



The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in BOTSWANA

A Shadow Report

Submitted to the Human Rights Committee by:

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The Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo)

with

Global Rights
International Gay and Lesbian Human Rights Commission (IGLHRC)

March 2008



ACKNOWLEDGEMENTS

This shadow report on lesbian, gay, bisexual, and transgender rights in Botswana was coordinated by The Botswana Network on Ethics, Law and HIV/AIDS (BONELA) and The Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo), in partnership with Global Rights and the International Gay and Lesbian Human Rights Commission (IGLHRC). The research was conducted by Seema Pereira of the Pennsylvania State University, The Dickinson School of Law, under the supervision of Professor Stephanie Farrior.

Executive Summary

Botswana is a party to the International Covenant on Civil and Political Rights (ICCPR) following its accession on September 8, 2000. In addition, the Constitution of Botswana establishes in its article 3 that “every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed or sex.”¹ Furthermore, article 12(1) of the Constitution states that “no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.”² The constitutional protection of freedom of assemble and association is established by article 13(1) that reads “no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assembly freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.”³

Despite all of these constitutional and international protections, lesbian, gay, bisexual, and transgender individuals in Botswana continue to face a denial of protection of basic human rights based on their sexual orientation and gender identity and expression. As the Human Rights Committee established in the landmark case of *Toonen v. Australia*⁴, the prohibition of discrimination on grounds of sexual orientation is included in the references to sex in the International Covenant on Civil and Political Rights (ICCPR). Therefore, discrimination on the basis of sexual orientation is a violation of Articles 2(1) and 26 (non-discrimination) of the ICCPR.

Botswana is in violation of several rights in the ICCPR with reference to its citizen because of their sexual orientation or gender identity and expression. First, civil society organizations that advocate for the rights of the LGBT (lesbian, gay, bisexual, and transgender) community have been denied legal status because the Republic of Botswana

¹ The Constitution of Botswana, Article 3.

² The Constitution of Botswana, Article 12(1).

³ The Constitution of Botswana, Article 13(1).

⁴ *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

claims that the country's constitution does not recognize homosexuals.⁵ The denial of registration is a violation under ICCPR article 22, freedom of association. Another violation of LGBT rights in Botswana is the state's criminalization of same sex sexual activity. The Human Rights Committee has declared laws that criminalize consensual same-sex behavior to be in violation of the right to privacy guaranteed by the ICCPR.⁶ Although Botswana has committed to uphold the principles of the ICCPR, it has failed to bring its criminal code into compliance with international principles, regarding criminal penalties for same-sex conduct. Such laws violate international protections of the right to privacy and protections against discrimination, and threaten basic freedoms of association, assembly and expression. These laws violate Article 2, 26 (non-discrimination), and 17 (right to privacy) of the ICCPR.

The overall culture in Botswana remains highly repressive in its attitudes towards LGBT persons. Despite instances of discrimination against LGBT individuals in Botswana and the fact that the ICCPR clearly prohibits such conduct, Botswana's state party report makes no mention of specific efforts to eliminate discrimination or protect the rights of LGBT persons.⁷ Despite such lack of attention, Botswana continues to have an obligation under the ICCPR to guarantee fundamental human rights to all persons, including LGBT individuals. In presenting this shadow report, it is our goal that this information will aid the Human Rights Committee in its evaluation of Botswana's adherence to the rights set forth in the ICCPR, and eventually lead to a genuine attempt to protect and provide civil and political rights to LGBT persons in Botswana.

Substantive Violations of the Convention

Articles 2(1), 26 (Non-discrimination) and 17 (Freedom from Arbitrary Interference with Privacy, Family, Home)

Articles 2(1) and 26 of the ICCPR set out the non-discrimination standards to which state parties will be held. Article 2(1) establishes that the rights guaranteed within the Covenant are guaranteed to all the citizens of each signatory country, "without distinction of any kind, such as race, color, [or] sex." Article 26 guarantees the right of all people to equality before the law and equal protection of the laws and legal systems of each signatory country. Discrimination in the law "on any ground such as race, color, [or] sex" is likewise prohibited. Article 17 of the ICCPR establishes that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence".

