

# Transgender Rights in Lesotho

## Rights under the Lesotho Constitution

Chapter II of the Constitution sets out the protection of fundamental rights and freedoms. There is no mention of gender identity or sexual orientation, but section 4(1) refers to “sex” and “other status”. The United Nation’s Human Rights Committee has stated that the phrase “other status”, should be interpreted to include protection from discrimination based on gender identity and sexual orientation.

Fundamental Human Right	Where is it in the Constitution?
Fundamental rights and freedoms	Section 4(1)
Right to life	Section 5
Right to personal liberty	Section 6
Freedom of movement	Section 7
Protection from torture, inhuman or degrading treatment	Section 8(1)
Freedom from arbitrary search	Section 10
Right to respect for private and family life	Section 11
Right to a fair trial	Section 12
Freedom of expression	Section 14
Freedom of association	Section 16
Freedom of peaceful assembly	Section 15
Freedom from discrimination	Section 18
Right to equality	Section 19

## Changing your Gender Marker

There is no law in Lesotho that makes provision for a transgender person to change the gender marker in their identity document. The **Lesotho Passports and Travel Documents Act 15 of 1998**, does not make provision for changes to a person’s sex description. A transgender person who uses a passport that does not reflect their gender expression could be charged with committing an offence.

The **National Identity Cards Act 9 of 2011** outlines new regulations for the national identity cards in Lesotho. **Section 8(1)** states:

*“The Director shall take reasonable practicable steps to ensure that personal information entered into the Register is complete, accurate and updated where necessary.”*

Transgender people can also rely on their rights protected by the Constitution including the rights to equality, freedom of expression and to personal liberty.

## Your Rights in the Workplace

- **Section 5 of the Lesotho Labour Code 24 of 1992** deals with non-discrimination, but does not include gender or sexual orientation as grounds of discrimination.

- **Section 5(1)** states that:

*“The application by any person of any distinction, exclusion or preference made on the basis of race, colour, sex, marital status, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, is incompatible with the provisions of the Code.”*

- **Section 5(2)** prohibits sexual harassment in the workplace.
- **Section 66(3)(d)** states that a termination of employment based on a person’s sex, is not a valid reason. **Sections 66(1)** and **66(2)** outline that termination must be for a valid reason, such as work performance, employee behaviour at work, and operational requirements.
- **Section 235E of the Labour Code Amendment Act 5 of 2006** prohibits discrimination based on HIV status.

## Criminalisation and Harassment

Consensual sex between two people of the same sex was not criminalised by the **Penal Code Act 6 of 2012**. There is still, however, a perception that the consensual same-sex sexual acts remains criminalised under the common law. However, the Code codified the common law criminal justice system and section 2(2) of the Penal Code Act specifically states that “no person shall be tried, convicted or punished for an offence other than an offence in this Code or any written law or statute in force in Lesotho”.

Transgender people may still face harassment under laws dealing with public indecency. This infringes a number of their human rights:

- **Section 56 of the Penal Code deals with public indecency.** It states that:

*“(1) A person who creates or takes part in any indecent spectacle or performance, or who does in public or in private any indecent act which is calculated to offend any reasonable member of the public, commits an offence.”*

Many LGBT people do not report incidents of violence due to the stigma associated with it, and the hostile treatment they experience at the hands of the police. This is despite **section 24(1)** of the **Police Service Act 7 of 1998** which states that a police officer must perform his duties impartially and with due regard to the Constitution.

The government must be able to justify, in terms of the law, any discriminatory treatment of transgender people - otherwise acts by its officials will be arbitrary and illegal.

## **Access to Sexual and Reproductive Health**

There is widespread discrimination directed at transgender people by healthcare staff. This results in transgender people not being able to access condoms or lubricants – despite the government stating that it would continue with free condom distribution in the public sector.

Gender reassignment surgery is not available in Lesotho. Hormone treatment is also not available. Transgender people who wish to begin hormone therapy have to go to South Africa to access it which is expensive.

The **National HIV and AIDS Strategic Plan 2011/12-2015/16** includes MSM and sex workers as a priority group to promote prevention, but does not address the needs of WSW, lesbians, transgender, or intersex people.