Home Office

Country Policy and Information Note
South Africa: Sexual orientation and gender identity

Version 1.0

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country information

COI in this note has been researched in accordance with principles set out in the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI) and the European Asylum Support Office's research guidelines, Country of Origin Information report methodology, namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at http://icinspector.independent.gov.uk/country-information-reviews/

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Policy guidance

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1. Introduction

1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state and/or non-state actors due to a person's actual or perceived sexual orientation/gender identity.

1.2 Points to note

1.2.1 For the purposes of this note, sexual orientation or gender identity means gay men, lesbians, bisexual and transgender (LGBT) persons although the experiences of each group may differ.

1.2.2 Where a claim is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as South Africa is listed as a designated state.

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2. Consideration of issues

2.1 Credibility

2.1.1 For guidance on assessing credibility, see the Asylum Instructions on Assessing Credibility and Refugee Status, Sexual Orientation in Asylum Claims and Gender identity issues in the asylum claim.

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

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2.2 Particular social group

2.2.1 LGBT persons in South Africa form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.

2.2.2 Although LGBT persons in South Africa form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.

2.2.3 For further guidance on particular social groups, see the Asylum Instructions on Assessing Credibility and Refugee Status, Sexual Orientation in Asylum Claims and Gender identity issues in the asylum claim.

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2.3 Assessment of risk

a. General points

2.3.1 Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as a LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why the person will do so.

2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.

2.3.3 But if a material reason why the person will live discreetly is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded.

2.3.4 For further guidance see the Asylum Instructions on Assessing Credibility and Refugee Status Sexual Orientation in Asylum Claims and Gender identity issues in the asylum claim.

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b. State treatment

2.3.5 South Africa has some of the most progressive legislation in the world protecting LGBT persons. The government is seeking to further bolster anti-discrimination laws by introducing a hate crimes law – a bill was introduced in October 2016 setting out measures to prevent and combat various offences, including those targeting LGBT persons (see Legal situation).

2.3.6 The Government has also taken significant steps to improve co-ordination between the state and civil society to provide protection and assistance in practice. In 2013 it established a National Task Team (NTT) formed of government departments and civil society to combat discrimination and violence against LGBT persons. In addition it has also established rapid response teams formed from civil society and various government departments to ensure that the police deal with crimes against the LGBT persons promptly and professionally (see Government policies).

2.3.7 However, despite the robust laws and policies protecting LGBT persons' rights some government officials, including police, health workers and educators, reportedly discriminate against persons because of their actual or perceived gender identity and/or sexual orientation. Some members of the

police service have also been reported to have ridiculed, harassed, physically attacked and raped LGBT persons, particularly lesbians. Homophobic attitudes also negatively affect how the police handle complaints by LGBT persons (see Legal situation; and Police and official attitudes). The government, however, does not target persons because of their sexual orientation and / or gender identity, although rogue officials may discriminate and, sometimes, commit abuses against LGBT persons.

2.3.8 In general LGBT persons in South Africa are not subject to treatment by the state which would be persecutory or cause serious harm. However, decision makers must consider whether there are particular factors specific to the person which would place them at real risk. Each case must be considered on its facts with the onus on the person to show that they would be at real risk on return.

2.3.9 For further guidance see the Asylum Instructions on Assessing Credibility and Refugee Status Sexual Orientation in Asylum Claims and Gender identity issues in the asylum claim.

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c. Societal treatment

2.3.10 Around 500,000 South Africans are estimated to identify as gay, lesbian, bisexual or gender non-conforming, while up to 3 million present themselves in a gender non-conforming way (see Demography). A number of South African cities, including Johannesburg and Cape Town, have LGBT communities, with LGBT-friendly clubs, bars and restaurants, and host Gay Pride events annually (see Civil society).

2.3.1 While South Africa remains culturally conservative, in general people accept or tolerate LGBT persons. Societal views are, however, complicated: homo- and trans-phobia remains common and many South Africans do not accept 'homosexuality'. Conversely surveys indicate that the majority of the population also appears to oppose the criminalisation of LGBT people and, in one study, 77% of people surveyed said they would have no concerns if their neighbour was gay or lesbian. Societal attitudes vary by geography, with rural areas and black townships reportedly less tolerant of LGBT people than the cosmopolitan cities (see Public attitudes).