⁵ Letter from Department of Civil and National Registration to LeGaBiBO Society, dated September 10, 2007.

⁶ *Toonen v. Australia*.

⁷ Initial Report Submitted by Botswana to the Human Rights Committee, U.N. Doc CCPR/C/BWA/1, May 2, 2007.

In 1994, in *Toonen v Australia*,⁸ the Human Rights Committee considered the criminalization of private sexual activity between consenting same-sex adults and found that such laws violated Articles 2(1), 17, and 26 of the Covenant. According to the Committee, the notion of sex in Articles 2(1) and 26 must be interpreted as including sexual orientation.⁹ The Human Rights Committee held in *Toonen* that the term ‘sex’ is to be read to include sexual orientation, meaning that persons regardless of their sexual orientation are entitled to all of the rights guaranteed by the Convention and are to be free from discrimination and guaranteed the equal protection of the law.¹⁰ The *Toonen* decision has been referenced many times by the Committee, by other Treaty Bodies, and by the UN Special Procedures when affirming that Articles 2(1) and 26 of the Covenant prohibit discrimination based on sexual orientation.

The most egregious violation of LGBT rights in Botswana lies in the Botswana penal code that still criminalizes same-sex sexual conducts in private between consenting adults, which contravenes to Articles 2(1), 17, and 26 of the ICCPR.¹¹ Section 167 of the Penal Code Act, Chapter 8 of the Laws of Botswana, states that

*“any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.”*¹²

Section 164 provides that

*“Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits any other person to have carnal knowledge of him or her against the order of nature; is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.”*¹³

Similar to the Tasmanian statute outlawed by the Human Rights Committee in *Toonen*¹⁴, section 164 punishes the crime of “unnatural offences,”¹⁵ and Section 165 punishes with imprisonment for five years the “attempt to commit unnatural offences.”¹⁶

In 1998, the process of revising the penal code raised prospects that the sodomy law might be repealed. However, both political and religious forces intervened to block that possibility. Politicians in Botswana defended sodomy laws based on the belief that

⁸ *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Botswana Penal Code, Chapter 8:01.

¹² Botswana Penal Code, § 167, Chapter 8:01.

¹³ Botswana Penal Code, § 164, Chapter 8:01.

¹⁴ *Toonen v. Australia*.

¹⁵ Botswana Penal Code, § 164, Chapter 8:01.

¹⁶ Botswana Penal Code, § 165, Chapter 8:01.

homosexuality represents both the antithesis of Botswana culture and a reflection of Western influence. The then Assistant Minister of Labor and Home Affairs, Olifant Mfa, claimed that homosexuality is “barbaric, whether you argue it from the perspective of religion or culture.”¹⁷ Mr. Mfa went so far as to encourage such individuals “to go for counseling and serious therapy so that they can be brought back to normality.”¹⁸ He considers homosexuality to occur when people ignore their religion and culture to suit their absurd behavior.¹⁹ Mr. Mfa also stated that the reason that homosexuality is not part of Botswana culture is because “even people who claim to be homosexual are afraid to come out in the open.”²⁰ Certainly, fear of being exposed to negative and discriminatory treatment by political and religious forces keeps these individuals from coming out into the open. It will continue to be difficult for the LGBT community to be open about their sexual orientation if it constitutes a criminal offence. According to BONELA (The Botswana Network on Ethics, Law and HIV/AIDS) and LeGaBiBO (Lesbians, Gays and Bisexuals of Botswana), “Homosexuality has always been a taboo subject and society has more often than not tried to hide the history of homosexuals.” Hardly anything positive has ever spoken about gays and lesbians and their contribution to society.”²¹ Kgosi Sediegeng Kgamane, a tribal authority, admitted that he was aware of such behavior in the society; however, he said that homosexuality is not welcome in the Tswana custom and is a kind of mental illness.²² LeGaBiBO responded by writing, “Homosexuality cannot be cured simply because it is not a disease.”²³ Kgosi Lotlaamoreng II, the paramount chief of Barolong, claimed that there are no elements of homosexuality in Botswana or other African societies.²⁴ He is convinced that it is “alien behavior that comes with foreigners.”²⁵ BONELA responded to the Botswana Gazette’s representation of homosexuality as “rubbish” by a letter stating: “We continue to advocate for the rights of the lesbians, gays, bisexuals, transgendered and intersexed community because they have long been here, contribute to the fabric of this country, and will long be here to stay. Homosexuality is found all around Botswana, including in rural areas.”²⁶

