions of the Commission are stipulated under Article 51 of the Constitution (1995).

1.5 Context in Ghana

The rights of LGBT individuals are protected under the Constitution in the same way that the rights of other Ghanaians are. Article 17 of the Constitution provides that all persons are equal before the law; and that a person may not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. Ghana continues to criminalise consensual same-sex relationships in its Criminal Code (Amendment) Act, 1998 of Act 554. The Criminal Code makes

7. Uganda Report of Violations Based on Gender Identity and Sexual Orientation, Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation, July 2015.

8. The Constitutional Court determined that the Anti-Homosexuality Act had been passed without following laid-down constitutional and parliamentary procedures on quorum.

9. About UHRC - <https://www.uhrc.ug/>

it a felony for one to have unnatural carnal knowledge of a person of over 16 years without his consent. It is also a misdemeanour for one to have unnatural carnal knowledge with another with his consent.

It is notable that while Ghana rejected recommendations on decriminalisation of consensual same-sex relationships made under the Universal Periodic Review (UPR) process, it accepted recommendations to ensure protection of LGBT persons from violence and discrimination. Ghana accepted that it would take steps to prevent, and ensure accountability for, acts of violence perpetrated against individuals, including on the basis of their sexuality. That it would ensure that complete and impartial investigations are conducted into allegations of attacks and threats against persons based on their sexual orientation or gender identity and bring those responsible to justice in conformity with international standards.

One of the more recent human rights reports on the situation of LGBT persons in Ghana conclude that violence and discrimination is common in the public and private spheres of life.¹⁰ Simultaneously, by the time of the assessment, a religious caucus had fronted advocacy against homosexuality, and even the Speaker of Ghana's Parliament had expressed negative sentiments. Encouragingly, notable political leaders attempted to steer a more moderate course on the matter. In an interview with Al-jazeera¹¹, President Nana Addo Dankwa Akufo-Addo implied that the decriminalisation of consensual same-sex relationships could take place when public opinion demanded a paradigm-shift. Subsequently, though, the President has explained that same-sex marriage will not be legalised in Ghana under his presidency.

The Commission on Human Rights and Administrative Justice (CHRAJ)¹² is a constitutional body established pursuant to Article 216 of the 1992 Constitution of Ghana and enabled by the Commission on Human Rights and Administrative Justice Act 1993, Act 456. The functions of CHRAJ are stipulated under Article 218 of the Constitution.

1.6 Context in South Africa

The protection of the rights of LGBT individuals in South Africa is established in law perhaps far more than most countries globally. Section 9 of the Constitution guarantees everyone equality before the law and equal protection and benefit of the law. The State or a person may not be unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief,

10. <https://www.hrw.org/news/2018/01/08/ghana-discrimination-violence-against-lgbt-people>

11. <https://www.youtube.com/watch?v=51WBgwfKijQ>

12. About CHRAJ - <https://chraj.gov.gh/>



Advocate Pansy Tlakula delivers a keynote address during the South African Human Rights Commission SOGIE incountry meeting. This meeting, which was held on November 29-30, 2017 to discussed among other issues, tackling discrimination and violence against LGBTI persons. Photo: SAHRC.

culture, language and birth.

The practice of LGBT rights in South Africa is, however, hedged in by many qualifications. Persons continue to face discrimination and violence on account of their sexual orientation and/or gender identity. Engagements by South Africa with regional and international human rights bodies have raised concerns about the levels of discrimination and violence faced by LGBT individuals. Illustratively, the ACHPR was concerned by 'discrimination, homophobia, and prejudice against homosexuals resulting in murder and violence against LGBT persons despite the existence of legal frameworks.'¹³

The South African Human Rights Commission (SAHRC)¹⁴ is a constitutional body whose functions are stipulated under Section 184 of the 1996 Constitution of the Republic of South Africa.

1.7 Context in Malawi

Although the protection of the rights of LGBT individuals in Malawi is not established explicitly, Section 20 of the Constitution of Malawi (1994) prohibits discrimination

13. For example, Concluding Observations and Recommendations on the Combined 2nd Periodic Report Under the African Charter on Human and Peoples' Rights and the Initial Report of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa on the Republic of South Africa.

14. About SAHRC - <https://www.sahrc.org.za/>



of persons in any form, and it guarantees all persons equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status. A number of laws restrict or criminalise conduct by LGBT persons. The Penal Code criminalises acts against the order of nature in section 153, indecent practices between males in Section 156 and indecent practices between females in Section 137A.

Malawi’s recent engagements with regional and international human rights bodies have raised relevant concerns and elicited pertinent responses by Malawi. Notably, Malawi accepted the following recommendations made in its most recent engagement under the Universal Periodic Review mechanism that it should:

- a. Take effective measures to protect lesbian, gay, bisexual and intersex persons from violence and prosecute the perpetrators of violent attacks (Austria); and
- b. Guarantee that people of the lesbian, gay, bisexual, transgender and intersex communities have effective access to health services, including treatment for HIV/AIDS (Honduras).

Significantly, Malawi’s executive has in recent years shown willingness to engage substantively on SOGIE issues. Notably, in 2010, the President had pardoned,

on humanitarian grounds, two individuals who had been sentenced to 14 years' imprisonment for homosexual acts. In 2012, the Ministry of Justice and Constitutional Affairs issued a moratorium on arrests and prosecutions for consensual adult sex. While this moratorium was reaffirmed in 2015, it was however, suspended in 2016 pending judicial review by the High Court.