2.3.2 LGBT persons may experience discrimination, verbal harassment and physical attacks - including 'corrective rape'- with black lesbian and bi-sexual women particularly vulnerable to violence. South Africa has high levels of societal violence generally, including gender and sexuality-based, however accurate data on the type and numbers of incidents are not available (see Violence and discrimination).

2.3.3 While LGBT people may face some form of discrimination, harassment and violence from societal actors, the evidence does not establish that they are generally at risk of serious harm or persecution from non state actors. Some LGBT persons, particularly black lesbian and bisexual women, however may face treatment which by its nature and repetition amounts to serious harm or persecution, depending on the facts of the case.

2.3.4 For further guidance see the Asylum Instructions on Assessing Credibility and Refugee Status Sexual Orientation in Asylum Claims and Gender identity issues in the asylum claim.

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2.4 Protection

2.4.1 Where the person's fear is of persecution or serious harm at the hands of the state, they will not be able to obtain protection.

2.4.2 If the person is at risk of persecution or serious harm from a non-state actor - including rogue state actors - they are likely to be able to obtain protection.

2.4.3 South Africa has shown a commitment to protect the rights of LGBT persons through the law and in its enforcement. It has a comprehensive framework of laws and policies protecting LGBT persons and the government has taken significant steps to improve co-ordination between the state and civil society to provide protection and assistance in practice (see Government policies). Persons who commit crimes against LGBT persons because of their sexual orientation and / or gender identity are reportedly arrested and prosecuted, although convictions rates are low. The criminal courts have handed down lengthy prison sentences to some perpetrators of crimes against LGBT persons (see Police and officials attitudes and Police effectiveness).

2.4.4 The enforcement of the law is the responsibility of the South Africa Police Service (SAPS). While the SAPS continues to professionalize it is reported to be understaffed, ill equipped, poorly trained, and affected by corruption. Some members of the police force have reportedly discriminated against, harassed, physically attacked and raped LGBT persons, particularly lesbians, including when registering and investigating allegations of human rights violations and/or societal violence(see Police and officials attitudes and Police effectiveness).

2.4.5 Anti-LGBT attitudes, particularly among junior members of the SAPS, sometimes affect how complaints made by LGBT persons are handled and have not always been dealt with by senior officers. The SAPS is, however, overseen by an independent external body which investigates abuses committed by police officers, although convictions are reported to be rare (see Police and officials attitudes and Police effectiveness). In addition to the police oversight body, the South African Human Rights Commission (SAHRC) conducts investigations into human rights abuses committed at all levels of government. The SAHRC is reported to be 'moderately' effective in carrying out its mandate and the government reacts positively to its reports and views (see South Africa Human Rights Commission).

2.4.6 South Africa also has a vibrant civil society, including many LGBT groups, which provide a range of services to LGBT persons. These groups may be able to assist LGBT persons in accessing protection from the state, although they are not able to provide protection themselves (see Civil society).

2.4.7 In general the state is willing and able to provide protection, although each case must be considered on its facts. A person's reluctance to seek protection does not necessarily mean that effective protection is not

available. The onus is on the person to demonstrate why they would not be able to seek and obtain state protection.

2.4.8 For further guidance on protection see the Asylum Instructions on Assessing Credibility and Refugee Status Sexual Orientation in Asylum Claims and Gender identity issues in the asylum claim.

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2.5 Internal relocation

2.5.1 Where the risk of persecution or serious harm is from the state, internal relocation will not be reasonable.

2.5.2 Where the risk of persecution or serious harm is from a non-state actor, including rogue state officials, decision makers should consider each case on its individual circumstances to ascertain if the threat is local and could be removed by internal relocation.

2.5.3 South Africans are able to move freely without official restrictions. The country is large and has over 54 million people including a number of significant cities such as Johannesburg and Cape Town, which accommodate and cater for LGBT persons by providing entertainment and support services (see Demography; Civil society; and Freedom of movement).

2.5.4 In general internal relocation from non state agents is likely to be reasonable. However internal relocation will not be reasonable if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.