Hostility to homosexuals has been expressed numerous times by government officials. The executive secretary of the ruling Botswana Democratic Party said his party “could not even debate the issue of homosexuality” because it “would shock the Batswana nation.”²⁷ The Vice-president of Botswana, Seretse Ian Khama, also spoke out against homosexuals,²⁸ stating that “Human rights are not a license to commit unnatural acts which offend the social norms of behavior ... The law is abundantly clear that homosexuality, performed either by males or females, in public or private is an offence

¹⁷ Aubrey Lute, Homosexuality is rubbish--Mfa, *The Botswana Gazette*, May 24-30, 2006.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Letter from BONELA and LeGaBiBO to the Editor of *The Botswana Gazette*, dated May 29, 2006.

²² Aubrey Lute, Homosexuality is rubbish--Mfa, *The Botswana Gazette*, May 24-30, 2006.

²³ Letter from BONELA and LeGaBiBO to the Editor of *The Botswana Gazette*, dated May 29, 2006.

²⁴ Aubrey Lute, Homosexuality is rubbish--Mfa, *The Botswana Gazette*, May 24-30, 2006.

²⁵ *Id.*

²⁶ Letter from BONELA and LeGaBiBO to the Editor of *The Botswana Gazette*, dated May 29, 2006.

²⁷ *Id.*

²⁸ *Id.*

punishable by law.”²⁹ Other traditional leaders, such as the late Bakgatla Kgosi Linchwe II and Bangwaketse Kgosi Seepapitso IV, have also opposed relaxing the penal code.³⁰ Bangwaketse Kgosi Seepapitso IV told the *Midweek Sun* that people who are gay should be whipped or sent to jail.³¹

African church leaders describe homosexuality as “unethical and unbiblical.”³² The Evangelical Fellowship of Botswana, a coalition of evangelical churches, launched a self-named “crusade” against homosexuality.³³ Its national secretary, Pastor Biki Butale, called on “all Christians and all morally upright persons within the four corners of Botswana to reject, resist, denounce, expose, demolish and totally frustrate any effort by whoever to infiltrate such foreign cultures of moral decay and shame into our respectable, blessed, and peaceful country.”³⁴

As a result of these political and religious influences, Botswana has not only retained its criminalization of same-sex sexual acts between men, but, in 1998, expanded its laws to criminalize sexual conduct between women.

In December 1994, an adult male citizen of Botswana, Utjiwa Kanane, was arrested and charged with engaging in unnatural acts and indecent practices between males under sections 164 and 167 of the Botswana Penal Code.³⁵ Through a series of appeals and other circumstances, this case lasted nine years, reaching the High Court on March 22, 2002.³⁶ In this decision, the late Judge Mwaikasu upheld the constitutionality of Sections 164 and 167 of the Penal Code.³⁷ The High Court further held that the “provisions of the Botswana constitution that protect rights to privacy, association, and freedom of expression could be curtailed by legislation enacted to support ‘public morality.’”³⁸ The court included sexual intercourse among women as a criminal offence based on the principle that there is no gender discrimination in the Penal Code.³⁹

The case of Mr. Kanane went before the Court of Appeal in July 2003 as a constitutional matter.⁴⁰ The Court ultimately found that Botswana’s Constitution did not prevent gays and lesbians from associating with each other “within the confines of and subject to the law.”⁴¹ The Court of Appeal stated that it “does have indications before it that the time

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ More Than A Name: State-Sponsored Homophobia and Its Consequences in Southern Africa, Human Rights Watch and The International Gay and Lesbian Human Rights Commission (available at <http://hrw.org/reports/2003/safrica/>)

³⁵ *Kanane v. The State 2003*, 2003(2) BLR 64 (CA).

³⁶ Ditshwanelo: Gays, Lesbians, and Bisexuals of Botswana, available at <http://www.ditshwanelo.org/bw/gay.html>

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Kanane v. The State 2003*, 2003(2) BLR 64 (CA).