In spite of these positive developments, LGBT persons in Malawi continue to face stigma, discrimination and violence in all aspects of their daily life. The police often physically assault, arbitrarily arrest and detain them. Providers of public amenities such as health services take punitive action or deny services to people on the basis of their actual or assumed SOGIE.¹⁵ Further, sodomy prosecutions continue before the Judiciary, and a number of decriminalisation petitions have been filed in the courts. These include the "kill the gays" case whose prosecution has been halted by the Malawian Director of Public Prosecution and a constitutional case on the protection of LGBT persons from violence.

The MHRC is a constitutional body established under section 129 of the Constitution of Malawi (1994). In 2017, the MHRC considered to undertake a national study on the rights of LGBT persons.

1.8 Objective of the Project Assessment Report

The NANHRI Secretariat was seeking to establish how the NHRIs from Kenya, Uganda, Malawi, Ghana and South Africa have been applying the Res. 275 to integrate SOGIE-related responses within their institutions. The results obtained are to be utilised to measure future progress within each respective NHRI. The period under assessment is 2017 – 2018.

1.9 Methodology

The research design utilised for the technical follow up was exploratory, as this was the first time that the NANHRI Secretariat was carrying out this specific assessment. The instruments used for data collection were a hybrid of a questionnaire and face to face interviews. The questionnaire was administered prior to the face to face interviews. In each of the five NHRIs, focus group discussions were held with technical staff. Also separately, in-depth interviews were held with various policy makers in each of the respective NHRIs. For triangulations, focus group discussion were also held with CSO representatives in each of the five countries. Face to face interviews were conducted about 6 -12 months after the in country convening for each co-hosted by each NHRI.

15. Human Rights Watch, 'Let Posterity Judge: Violence and Discrimination against LGBT People in Malawi', 2018. - <https://www.hrw.org/report/2018/10/26/let-posterity-judge/violence-and-discrimination-against-lgbt-people-malawi>

Chapter Two: Findings and Analysis



The Commission on Human Rights and Administrative Justice of Ghana hosts the high-level convening on SOGIE in Accra, Ghana, on November 19 -21, 2018. Photo: Secretariat.




This section presents and analyses the data obtained from the questionnaire and in-depth interviews. Analysis will be under each question as necessary.

2.1 Collaboration with External Actors

This section presents the feedback obtained from the five NHRIs on the outcomes since the in-country workshops. It also maps out which actors that the NHRIs have partnered with under the period of assessment.

2.1.1 Outcomes as a Result of In-country Workshops

Table 1: Key outcomes since in-country workshops¹⁶

	<p>The Complaints Management System can now provide disaggregated data on complaints received of violations on LGBT people. The Commission has further been enjoined as <i>amicus curiae</i> in the case challenging the constitutionality of sodomy laws in Kenya¹⁷. KNCHR also issued its first IDAHOBIT statement in 2018¹⁸ and also published a report¹⁹ on promoting the rights of intersex persons in Kenya.</p>
	<p>Uganda Human Rights Commission has trained over 60 police officers on the need to protect LGBT persons. This has significantly reduced violence against LGBT persons in Uganda by the police. Additionally, about 60 prosecutors were also trained.</p>
	<p>The Chairperson²⁰ and the Western Regional Director²¹ had interviews on several radio stations on the protection of LGBT persons. The Western Region Director also engaged stakeholders on the right to health for LGBT persons. CHRAJ played a key role in building State capacities on LGBT issues during Ghana's UPR engagements at the Human Rights Council. During IDAHOBIT, CHRAJ offered a statement of solidarity during a CSO event. CHRAJ had also contributed to inter-NHRI SOGIE rights learning by sending one of its staff members to facilitate the training of staff workshop for the Malawi Human Rights Commission in March 2018.</p>

16. All in country reports are available on <https://www.nanhri.org/resource-centre/reports/>

17. Petition 150 & 234 of 2016: EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (*Amicus Curiae*) - <http://kenyalaw.org/caselaw/cases/view/173946/>

18. KNCHR IDAHOBIT 2018 Statement - <https://bit.ly/2CY6Foj>

19. KNCHR Intersex persons report - <https://bit.ly/2OrffRT>

20. <https://bit.ly/334C1nY>

21. <https://bit.ly/2KDwUom>

	<p>Development of Advocacy Material on SOGIE, Hosted Pride in Rugby Tournament²², Published Thematic Discussion Paper⁷ on SOGIE, Established Section 11 Committee on Equality; Co-Hosted IDAHOT Workshop with Foundation for Human Rights.</p>
	<p>Little progress was made. Commissioners and staff were oriented on rights of LGBT persons. MHRC participated in CSO-initiated training workshops targeting grassroots communities and other activities.</p>

NB: By time of the assessment, the UHRC and KNCHR in country workshops had taken place one year earlier; eight and nine months had elapsed for CHRAJ and SAHRC respectively.

The MHRC in-country workshop took place only six month prior to the assessment. Hence, many of the anticipated activities have not taken place. This time limitation was compounded by the fact that the terms of all Commissioners ended fairly soon after the workshop. By the time of the assessment, a new cohort of Commissioners has not been appointed to provide policy direction to MHRC’s work.