2.5.5 For further guidance on internal relocation see the Asylum Instructions on Assessing Credibility and Refugee Status Sexual Orientation in Asylum Claims and Gender identity issues in the asylum claim.

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2.6 Certification

2.6.1 South Africa is listed as a designated state under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.6.2 However where a claim made on the basis of the person's sexual orientation or gender identity is refused, it is unlikely to be certifiable because in general the claim when taken at its highest is unlikely to be so clearly without substance that it is bound to fail.

2.6.3 For further guidance on certification, see Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

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3. Policy summary

3.1.1 South Africa has a comprehensive legal and policy framework protecting the fundamental rights of LGBT persons. The state does not generally subject

LGBT persons to serious harm or persecution, although some officials may discriminate and commit abuses against individuals.

3.1.2 LGBT persons are generally accepted or tolerated by South African society, although discrimination and violence is relatively widespread particularly in rural areas. Black lesbians and bisexual women are particularly vulnerable to physical attacks, including ‘corrective’ rape. While LGBT people are likely to face some form of discrimination, harassment and/or violence from societal actors, in general LGBT persons are not at risk of persecution or serious harm from non-state actors but each case will need to be considered on its facts.

3.1.3 In general, the state is willing and able to provide protection but decision makers must consider each case on its facts.

3.1.4 Internal relocation is likely to be reasonable.

3.1.5 Claims are unlikely to be certifiable as clearly unfounded.

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Updated 30 June 2017

4. Demography

4.1.1 South Africa's overall population was estimated to be in July 2016 around 54 million.[1]

4.1.2 Accurate data on the size of South Africa's LGBT population is limited. A study of men who have sex with men (MSM) by the University of California (San Francisco) in 2013 observed that there are no accurate data available on the size of the MSM population in South Africa. However, in other contexts 'up to 1% of the adult population could be considered as engaging in same sex practices' and for the purposes of the study used this percentage to estimate the size of the LGBT population.[2]

4.1.3 The Other Foundation extrapolating from the findings of a survey of 3,000 South Africans undertaken in 2015 considered that around 1.4% of the population identified as a LGBT person (to note it has embargoed the original data for 1 year from September 2016).[3] It noted:

'…. over half a million adult women and men, across all population groups, living in both rural and urban areas, and across all age groups identified themselves as homosexual, bisexual, or gender non-conforming – consistent with similar population ratios in many different parts of the world. Almost six times that number of South Africans (3 million) present themselves in public ("dress and act") in a gender non-conforming way: about 430 thousand men and nearly 2.8 million women.'[4]

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[1] Central Intelligence Agency, 'World Factbook', South Africa (Population and Society), updated 15 June 2017, https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html. Date accessed 22 June 2017.
[2] University of California, San Francisco 'Report of the South Africa men-who-have-sex-with men Data Triangulation Project. San Francisco: UCSF. Global Health Sciences' (p3), 2015, https://www.researchgate.net/publication/279845286_MSM_in_South_Africa_Data_Triangulation_Project_and_Final_Report. Date accessed: 12 May 2017.
[3] The Other Foundation, 'Progressive Prudes' (p3), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017.
[4] The Other Foundation, 'Progressive Prudes' (p3), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017.

5. Legal situation

5.1 International instruments

5.1.1 The government of South Africa is signatory to a number of international and regional conventions that protect the rights of persons based on their sexual orientation and / or gender identity.[5] [6] [7]

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5.2 Domestic law

5.2.1 Lesbian, gay, bisexual and trans persons rights (LGBT) are protected under domestic law: 'South Africa has a progressive constitution that prohibits discrimination on the basis of sexual orientation and protects the human rights of LGBTI people.'[8] In its summary of the situation of South Africa, the NGO Outright Action International observed that:

'The South African constitution provides one of the most comprehensive sets of protective measures of individual rights not only in southern Africa but in the world. A ban on discrimination on the basis of sexual orientation has been enshrined in the South African constitution for twenty years. This is particularly notable given that consensual adult same-sex sexual acts are subject to criminal penalties in many of the country's neighboring states. In addition, same sex marriage is a national right. As further evidence of its commitment to protecting LGBT rights, South Africa recently voted in favor of the Resolution on Human Rights, Sexual Orientation and Gender Identity adopted by the 27th Session of the Human Rights Council in September 2014, which has been hailed as a significant step forward in the fight against violence and discrimination based on sexual orientation and gender identity.'[9]