⁴¹ Ditshwanelo: Gays, Lesbians, and Bisexuals of Botswana, available at <http://www.ditshwanelo.org/bw/gay.html>

has not yet arrived to decriminalize homosexual practices even between consenting adult males in private. Gay men and women do not represent a group or class which at this stage has been shown to require protection under the Constitution.”⁴² The court referred to a lack of evidence showing that public opinion has so changed or developed to warrant such a change in legislation.⁴³ According to the court, this decision reflects the interest of the public, which “must always be a factor in the court’s consideration of legislation.”⁴⁴

The effect of having legal penalties for same sex sexual conduct is that, even when they are not enforced, these laws strengthen and reinforce social stigma and homophobia against sexual and gender non-normative behavior, whether perceived or real, that may easily cause discrimination or more serious forms of human rights abuses. That stigma, in turn, can be even more effective than legal penalties in stripping individuals of the economic, social, and political rights guaranteed to them under the ICCPR.⁴⁵

On November 7, 2006, LeGaBiBo published a press release describing an individual who was ejected from a local nightclub on the grounds that she was “a lesbian.”⁴⁶ She was simply standing on line for a drink, when a man who identified himself as the owner of the club approached her.⁴⁷ He proceeded to push her into the kitchen where he touched her chest and said, “Identify yourself. Are you a man or a woman? We don’t allow lesbians here.”⁴⁸ She was then escorted off the premises by a security guard.⁴⁹ This incident had no recourse because there is no law in Botswana that recognizes the rights of non-heterosexual people. Therefore, reporting such an incident to authorities or police will be to no avail because there is no Botswana legal instrument that recognizes discrimination based on sexual orientation or gender expression.

On January 24, 2007, the *Midweek Sun* published an article titled “Homosexual teacher at FSS?,” which described a teacher who was luring boys at a secondary school with cell phones and money in exchange for homosexual sex.⁵⁰ The article focused more on the teacher’s homosexuality than on the abusive nature of teacher-student relationships.⁵¹ The article quotes a parent saying, “He might influence our children to accept homosexuality.”⁵² This type of media attention creates greater discrimination because its failure to effectively prevent discrimination creates dangerous stereotypes.⁵³

⁴² *Kanane v. The State* 2003, 2003(2) BLR 64 (CA).

⁴³ Ditshwanelo: Gays, Lesbians, and Bisexuals of Botswana, available at <http://www.ditshwanelo.org/bw/gay.html>

⁴⁴ *Id.*

⁴⁵ See, J.S. Mill, *On Liberty*. “(T)he chief mischief of the legal penalties is that they strengthen the social stigma. It is that stigma which is really effective... (it) is as efficacious as law; men might as well be imprisoned, as excluded from the means of earning their bread.”

⁴⁶ Group Condemns Act of Discrimination at Local Nightclub, Press Release published by LeGaBiBo, November 7, 2006.

⁴⁷ *Id.*

⁴⁸ Group Condemns Act of Discrimination at Local Nightclub, Press Release published by LeGaBiBo, November 7, 2006.

⁴⁹ *Id.*

⁵⁰ Ntibinyane Ntibinyane, Homosexual teacher at FSS?, *Midweek Sun*, January 24, 2007.

⁵¹ Letter from LeGaBiBo and BONELA to Editor of *Midweek Sun*, dated January 25, 2007.

⁵² Ntibinyane Ntibinyane, Homosexual teacher at FSS?, *Midweek Sun*, January 24, 2007.

⁵³ Letter from LeGaBiBo and BONELA to Editor of *Midweek Sun*, dated January 25, 2007.

Notably, the law criminalizing same sex sexual conduct is also detrimental to Botswana's efforts toward HIV/AIDS education, prevention and care. In *Toonen v Australia*, the Human Rights Committee noted that the criminalization of same sex sexual practices "could not be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS."⁵⁴ In fact, as the State party in that case commented, "statutes criminalizing homosexual activity tend to impede public health programs by driving underground many of the people at the risk of infection."⁵⁵ The Committee concluded in *Toonen* that "(c)riminalization of homosexual activity thus would appear to run counter to the implementation of effective education programs in respect of the HIV/AIDS prevention. Secondly, the Committee notes that no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus."⁵⁶

Articles 21 (Right of Peaceful Assembly) & 22 (Freedom of Association)

According to Botswana's state report, the protection of freedom of association is provided for under Section 13(1) of the Constitution.⁵⁷ The ICCPR also guarantees the right of association under Article 22 and the right of peaceful assembly under Article 21. The only restrictions that may be placed on these rights are those that are necessary for national security and public order or safety.