2.1.2 Stakeholder Collaborations

To attain the key outcomes outlined in the previous sections the NHRIs collaborated with various partners. KNCHR worked closely with the Secretariat to the Taskforce on Legal, Policy, Institutional and Administrative Reform on Intersex Persons in Kenya & The members of SOGIE Forum. Some of the CSOs UHRC has collaborated with include Sexual Minorities Uganda and HURIPPEC. CHRAJ facilitated sessions on the protection of LGBT persons in workshops hosted by the Ghana AIDS Commission, CEPHERG and Solace Foundation. SAHRC collaborated with Foundation for Human Rights, Commission for Gender Equality, Jozi Cats Rugby Club, Centre for Human Rights, Department of Justice and Constitutional Development, Gay and Lesbian Memory in Action and; Film and Publications Board Commission for Cultural, Religious and Linguistic Rights. The MHRC collaborated with Centre for Development and Education of People (CEDEP), Centre for Human Rights and Rehabilitation (CHRR) and Innovations for Change.

22. SAHRC Spokesperson, Gail Smith on the power of sport to fight for equality via ETV - <https://bit.ly/2XEXhzH>
 Communications Coordinator Gushwell Brooks on ETV speaking about Human Rights Day - <https://www.youtube.com/watch?v=MQjUVBzKCnM>

Gushwell Brooks on the rugby tournament held to raise awareness of inequality via ENCA - <https://www.youtube.com/watch?v=9DFHWUihKM4>

Jozi Cats Rugby Chairman Chris Verrijdt on the truly inclusive rugby tournament - <https://bit.ly/20wPeR2>

Jozi Cats Rugby Club teamed up with SAHRC and NANHRI to observe Human Rights Day via SABC - <https://bit.ly/2QACWK0>
 23. <https://bit.ly/33YZSXn>

2.2 Policies and Practices

The assessment also sought to find out if the NHRIs have human resources policies and practices that foster enabling environment for all employees to execute their duties. Additionally, it also sought to find out to what extent the policies towards the public encourage LGBT persons to interact with the NHRIs.





2.2.1 Human Resources Policy and Practices

Except for MHRC, all NHRIs have a non-discriminatory and equality Human Resources (HR) Policy. However, there is a presumption that MHRC treats all staff equally based on the Malawian Constitution and human rights principles.

It is only the HR policy from KNCHR and SAHRC that explicitly mentioned sexual orientation and gender identity as a ground of non-discrimination. The UHRC and CHRAJ prescribes to a general anti-discrimination and equality commitment. The HR manual for CHRAJ is drawn from the Public Service Commission.

On addressing workplace harassment/discrimination, all the five NHRIs reported that they had institutional mechanisms in place.

Table 2: Workplace Harassment/Discrimination

	<p>The HR Policy provides for grievance/complaints handling mechanism under Section 13 of the Human Resource Policy.</p>
	<p>Has a sexual harassment committee, which is mandated to handle issues of harassment of the staff. It also has a human resource committee, which is mandated to handle issues of recruitment without discrimination.</p>
	<p>The HR department has a process to address grievances between members of the SAHRC – including grievances that relate to discrimination and sexual harassment.</p>
	<p>Management has adopted a procedure whereby a Senior Officer has been appointed to be responsible for receiving and addressing discrimination and harassment in the workplace. The officer appointed is a Director.</p>

CHRAJ did not explicitly mention the mechanism for addressing workplace harassment and discrimination. Although, they rely on the following pronouncement in the HR policy:

'In the performance of the functions of the Commission, all staff and other authorised persons must at all times ensure that anyone seeking the service of the commission isn't discriminated against and that the dignity all such person is upheld.'

All the five NHRIs asserted that all staff members were aware of the HR policies and practices.

2.2.2 Client Policy

Similarly, all the five NHRIs demonstrated to having a non-discriminatory approach towards the people they serve, in which all their staff are aware of. The embodiment of the client policy varies. MHRC and UHRC have independent client charters. CHRAJ relies on the provisions included in the HR policies. The SAHRC has a specific section in their employee handbook that regulates the relationship of their staff with the public. KNCHR has a specific provision that applies to LGBT persons. It states:

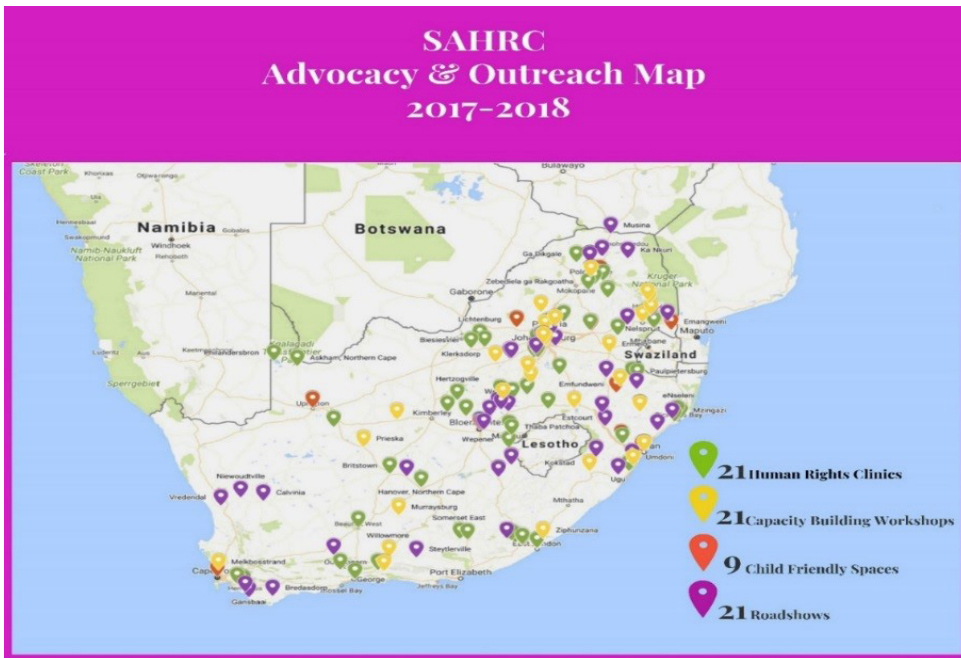
'KNCHR is fully committed to ensuring that marginalized groups including women, children, the youth, older members of society, persons with disabilities, persons living with HIV and AIDS, sexual minorities and marginalized communities are at the center of its work. This commitment is informed by the current status of these groups who continue to face factual and legal discrimination which has contributed to their marginalization and systematic exclusion from the country's development agenda. In the context of entitlements, these groups are yet to fully realize their human rights (KNCHR Gender and Diversity Mainstreaming Policy and Action Plan 2015 – 2020).'