5.2.2 However, the same source went to observe that:

'… in spite of an arsenal of statutory and jurisprudential protections, the guarantee of legal rights alone is not sufficient to ensure that people can

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[5] The Office of the United Nations High Commissioner for Human Rights, 'International Covenant on Economic, Social and Cultural Rights', Undated, available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx. Accessed 13 February 2017.
[6] African Commission on Human and People's Rights, 'Ratification Table: African Charter on Human and People's Right', Undated, available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf. Accessed 3 February 2017.
[7] Organisation of African Unity, 'African (Banjul) Charter on Human and People's Rights', 21 October 1986, available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf. Accessed 3 February 2017.
[8] Human Rights Watch, 'World Report 2017', South Africa, January 2017, https://www.hrw.org/world-report/2017/country-chapters/south-africa#e81181. Date accessed on 26 April 2017.
[9] OutRight International, 'A survey of laws impacting the human rights of LGBT person in selected southern African countries'. 16 March 2016 (A. South Africa, 1 Background), https://www.outrightinternational.org/content/survey-laws-impacting-human-rights-lgbt-person-selected-southern-african-countries. Date accessed 26 April 2017.

exercise and enjoy such rights: the state must proactively ensure the rights through protective and transformative measures.

'According to a report by Human Rights Watch and the International Gay and Lesbian Human Rights Commission, "[m]ost of the population is still shut off from accessing [South Africa's promises of equality]—or from experiencing the freedoms described on paper—by deep economic inequality, social isolation, and cultural exclusion." However, prohibiting discrimination on the basis of sexual orientation is certainly a critical step in the right direction for countries seeking to combat LGBT discrimination and homophobia, and South Africa's constitution and anti-discriminatory statutes provide a clear path forward for any country undertaking legal reform.'[10]

5.2.3 Human Rights Watch observed in its submission of September 2016 to the UN Human Rights Council as part of the Universal Periodic Review of South Africa: 'Despite the country's progressive legislation on the rights of LGBT people, discrimination remains institutionalized in families, communities, and in the behaviour of some government officials, such as police, some health care workers, and educators.'[11]

Constitution

5.2.4 The Constitution, under Chapter 2, Section 9, which came into effect from October 1998 draws a clear principle that discrimination on grounds of sexual orientation is unconstitutional, it provides that:

- 'S9(3): The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including … gender, sex, … sexual orientation.
- S9(4): No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- Furthermore, S12 guarantees security of the person, S16 prohibits hate speech, S17 promises freedom of assembly and the right to protest, S18 defends freedom of association, and S35 the right to a fair trial.' [12]

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[10] OutRight International, 'A survey of laws impacting the human rights of LGBT person in selected southern African countries'. 16 March 2016 (A. South Africa, 1 Background), https://www.outrightinternational.org/content/survey-laws-impacting-human-rights-lgbt-person-selected-southern-african-countries. Date accessed 26 April 2017.

[11] Human Rights Watch, Human Rights Watch Submission to the Universal Periodic Review of South Africa, September 2016, https://www.hrw.org/news/2017/05/05/human-rights-watch-submission-universal-periodic-review-south-africa. Date accessed 12 May 2017.

[12] Department of Justice and Constitution Development, 'Republic of South Africa 'Bill of Rights' (Chapter 2, pg6), October 1998, http://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng-02.pdf. Date accessed 23 January 2017

National law

5.2.5 Since the repeal of anti-sodomy legislation in 1998[13], further provisions have been implemented in national law:

- '1998: Employment Equity Act recognises sexual orientation as an explicit category protected from discrimination.[14]
- 2000: Promotion of Equality and Prevention of Unfair Discrimination Act.[15]
- 2000: Prohibition of Incitement to hatred based on sexual orientation.[16]
- 2002: Case of Du Toit v Minister of Welfare and Population Development[17], where the South African Constitutional Court legalised joint adoption by same-sex couples, a decision cemented in the 2005 Children's Act.[18]
- 2003: The Birth and Death Registration Act, which was amended to allow the transgendered to correct their sex as entered in the official register.[19]
- 2006: Civil Union Act legalises same-sex marriage.[20]
- 2007: Equal age of consent for homosexual and heterosexual acts.' [21]