Botswana has violated these rights by denying groups and non-governmental organizations the right to register and enjoy a formal, legal existence, based on discriminatory grounds. The country has also violated these rights by offering no protection to gays and lesbians subject to violence when they gather, socialize, or meet in public places, including bars, pubs, and clubs. Due to the repressive laws enforced by state officials in Botswana and the homophobic public statements and speeches delivered by politicians, these rights continue to be violated in Botswana.

In Botswana, a human rights organization called Ditshwanelo has been defending and advocating for LGBT rights for over ten years.⁵⁸ As early as 1995, it urged decriminalization of same-sex sexual conduct.⁵⁹ It housed and provided legal aid to a group of gays and lesbians who eventually founded an organization called LeGaBiBO, which is currently the only organization in Botswana advocating for the rights of the LGBTI community.⁶⁰ Ditshwanelo organized a "roundtable on gay rights"⁶¹, producing a

⁵⁴ *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

⁵⁵ *Id.*

⁵⁶ *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

⁵⁷ Initial Report Submitted by Botswana to the Human Rights Committee, U.N. Doc CCPR/C/BWA/1, May 2, 2007.

⁵⁸ More Than A Name: State-Sponsored Homophobia and Its Consequences in Southern Africa, Human Rights Watch and The International Gay and Lesbian Human Rights Commission (available at <http://hrw.org/reports/2003/safrica/>)

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

paper on the subject, which it submitted to the criminal law reform process in 1998.⁶² As a result of this process, the organization was attacked by Bekezela Nkomo, of the Evangelical Christian Fellowship, who described the Ditshwanelo as “infiltrated by gays and lesbians with the set aim of desecrating traditional African moral values on the altar of perceived constitutional rights.”⁶³ In the same year, members of LEGABIBO met the Attorney General, who informally conveyed to them that the organization would never be allowed to register legally because same sex sexual conduct remained a criminal act.⁶⁴

While it is true that some change has taken place in Botswana, the change is not substantive. In late 2000, President Festus Mogae launched the Botswana Human Development Report 2000 in which he urged the nation “not to be judgmental” about groups vulnerable to HIV, including homosexuals, prisoners, and commercial sex workers.⁶⁵ At the same time, LeGaBiBO, the organization that represents and advocates for such individuals continues to operate as an extralegal organization. By deciding not to allow registration to this organization, the government is, in fact, denying the existence of these individuals or their need for protection under the law. In addition, the NGO operates under potential threat of government sanction because the government could, at any time, move against the organization for operating extralegally. BONELA has housed LeGaBiBo since 2005 and filed registration papers on behalf of LeGaBiBO with the Registrar of Societies on September 27, 2006.⁶⁶ The letter rejecting the application to register LeGaBiBO is dated September 10, 2007, and is signed by Mabuse Pule, the Acting Director in the Registrar of Societies’ office.⁶⁷ The organization was denied registration based on the principle that because the country’s constitution does not recognize homosexuals, registering a gays and lesbians’ organization would contravene the laws of Botswana.⁶⁸ In addition to the Constitution, Botswana’s penal code criminalizes same sex sexual activities under unnatural offenses, which carry a maximum of seven years’ imprisonment.⁶⁹ Mr. Pule also referenced the Botswana’s Societies Act Section 7(2) (a) which says that any of the objects of the society is, or is likely to be used for any unlawful purpose or any purpose prejudicial to or incompatible with peace or good order in Botswana.⁷⁰

In 2005, the Botswana Network of AIDS Service Organizations [BONASO] gave grants to youth organizations through District MultiSectoral AIDS Committees [DMSAC] and Gaborone DMSAC denied funding to a youth AIDS outreach project that was to be

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ More Than A Name: State-Sponsored Homophobia and Its Consequences in Southern Africa, Human Rights Watch and The International Gay and Lesbian Human Rights Commission (available at <http://hrw.org/reports/2003/safrica/>)

⁶⁶ Letter from Department of Civil and National Registration to LeGaBiBO Society, dated September 10, 2007.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Botswana Penal Code, § 164, Chapter 8:01.