2.2.3 Accessibility

To ensure accessibility to all persons seeking services all the five NHRIs have offices regional and/or field offices across their national borders. In addition, the MHRC maintains a policy of receiving all forms of human rights violations. UHRC has an open door policy. CHRAJ encourages walk-in services and also has an online discrimination reporting system. KNCHR has toll free calling and texting numbers, are reachable through social media pages such as twitter and Facebook. For SAHRC, complaints can be submitted in all official South African languages. They also utilise radio, television and print media as a key strategy to reach out to rural and peri-urban communities.

Other strategies employed by SAHRC to increase accessibility include human rights clinics, road shows and public outreaches.

Figure 1: SAHRC Advocacy & Outreach Map



2.2.4 Confidentiality

In maintaining confidentiality throughout the complaints handling process, all the NHRIs had policies in place that guided their respective institutions. Additionally, UHRC had their staff take an oath of secrecy that emphasized non-disclosure of all cases. CHRAJ ensures that their interview rooms provided utmost privacy. KNCHR's has a well-established complaints management system that guarantees confidentiality. SAHRC Complaints Handling Procedure Manual (2018) goes further to provide guidance on steps to take should a waiver of confidentiality is deemed necessary to resolve the complaint.

2.2.5 SOGIE-related Complaints

The survey also sought to find out how many SOGIE-related complaints had been filed with all the five NHRIs during the period under assessment (2017-2018). Overall, for the period under assessment significantly low levels of SOGIE-related complaints had been lodged with the NHRIs.





	<p>Three complaints were received. The three had been investigated and recommendations provided.</p>
	<p>10 complaints received. The remedy provided included court litigation, engagement with relevant government agencies and ongoing work on taskforce on intersex persons.</p>
	<p>Specific figures under period of assessment couldn't be shared since the online reporting system experienced failure at some point. However, 41 SOGIE-related complaints had overall been received throughout the life-time of the institution.</p>
	<p>No data is available because UHRC does not classify its complaints. Emphasis is placed on highlighting the human rights violation or abuse within the complaint.</p>

Figure 2: SAHRC Stats on SOGIE-related Complaints

Types of Equality Complaints Received in 2013/14

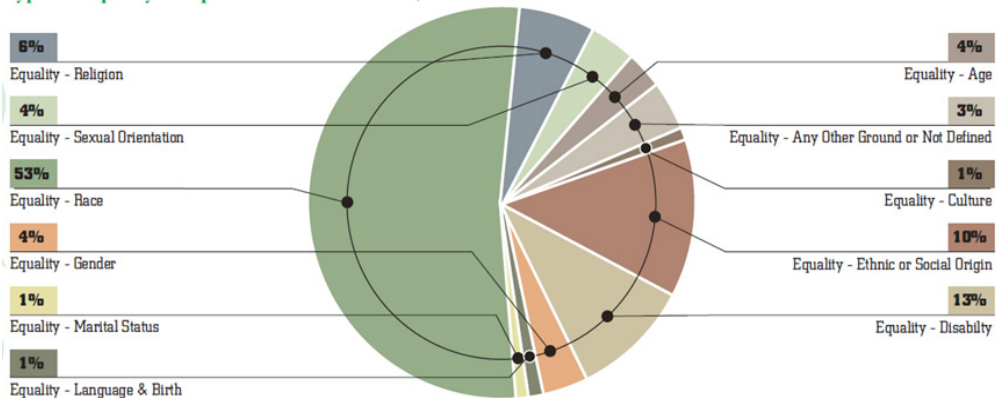


Figure 2 shows that out of all the complaints SAHRC received in relation to an alleged violation of the right to equality, complaints relating to sexual orientation account for only 4%. This number is significantly lower compared to complaints alleging a violation of rights based on race – which account for 53% of all equality related complaints²⁴.

24. In addition, the SAHRC explained that gender related complaints were for the most part directed to and received by the Commission on Gender Equality from the public and from other statutory and constitutional bodies. The Commission had, however, undertaken strategic litigation where the Seshego Equality Court (Limpopo) ruled in favour of the Commission in a case where a transgender secondary pupil had been humiliated and harassed on the basis of gender identity.

2.2.6 SOGIE-related Focal Points

In order to ensure that SOGIE-related responses remain a priority for the NHRIs, focal point person/department had been assigned. In all the NHRIs, the lead persons had the necessary know-how or had received appropriate training on addressing SOGIE-related violations.