5.2.6 Section 39 of the South African Constitution requires courts and enforcement agencies to: '… Promote the spirit, purport and objects of the Bill of Rights when interpreting any legislation and when developing the common law. Courts must therefore exercise their sentencing discretion for punishing bias-

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[13] National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others, Case CCT 11/98, South Africa: Constitutional Court, 9 October 1998, (available at) http://www.refworld.org/docid/48246cf72.htm. Date accessed 23 January 2017.

[14] Department of Labour, Republic of South Africa 'Employment Equity Act, No. 55 of 1998' (Chapter 6, pg 7), available at: http://bee.b1sa.co.za/docs/The%20Employment%20Equity%20Act%201998.pdf [accessed 23 January 2017]

[15] Department of Justice and Constitution Development, Republic of South Africa, 'Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000' (Chapter 1, pg5), available at: http://www.justice.gov.za/legislation/acts/2000-004.pdf [accessed 23 January 2017]

[16] International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), State-Sponsored Homophobia, 'A world survey of laws: Criminalisation, protection and recognition of same-sex love' , May 2013, available at: http://www.refworld.org/docid/519b6c2f4.html [accessed 27 January 2017]

[17] Constitutional Court of South Africa, 'Case of Du Toit v Minister of Welfare and Population Development', 10 September 2002, available at: http://www.saflii.org/za/cases/ZACC/2002/20.pdf [accessed 3 February 2017]

[18] Department of Justice and Constitution Development, 'Children's Act 38 2005', 8 June 2006, available at: http://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf [accessed 3 February 2017]

[19] GayLawNet, 'Gender Identity, intersex, transgender and transsexual', available at: http://www.gaylawnet.com/laws/za.htm#gender [accessed 23 January 2017]

[20] Southern African Legal Information Institute, 'Civil Union Act17 of 2006', 30 November 2006, available at: http://www.saflii.org/za/legis/consol_act/cua2006139.pdf [accessed 23 January 2017]

[21] International Lesbian Gay Bisexual Trans and Intersex Association, 'A world survey of laws: Criminalisation, protection and recognition of same-sex love', May 2013, available at: http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf [accessed 23 January 2017]

motivated crimes in a way that affirms basic constitutional values such as dignity, equality and non-discrimination'[22].

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Hate crime legislation

5.2.7 The UN Special Rapporteur on violence against women, its causes and consequences recommended that the Government should: 'Consider enacting a hate crime legislation which would enable to capture both the hate dimension of crimes and the sexual orientation of LGTBI victims of GBV'.[23]

5.2.8 The Government of South Africa stated in its submission of April 2017 to the UN Human Rights Council as part of the Universal Periodic Review process that:

'The Cabinet, in October 2016, approved the publication for public comment of the Prevention and Combating of Hate Crimes and Hate Speech Bill. The Bill creates the offences of hate crimes and hate speech, and also seeks to put in place measures to prevent and combat these offences. According to the Bill, a hate crime is committed if a person commits any recognised offence, that is a common law or statutory offence (referred to as the "base crime or offence") and the commission of that offence is motivated by unlawful bias, prejudice or intolerance. Following public consultation and comments, the Bill is currently being redrafted.'[24]

5.2.9 A draft of the bill is available on the South African government website.

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6. State attitudes and treatment

6.1 Government policies

6.1.1 In its submission of April 2017 to the UN Human Rights Council, as part of the Universal Periodic Review process, the South African government stated that:

'The Government, working with relevant stakeholders, developed a strategy to address gender-based and sexual orientation-based violence against lesbian, gay, bisexual, transgender and intersex people in South Africa. A

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[22] Oxford Pro Bono Publico, 'Comparative Hate Crime Research Report', April 2014, available at: http://ohrh.law.ox.ac.uk /Oxford-Pro-Bono-Publico-Comparative-Hate-Crime-Research-Report-April-2014.pdf [accessed 3 February 2017]

[23] UN Human Rights Council, 'Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (based on a visit to South Africa undertaken between 4 and 11 December 2015) (p19), http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZAIndex.aspx. Date accessed 26 April 2017.

