
Introduction

“Members of the gay, lesbian and transgender community, although no doubt a small minority, and unacceptable to some on religious or other grounds, form part of the rich diversity of any nation and are fully entitled in Botswana, as in any other progressive state, to the constitutional protection of their dignity.”

Botswana Court of Appeal in *Attorney General v Rammoge and Others*
(the LEGABIBO judgment)¹

Throughout Africa, transgender persons have to contend with pervasive negative experiences, such as societal stigma and discrimination. Many transgender men and women experience discrimination and harassment in their daily lives - at work, at home, while they are walking on the street, or when they use public facilities such as banks, restaurants, hospitals, police stations or airports – simply because they do not conform to gender identity norms. Moreover, transgender persons are perpetually exposed to the threat of violence against them due to their gender non-conformity.

For many transgender persons, having a gender identity that is not reflected by their identity document exposes them to humiliation and a risk of violence. This effectively denies them their legal rights and citizenship. This problem is highlighted when transgender persons are refused employment and banking transactions because they lack proper government identification. They are often required to explain intimate details of their lives and identity to strangers in order to access routine services. This causes a great deal of emotional distress, discomfort, and violates their dignity and privacy.

Transgender persons should not have to endure this kind of treatment. They are entitled to the protection of their dignity and national constitutions and regional and international instruments apply to them equally.

¹ *Attorney General v Rammoge and Others* CACGB-28-14, 16 March 2016, at para 60. Hereinafter referred to as the ‘LEGABIBO judgment’.

“Fundamental rights are to be enjoyed by every person. To deny a person his or her humanity is to deny such person human dignity – and the protection and upholding of personal dignity is one of the core objectives of Chapter 3 of the Constitution.”

The LEGABIBO judgment²

All persons – regardless of their gender identity and expression – are entitled to fundamental rights and freedoms and have the right not to be discriminated against, harassed or abused. All persons are born as equal human beings, with inherent dignity, and are entitled to be treated with respect. Once we accept that fundamental human rights apply to all persons, it is a basis upon which transgender persons can enforce and assert their rights.

The national constitutions of Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe specifically recognise the right to be free from discrimination, and provide a framework within which transgender persons can assert their rights and oblige their governments to protect the rights and interests of all persons, including those belonging to the transgender community. In addition to this, regional and international instruments provide very useful avenues which allow transgender persons to enforce, interpret, protect and assert their rights. All of these countries have signed and ratified the African Charter on Human and Peoples’ Rights (“African Charter”).

² *Id.*