CHRAJ had a focal point person at the Health Rights Desk at their head office and directors at the regional offices. MHRC does not have a specific individual assigned, however, SOGIE related complaints are handled by the departments of Civil and Political Rights and Economic, Social and Cultural Rights. KNCHR has 3 focal points at the technical, directorship and Commissioners level, however, all the operational departments have integrated SOGIE-related work.

For SAHRC, The Office of the Deputy Chairperson, which is responsible for the 'Equality and Social Cohesion' focus area, is the focal point. It works closely with other leads for other thematic focus areas. For UHRC, the Directorate of Monitoring and Inspections leads the SOGIE-related interventions.

2.2.7 Annual Reports

The Assessment also sought to find out if the most recent NHRI annual reports had incorporated SOGIE-related issues or any other. By the time of the assessment it is only SAHRC that had published their 2017 annual report²⁵. UHRC was preparing and consolidating the annual report through predetermined thematic areas. The thematic areas are lined up depending on the human rights issues that have occurred in 2017. KNCHR was in the process of preparing its annual report for the 2016/2017²⁶ financial year. In the report, matters concerning the establishment of the Taskforce on Legal, Policy, Institutional and Administrative Measures and activities undertaken by the Taskforce have been highlighted. By the time of drafting this report the 2017 annual report from CHRAJ, MHRC and UHRC were still unpublished.

2.3 Feedback from Civil Society Organisations

For triangulation, in each of the five countries focus group discussions were held with representatives of civil societies working towards addressing violence against LGBT persons. The aim of the discussions was to assess whether the contributions towards addressing SOGIE-related violations being made by NHRIs are being impactful.

25. SAHRC 2017 annual report - <https://bit.ly/35lh94>

26. KNCHR 2016/2017 annual report - <https://www.knchr.org/Portals/0/2016-2017.pdf>

a) Kenya

Against the background of heightened tension due to the public litigation case on decriminalizing same sex consensual relationships, it was confirmed by CSOs interviewed that KNCHR had deployed a rapid response to intervene on security incidents upon request. Also, a case was referred to KNCHR of an intersex child who was at risk since the specific CSO lacked expertise in handling child-related cases.

On the 10 SOGIE-related complaints filed during the period of May 2017 and May 2018, the CSOs interviewed lacked awareness if any of the complaints were lodged by members of their organisations. It was raised that the perception of KNCHR as a state institution and the perception that the staff are unfriendly towards LGBT persons may have contributed to shyness from them to report violations. Specifically, the transgender community has had misgivings because of past engagements with other state actors²⁷.

CSOs reported that KNCHR had contributed important ideas on how to deal with broadcasters disseminating homophobic content. KNCHR has also opened up spaces with state actors to ensure CSO participation in ensuring the statute books also protect the LGBT community. KNCHR by the time of the follow up, was preparing its mid-term UPR report as well as supporting the state and CSOs in formulating theirs. KNCHR's quality of representation in the international SOGIE forum²⁸ was also commended by CSOs interviewed.

KNCHR had reached out to relevant CSOs when exploring the idea for a public event to mark IDAHOBIT 2018. The Commission respected views from stakeholders suggesting that a public event should not be undertaken. Stakeholders welcomed the press statement²⁹ issued by the Commission as a significant milestone in interventions by KNCHR. On the three SOGIE-related focal point persons³⁰, CSOs interviewed were concerned that the issues were being individualized rather than institutionalised.

27. It was highlighted that some public office holder presently advocating for intersex rights were at the same time dismissing the rights of the transgender community. Hence, the community therefore associates KNCHR as a state body and thereby not engage with it.

28. The International SOGIE forum was established in 2014 as a network of Kenyan LGBT CSOs, human rights organisations and international missions in Kenya to have an arena for sharing information on relevant developments, as well as coordinate strategies on realising the rights of LGBT people.

29. Ibid²⁶

30. It ought to be recognized that in other thematic areas such as children, disability and gender mainstreaming KNCHR utilizes focal points to ensure increased focus on the issues. Notwithstanding, more staff are being nurtured at the technical level to ensure that SOGIE-related issues remain a priority.

b) Uganda

The CSO interviewed in Uganda confirmed that UHRC had undertaken the trainings of security agencies and the prosecutors. Some had been incorporated in the trainings to provide technical support. The training workshops were styled as focusing on 'vulnerable groups', this was not intended to exclude focus on SOGIE-related issues. CSO respondents agreed that beginning discourse by using the concept of vulnerable groups made sense in light of the situation in the country.

CSO respondents however raised concerns about the quality of partnership employed by the Commission. They noted that UHRC invited specific individuals to participate in their training activities and that the organisations were not incorporated into the planning process of the activities. Concerns were also raised over the relatively slow process in handling of complaints. It was provided that one of the CSOs had supported the filing of three SOGIE-related violations complaints at the Commission in 2016. It seems those cases were stuck in a backlog alongside other cases. CSOs remained concerned about the non-specificity of the Commission's annual reports which failed to spell out SOGIE-related issues.

CSO respondents acknowledge the critical positive role which the focal-point persons and UHRC's Chairperson had played in support of the protection of LGBT individuals. They however noted the absence of overt support and the possible presence of overt or covert hostility from some staff. While they could approach the designated technical officers, they were less clear on how to leverage approaches at the policy level. The designation of specific focal-point persons on SOGIE within UHRC was welcomed as an essential step for leveraging responses against rights violations of LGBT individuals.