[24] UN Human Rights Council, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*', South Africa (para 59), 11 April 2017, http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession27.aspx. Date accessed 26 April 2017.

National Task Team (NTT) was re-established in 2013, with the Government together with representatives from Chapter 9 institutions [institutions established under chapter 9 of the Constitution, such as the South African Human Rights Commission[25]] and civil society organisations working in partnership to achieve a number of formidable tasks. These include, amongst others, the development of a National Intervention Strategy to respond to, and prevent, gender and sexual orientation-based violent crimes perpetrated against LGBTI persons and the development of an Inter-sectoral Implementation Plan which would link parallel and complementary initiatives. The NTT also undertook to strengthen the Government's ability to respond to LGBTI needs and to strengthen the capacity of civil society organisations to deliver related services. The Government sets out to improve linkages amongst Government Departments, to undertake programmes such as the Access to Justice and the Promotion of Constitutional Rights Programme and the National Action Plan (NAP), as well as working closely with relevant human rights institutions - such as the Human Rights Commission and the Commission for Gender Equality – to combat racism, xenophobia and related intolerance and in that manner address the impact of different forms of discrimination targeting LGBTI persons. It seeks to improve the management of cases by relevant role-players in the criminal justice system, including the SAPS, the NPA, the DSD, the DoH and the Department of Correctional Services (DCS).'[26]

6.1.2 The same report opined that:

'South Africa has taken significant steps to improve coordination between Government and civil society in combatting violence (including rape and murder) against LGBTI persons.

'The Government is making strides to ensure that LGBTI persons are treated as equal citizens and ensure that any challenges to fulfil the rights of the LGBTI community are dealt with. The Government does not allow any discriminatory practices in respect of the marriage of same-sex couples, or any form of degrading and harmful treatment of transgender persons. The Government's commitment to protect the rights of LGBTI persons in South Africa was recently exemplified by action by the Minister of Home Affairs, who denied a visa application by a cleric well known for preaching homophobia from the pulpit. The Minister of Home Affairs has established a task team to deal with similar cases in the future.'[27]

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[25]Government of South Africa, Ministry of Justice, The Chapter 9 of the Constitution, 1996, http://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng-09.pdf. Date accessed on 12 May 2017.

[26] UN Human Rights Council, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*', South Africa (para 67), 11 April 2017, http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession27.aspx. Date accessed 26 April 2017.

[27] UN Human Rights Council, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*', South Africa (para 68-69), 11 April 2017,

6.1.3 The UN Special Rapporteur on violence against women, its causes and consequences, observed that:

'The [Special Raporteur] SR welcomes the establishment of a National Task Team on Gender and Sexual Orientation Based Violence formed by government departments, Chapter 9 [institutions established under chapter 9 of the Constitution, such as the South African Human Rights Commission[28]] institutions and [civil society organisations] CSOs which designed a National Intervention Strategy for LGBTI issues (2014-2017) with the aim to address so-called "corrective rape" and other forms of violence against LGBTI persons. In addition, a Rapid Response Team was established to attend to the pending cases in the criminal justice system. While there is no specific crime against specific persons or groups, the SR welcomes recent case law which shows that courts have started to address such crimes as hate crimes even in the absence of specific hate crimes legislation. In November 2014, the Johannesburg High Court issued a strong condemnation of the discriminatory attitudes that fuelled such crimes and pronounced a sentence of 30 years imprisonment against the murderer of a young lesbian. The Rapporteur welcomes ongoing discussion in relation to the possibility of drafting legislation on hate crimes.'[29]

6.1.4 The US State Department in its human rights report for 2016 observed that: 'In 2014 the government launched a National Intervention Strategy that included rapid-response teams from civil society and various government departments to ensure that law enforcement officers dealt with crimes against the LGBTI community promptly and professionally.'[30]

6.1.5 Human Rights Watch noted in its report for 2016 that: 'The Department of Justice and Constitutional Development has taken significant steps to improve coordination between government and civil society in combatting violence (including rape and murder) against lesbians and transgender men.' The same source also noted that:

'On September 6 [2016], Home Affairs Minister Malusi Gigaba announced that due to widespread homophobic attitudes within South African society, and to protect the rights of LGBTI people, homophobic US pastor Steven Anderson and members of his church were banned from entering the

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http://www.ohchr.org/EN/HRBodies/UPR/Pages/ZASession27.aspx. Date accessed 24 April 2017.