⁷⁰ Letter from Department of Civil and National Registration to LeGaBiBO Society, dated September 10, 2007.

implemented by LeGaBiBo since “homosexuality is illegal in the country.”⁷¹ Botswana has an adult seroprevalence of 24.1%, which makes it the country with the highest HIV rate in the world.⁷² By refusing to provide critically needed assistance to same-sex practicing people in Botswana, “homophobia continues to trump the government’s commitment to funding effective, science-based HIV prevention initiatives.”⁷³

As recently as March 24, 2007, Anglican women in Botswana held a dialogue on homosexuality in which the intention was supposedly to create a dialogue where different views could be shared.⁷⁴ However, for the most part, it was a “monologue” of speeches against the acceptance of LGBTs.⁷⁵ “People who were supportive of gays and lesbians were not allowed to speak, or, when they did get a chance to say something, they were cut short before they could finish their point.”⁷⁶ Those speakers who did have an opportunity to speak quoted the Bible often and made many references to sodomy.⁷⁷

Concluding Notes and Observations

- The laws of Botswana that criminalize any form of consensual same-sex conduct between consenting adults provide for the possibility of imprisonment for seven years. Beyond establishing a legal ground for the deprivation of life, liberty, physical integrity, health, and opportunity, these laws preserve ingrained stereotypes about LGBT individuals and, in effect, serve to reinforce and strengthen social stigmas against them. Ultimately, these laws are in conflict with Articles 2(1), 17, and 26 of the ICCPR.
- The discriminatory culture against LGBT individuals in Botswana denies these persons of their right to freedom of association and further limits the possibility of providing education, prevention and care programs to individuals with HIV/AIDS. Anti-discrimination legislation, directed specifically at LGBT rights, is needed.

⁷¹ Cary Alan Johnson, *Off the Map: How HIV/AIDS Programming is Failing Same-Sex Practicing People in Africa*, International Gay and Lesbian Human Rights Commission, 2007 (available at <http://www.iglhrc.org/files/iglhrc/otm/Off%20The%20Map.pdf>).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Prisca Mogapi, *Anglican women in Botswana hold a dialogue on homosexuality*, BONELA.

⁷⁵ Prisca Mogapi, *Anglican women in Botswana hold a dialogue on homosexuality*, BONELA.

⁷⁶ *Id.*

⁷⁷ *Id.*

Detailed Recommendations to the Government

- Botswana to refrain from statements that incite division, hatred, violence, and discrimination based on sexual orientation or gender expression or identity.
- To repeal so-called “sodomy laws,” or laws that criminalize consensual, adult, homosexual acts. In particular,
 - Botswana should repeal Sections 164, 165, and 167 of its Penal Code.
- To end discrimination in the provision of health care by ensuring that gay, lesbian, bisexual, transgender, and intersexed people as well as all other vulnerable groups have access to relevant, population targeted and appropriate information on health, including information on sexual health and HIV/AIDS.
- To enact laws protecting against discrimination on the basis of sexual orientation or gender identity or expression.
- In future processes of constitutional revision, to include provisions that:
 - Affirm or strengthen the right to privacy;
 - Strengthen anti-discrimination protections, and include sexual orientation and gender identity or expression in their scope;
 - Eliminate any exemption from equality protections for customary laws or traditional practices.

Proposed Questions for the Government Delegation

- What steps is the government to take to ensure that LGBT organizations are not denied registration?
- Has the government considered repealing the laws that criminalize same sex sexual conduct?
- Why has the government failed to mention any issues regarding discrimination against LGBT persons in its state party report?
- Is the government providing HIV/AIDS education targeted to people who have sex with partners of the same sex as well as of the opposite sex?
- Has the government inquired into the issue of discrimination against LGBT people affected by HIV/AIDS?