Significantly, CSO respondents indicated that the protection of LGBT individuals had witnessed notable improvements in 2018, which may be inferred to have been contributed by the training of police forces held by UHRC. Interactions with the police was reported to have been less forceful overall.

c) Ghana

Against a background of sustained anti-LGBT pressure being exerted from religious and political quarters, CSOs interviewed noted that members of the movement were reticent about decriminalisation consensual same sex relationships. They were concerned that a decriminalisation initiative could lay the spotlight on them and encourage anti-LGBT public rhetoric. CSOs interviewed preferred to work away from the media limelight. Thus, while the question of law reform remained important, it

was raised that it would be more strategic for relevant state institutions like CHRAJ to focus on advocating for the enactment of anti-hate speech legislation to protect LGBT person and other vulnerable individuals.

On filing complaints with CHRAJ, it was raised that some LGBT community members filed directly while others filed through CSOs. Most LGBT persons did not file complaints directly with the Commission, they consulted CSOs who in turn file on their behalf, or would refer them to specific persons within CHRAJ. Complainants' reluctance to file violations with CHRAJ was stoked by experiences that cases were handled too slowly by the Commission and that feedback on progress tended to be unforthcoming³¹.

CSOs interviewed reported that CHRAJ played a key role in building state capacities on LGBT issues during Ghana's UPR engagements at the Human Rights Council. Also, During IDAHOBIT 2018, CHRAJ offered a statement of solidarity during one of the CSO events.

d) Malawi

The CSOs interviewed provided that SOGIE-related complaints are synthesised by the Commission using an electronic data processing system put in place in partnership with a CSO called Innovations for Change. Complainants may use the *Rainbow Platform* for key populations to send complaints which are forwarded to MRHC's complaints processing system. CSOs also noted that the nature of some violations demands immediate responses which unfortunately may not be forthcoming from the Commission because of its slow responses. They provided that capacity limitations intersect with questions of personal attitude. They further noted that the Commission's complaints handling function had not been popularised within the LGBT communities.

It was raised that the MHRC had supported a decriminalisation petition on sex work. However, it declined to participate in an on-going consensual same-sex relationship decriminalisation petition³². It was also highlighted that the Commission had participated and provided technical support in CSO-initiated training workshops targeting grassroots LGBT communities.

Concerns were raised over the methodology of the national study that the MHRC had been requested by the government to undertake. MHRC had initially been requested by the government to undertake a public inquiry on the rights of LGBT persons. It,

31. In rebuttal, CHRAJ noted that the wheels of justice were slow for all those who filed complaints. Case delay was a systemic and not peculiar to the LGBT community.

32. MHRC views being it was not strategic to argue decriminalization of consensual same-sex relationships in Malawi's circumstances at the time. However, MHRC was participating in exploring whether the case of an individual who was arrested in March 2018 for engaging in acts against the order of nature could be a compelling case for public interest litigation. Concerns about the victim's privacy and safety were being assessed.

however, eventually responded to concerns about the value of an inquiry by preferring to undertake a national study. In this regard, while a concept paper had been finalised, it had not yet been funded. While some CSOs had participated in revising the initial concept, they had not seen the revised version.

e) South Africa

Some civil society stakeholders confirmed they had provided feedback on some aspects of the advocacy material developed by SAHRC for South African Police Service (SAPS). They had also expressed desire to have it translated into the 11 official South African languages and braille³³. A concern was raised over duplication of material. It was proposed that SAHRC ought to carry out a scoping exercise prior to production of such material. Further, it should facilitate development of a portal that would ensure ease of access to relevant material. It was also suggested that the Commission should consider developing group-specific/issue-specific advocacy material.

Some CSOs have become sceptical about SAHRC's perspectives or strategies on realisation of LGBT rights. It is felt that the approaches and strategies are too diplomatic and not radical enough. Hence, they opt not to participate in SAHRC initiatives. Simultaneously, some CSOs have felt that SAHRC may not have attended key sector meetings³³ on a regular basis. This is the case in some provinces where staff may not have the initiative or interest to advance particular causes. Additionally, the CSOs interviewed were unaware of the development of the thematic discussion paper on SOGIE by SAHRC.

CSOs interviewed also provided that they required a hook to get traction into the Commission. Quite often their contacts might not have enough influence within the Commission or they might not communicate as necessary within the Commission. CSO respondents were unaware which commissioner was assigned focal-point for SOGIE-related issues. They also recalled situations where they undertook training for different departments separately when this could have been done jointly. Further, they urged that one of the key functions of the focal-point(s) on SOGIE should be to initiate an intersectional approach for dealing with LGBT issues within the Commission.

33. Due to budgetary constraints, the advocacy material is only available in English. To mitigate the challenge of translation costs by SAHRC, CSOs proposed forging partnership with organizations that are already utilizing the relevant local dialects to assist with translation.

34. The SAHRC also maintains membership in a consultative capacity in the National Task Team (NTT) on LGBT issues. The NHTT has state organs, CSOs and chapter 9 institutions that work on or have interest in LGBT issues.

35. SAHRC thematic discussion paper on SOGIE - <https://bit.ly/35ftcjt>
SAHRC has put in place an institutional monitoring and evaluation framework which would be used to assess implementation of the paper's recommendations.

Chapter Three: Recommenations and Conclusion



This sections begins by presenting recommendations made to the five NHRIs collectively. It subsequently follows by each NHRI specific recommendations. It ends with those made to the NANHRI Secretariats and provides a conclusion.