[28] Government of South Africa, Ministry of Justice, The Chapter 9 of the Constitution, 1996, http://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng-09.pdf. Date accessed on 12 May 2017.

[29] UN Human Rights Council, 'Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (based on a visit to South Africa undertaken between 4 and 11 December 2015) (para 34), http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZAIndex.aspx. Date accessed 26 April 2017.

[30] US State Department, 'Country Reports on Human Rights Practices for 2016' (section 7a), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Date accessed at 10 April 2017.

country because they promote hate speech and advocate social violence. He said constitutional and legislative guarantees, including the rights of LGBTI persons, must be respected by all. Domestic LGBTI groups lauded the decision.[31]

6.1.6 Freedom House in its report covering events in 2016 noted: 'The constitution prohibits discrimination based on a range of categories, including race, sexual orientation, and culture. State bodies such as the South African Human Rights Commission and the Office of the Public Protector are empowered to investigate and prosecute discrimination cases.'[32]

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6.2 Police and official attitudes

6.2.1 The US State Department report on human rights in 2016 observed that:

'There were reports of official mistreatment or discrimination based on sexual orientation or gender identity despite clear government policies prohibiting discrimination. Security force members, for example, reportedly raped LGBTI persons during arrest. A 2015 Human Rights Watch report highlighted violence and discrimination, particularly against lesbians and transgender persons in the country. The report documented cases of "secondary victimization" of lesbians, including cases in which police harassed, ridiculed, and assaulted victims of sexual- and gender-based violence who reported abuse. According to the Khayelitsha Commission of Inquiry Report released in 2014, LGBTI individuals were particularly vulnerable to violent crime due to anti-LGBTI attitudes within the community and among police. Anti-LGBTI attitudes among junior members of SAPS [South Africa Police Service] affected how SAPS handled complaints by LGBTI individuals, and management did not always address the problem.'[33]

6.2.2 The same report observed that while the Employment Equity Act protects workers from unfair discrimination on the grounds of, amongst others, sexual orientation '[d]iscrimination in employment and occupation occurred with respect to race, gender, disability, sexual orientation, HIV status, and country of origin'.[34]

6.2.3 The OutRight survey of laws affecting LGBT persons in Africa of March 2016 noted, based on a range of sources:

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[31] Human Rights Watch, 'World Report 2017', South Africa, January 2017, https://www.hrw.org/world-report/2017/country-chapters/south-africa#e81181. Date accessed on 26 April 2017.
[32] Freedom House, 'Freedom in the World – South Africa' (Rule of law), https://freedomhouse.org/report/freedom-world/2017/south-africa. Accessed 20 July 2017.
[33] US State Department, 'Country Reports on Human Rights Practices for 2016' (section 6), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Date accessed at 10 April 2017.
[34] US State Department, 'Country Reports on Human Rights Practices for 2016' (section 7a), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Date accessed at 10 April 2017.

'… in a significant ruling in 2012, a judge sentenced four men, convicted of killing an openly gay woman, to 18 years in prison, identifying the murder as a hate crime and sending a message that such violence would be severely punished. This was a noteworthy development given that the provisions of the South African Constitution allowing for the freedom of expression do not extend to "advocacy of hatred that is based on race, ethnicity, gender or religion," but advocacy of hatred on other non-specified grounds, such as sexual orientation, is arguably protected on a strict reading of the Constitution. It should be noted, however, that [The Promotion of Equality and Prevention of Unfair Discrimination Act passed in 2000] PEPUDA explicitly prohibits hate speech on the grounds of sexual orientation, as discussed above.' [35]

6.2.4 The USSD report also stated that:

'In August 2015 the government reported these rapid-response teams [established as part of the Government's National Intervention Strategy for LGBTI issues; see Government polices above], which continued to meet during the year [2016], analyzed more than 200 hate crimes cases labeled as "stalled" by civil society. The [National Prosecuting Authority] NPA closed approximately 80 of the cases due to lack of evidence or unavailability of witnesses, but it advanced and concluded 23 cases with convictions, some resulting in life sentences. The NPA and SAPS continued to investigate the remaining cases. The task team has also made progress in educating local government officials and the public about equal rights for the LGBTI community.