Recommendations to the five NHRIs:

- a) Proactively reach out to and forge alliances with the LGBT constituents to raise awareness of the respective institutional functions. Strategies should be informed by the views of the community on what may be in their best interest.
- b) Provide status updates to LGBT complainants and initiates further responses when the complainants so request.
- c) Regularly report on SOGIE-related issues to human rights treaty bodies at the international and regional levels. Utilise Res. 275.
- d) Beyond the focal point persons adopt a multi-faceted approach both at the policy and technical level so as to ensure that more personnel undertake SOGIE-related work.
- e) Capacities on SOGIE-related issues should be enhanced for all staff including those working in the regional and field offices by utilising both internal and external training resources. These should be complemented by continuous refresher sessions.
- f) Include SOGIE-related themes and illustrations in information, education and communication material.
- g) Annually mark the International Day Against Homophobia, Biphobia and Transphobia, May 17.
- h) Review internal policies, standard operating procedures and practices to ensure they take account of the rights of all persons.
- i) Necessary institutional budgetary allocations should be done to ensure that sufficient funding is made available for SOGIE-related interventions.

Key Recommendations to KNCHR:

- a) KNCHR needs to affirm protocols for determining on a case-by-case basis when it may intervene as *amicus curiae* on public interest litigation in a timely manner to ward off missed opportunities.
- b) The Attorney General and other processes including the task force on law auditing the penal code should be continually engaged on SOGIE-related matters.
- c) KNCHR leadership should strategically intervene on SOGIE-related issues.
- d) KNCHR should proactively intervene where public office holders and state institutions have made utterances or have taken actions that undermine the rights and dignity of LGBT people.

Key Recommendations to UHRC:

- a) UHRC should continue positioning itself as an effective interlocutor with state agencies and non-state actors on SOGIE-related issues.
- b) UHRC should measure the impact of the training it undertakes with state actors by following up with trained departments and officers to evaluate changes.
- c) UHRC should establishing a system for tracking and updating SOGIE-related complaints processed through data disaggregation.
- d) UHRC should make more explicitly inclusive non-discrimination policy statements to cover diverse staff and clients in the Human Resource Manual, Client Charter and Complaints Handling manuals.
- e) UHRC should develop an on-the-record public presence speaking against violation of the rights of LGBT individuals.

Key Recommendations to CHRAJ:

- a) CHRAJ should lead in the preparation of an anti-hate speech Bill and advocate for its enactment by Parliament.
- b) CHRAJ should monitor media houses that disseminate hate speech and ensure that they are sanctioned.
- c) CHRAJ should ensure that the Discrimination Reporting System (DRS) functions at optimum levels.
- d) CHRAJ should continue inter-NHRI capacity-building by acceding to requests for its staff to participate in activities of other NHRIs.
- e) CHRAJ should utilise inexpensive methods such as internal sensitisation staff meetings to continuously build staff capacities.

Key Recommendations to SAHRC:

- a) SAHRC should ensure that the recommendations made in the thematic discussion paper on discrimination and violence on the basis of SOGI have been acted upon.
- b) SAHRC should liaise with other relevant stakeholders towards developing a portal for all available SOGI-related advocacy material to refrain from duplication and also benefit from the available resource in regards to local language translation.
- c) SAHRC should also consider developing group-specific advocacy material targeted for specialised audiences.
- d) SAHRC should ensure that sports as a means of advocacy is inclusive, sustained and utility of other diverse sports ought to be considered.
- e) SAHRC should engage more robustly with relevant state and non-state actors regarding South Africa's positioning on SOGIE-related issues in international and regional spaces.

Key Recommendations to MHRC:

- a) MHRC should ensure that the new cohort of Commissioner's, as part of the induction process, ensure that the commitment made on SOGIE-related issues are continued.
- b) MHRC should consider enjoining as *amicus curiae* in the ongoing decriminalisation of consensual same-sex relationships.
- c) MHRC should utilise the national study to assess the extent and nature of SOGIE-related violence in order to expand the protection space for LGBT persons.
- d) MHRC should fully utilise the complaints filing and data processing system developed collaboratively with Innovations for Change.
- e) MHRC should works towards implementation of recommendations made in the Human Rights Watch (October 2018) report dubbed *Let Posterity Judge*.

Key Recommendations to the NANHRI Secretariat:

- a) NANHRI should develop a practical guide for NHRIs to use for reference while undertaking the implementation of Res. 275 to institutionalization of SOGIE-related responses within their institutions.
- b) NANHRI should organise more regional and cross-regional convenings where NHRIs and other stakeholders may exchange good practices.
- c) In advancing the initiative, NANHRI should proactively forge linkage of implementation of the Res. 275 with sustainable development goals.
- d) NANHRI should continue to provide technical and financial support to the staff of the NHRIs.

Conclusion

As human rights promotion and protection are two sides of the same coin, similarly, in undertaking promotional work, NHRIs should stress the protection of the rights of all individuals including LGBT persons. It also ought to be recognised that some spaces of engagement on law reforms initiatives may still be closed for the LGBT community, hence, NHRIs, should proactively take the lead in articulating violations and proposing appropriate human rights-based remedies.

In spite of previous hurdles faced and the current existing challenges, stakeholders ought not to shy away from supporting the efforts of NHRIs in protecting the rights of LGBT persons. Similarly, persons affected by SOGI-related violence should approach NHRIs to file complaints. Further, CSOs working on SOGI-related issues should look to NHRIs as a resource and ally in attaining their goal. It should be recognised that rights, unless claimed and reinforced remain theoretical.

Importantly, NHRIs should continuously ensure that LGBT persons enjoy rights that are accrued to other persons on an equal basis. SOGIE-related violence should be dealt with as a human rights issue with intersectional implications. Staff should not pick and choose which human rights work they do, and the NHRIs should be conscious of the requisite staff capacity-building from the point of staff advertisement, recruitment, capacity-building and promotion. Senior staff should lead in this regard by example.

It emerges that the in-country workshop enabled KNCHR to initiate and enhance responses specifically targeted towards increasing the protection of LGBT persons within its programming in line with its Gender and Diversity Mainstreaming Policy and Action Plan (2015-2020). Uganda's policy, legal and social environment has undermined the Commission's effective responses around advocacy, policy and law reform, however, UHRC cannot simply sit on its laurels in this respect. While it is not feasible or even strategic for CHRAJ to establish a department focusing specifically on SOGIE issues, the Commission should ensure it focuses specifically on all minority and vulnerable groups in a manner that is inclusive and spreads across departments.

The progressive national policies and bodies that South Africa has in place ought to allow for the SAHRC and related mandated independent constitutional bodies to be more ardent and outspoken as the protector of LGBT rights. SAHRC should leverage South Africa's eminent constitutional and statutory instruments to ensure that LGBT individuals enjoy protection from stigma, discrimination and violence.

MHRC is advantaged because the SOGIE-related activities developed during the March 2018 workshop were aligned with the institution's strategic plan. Hence, the new cohort of Commissioner's should be briefed on the levels of implementation. Meanwhile, the Commission can engage with funding partners to support the national study, which ought to be aligned with human rights principles. In this regard, MHRC should not feel constrained from engaging on policy issues simply because the national study has not taken place. The Commission's policy-making role is pivotal and should not be held in abeyance when important national interventions are called for.

ANNEX: QUESTIONNAIRE

BACKGROUND

The Network of African National Human Rights Institutions (NANHRI) is conducting a follow-up exercise to assess the extent to which your NHRI has integrated responses to sexual orientation and gender identity and expression (SOGIE)-related violence and discrimination within its institution.

This questionnaire seeks to gather information related to plans and actions undertaken by your NHRI with the aim of protecting the human rights of lesbian, gay, bisexual and transgender (LGBT) individuals.

The aim of the follow-up exercise is to determine and assess the impact of the collaboration between your NHRI and NANHRI's SOGIE Project.

We thank you in advance for taking the time to complete this questionnaire.

Information Provided by:	
Designation:	

Section A – Collaboration with External Bodies

1. What outcomes have occurred as a result of the in country workshop on SOGIE & Human Rights that was held?
2. From **2017 to date**, list the state institutions/departments, CSOs and other stakeholders (local, regional and international) that you have collaborated with in the protection of the human rights of LGBT persons. State the nature of the collaboration, and the roles that each of the actors played.

Section B – Institutionalization of SOGIE-Related Issues into SAHRC

Part 1

3. Does your NHRI have a non-discriminatory Human Resources Policy? [YES | NO]
4. Does it explicitly mention sexual orientation and/or gender identity as a ground for non-discrimination? [YES | NO]
5. Are all staff across all levels aware of the policy? [YES | NO]
6. Please paste the text of the Human Resources Policy that explicitly addresses non-discrimination here.
7. Are there specific mechanisms within your NHRI for all staff to report workplace discrimination and/or harassment and seek remedy? [YES | NO] If yes, provide details.

Part 2

8. Does your NHRI have a non-discrimination policy towards the people they serve?

[YES | NO] if yes, please copy here the relevant section of the policy
9. Are all staff across all levels aware of this policy? [YES | NO]
10. From 2017 to date (2018), how many SOGIE-related complaints has received? Please indicate where remedy was provided, if any.
11. Does your NHRI have an individual (focal point) or department(s) that is responsible for handling SOGIE-related violence, discrimination and any other related issues? [YES | NO] if yes, provide details.
12. Has the focal point person or all staff of the department(s) received training on SOGIE & Human Rights? [YES | NO] If so, when?

13. How does your NHRI ensure that it is easily accessible to all seeking services?
14. How does your NHRI ensure confidentiality of complainants during case management and when making referrals? In case of referrals, is there informed consent from the client?
15. Did your most recent annual report include SOGIE-related issues, mentioned specifically or as part of another section? [YES | NO] (*Provide further details for either answer*)
16. Highlight examples of good practices/ actions undertaken by your NHRI in ensuring the protection and promotion of the rights of LGBTI persons.

Section C - Action Plan

17. Please indicate your progress (indicate either **ongoing, initiated, not initiated, completed**) thus far regarding the implementation of the action plan solidified during the incountry meeting in SOGIE & Human Rights.
18. What challenges does SAHRC face or has faced in the process of institutionalizing responses to SOGIE-related violations and discrimination in SAHRC?
19. What steps have been undertaken or are being undertaken to address the challenges mentioned above?
20. Would your NHRI wish to be part of the next phase of the SOGIE Project? [YES | NO]

If yes, please provide the anticipated support from the NANHRI Secretariat.
If not, also please provide more detail.

Copyright

The content of this publication may be used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of NANHRI.

ISBN: 978-9966-1765-7-8

©2019 Network of African National Human Rights Institutions - NANHRI

This report is published by:

The Network of African National Human Rights Institutions

2nd Floor, CVS Plaza, Lenana Road

P.O Box 74359-00200

Nairobi-Kenya.

Website: www.nanhri.org

Email: info@nanhri.org

Twitter: @NANHRI40

Facebook: Network of African National Human Rights Institutions.