'On August 17 [2016], a gang member raped a lesbian in Bentersdorp. The gang member allegedly told the victim that other lesbians were next, as he knew where they stayed and their working hours. The perpetrator was arrested the following day and was awaiting trial at year's end.

'According to the Western Cape Ministry of Community Safety, on December 3 [2016], more than 10 men broke into the home of 22-year-old LGBTI activist Noluvo Swelindawo, who they subsequently abducted, assaulted, shot, and killed. Authorities arrested one suspect, who was awaiting trial at year's end.'[36]

6.2.5 The UN Human Rights Committee report 'Concluding observations on the initial report of South Africa' of April 2016 observed that:

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[35] OutRight International, 'A survey of laws impacting the human rights of LGBT person in selected southern African countries'. 16 March 2016 (A. South Africa, Expression and Assembly), https://www.outrightinternational.org/content/survey-laws-impacting-human-rights-lgbt-person-selected-southern-african-countries. Date accessed 26 April 2017.

[36] US State Department, 'Country Reports on Human Rights Practices for 2016' (section 6), 3 March 2017, https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#section6. Date accessed at 10 April 2017.

'While acknowledging the considerable efforts invested by the State party in this field [combating violence based on sex, gender, gender identity and sexual orientation], the Committee is concerned that gender-based and domestic violence remains a serious problem in the State party, that the conviction rate for such acts is low and that there is a lack of disaggregated data on the phenomenon.'[37]

6.2.6 The same report observed that

'The Committee is concerned about reports of threats, intimidation, harassment, excessive use of force and physical attacks, some resulting in deaths, by private individuals and police forces against human rights defenders, in particular those working on corporate accountability, land rights and transparency issues, as well as lesbian, gay, bisexual, transgender and intersex persons and HIV activists. It also notes with concern reports about the lack of due diligence of law enforcement officers in protecting human rights defenders, including registering and investigating allegations of human rights violations, and in securing accountability for such violations (arts. 2, 6, 9, 19, 21 and 22).'[38]

6.2.7 The USSD report on human rights for 2016 observed that:

'According to the Other Foundation, a local NGO, more than 50 percent of citizens believed that LGBTI individuals should have the same human rights as other citizens, although more than 70 percent of respondents believed same-sex sexual activity was morally wrong. This cultural attitude influenced service delivery by individual government employees at the local level. NGOs reported the prevailing culture also negatively influenced hiring practices by local firms, particularly for transgender and intersex individuals.'[39]

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6.3 Police effectiveness

6.3.1 The Interpol entry for South Africa noted that the South African Police Service (SAPS): '… is the principal law enforcement body for South Africa, and is responsible for investigating crime and maintaining safety and security throughout the country. Some municipalities, such as Cape Town,

[37] UN Human Rights Council, 'Concluding observations on the initial report of South Africa*' (para 20), 27 April 2016, http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZAIndex.aspx. Date accessed 26 April 2017.
[38] UN Human Rights Council, 'Concluding observations on the initial report of South Africa*' (para 20), 27 April 2016, http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZAIndex.aspx. Date accessed 26 April 2017
[39] US State Department, 'Country Reports on Human Rights Practices for 2016' (section 6), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Date accessed at 26 April 2017.

Johannesburg, Durban and Pretoria, have their own local police units, tasked mainly with road security and local law enforcement.' [40]

6.3.2 The USSD report for 2016 stated:

'[South Africa Police Service] SAPS has primary responsibility for internal security. The police commissioner has operational authority over police. The president appoints the police commissioner, but the minister of police supervises the commissioner... The SAPS Directorate for Priority Crime Investigation, also known as "the Hawks," coordinates efforts against organized crime, priority crimes, and official corruption. Despite continued efforts to professionalize, SAPS remained understaffed, ill equipped, and poorly trained. Corruption was a problem…

'The government investigated and prosecuted security force members who committed abuses, although there were numerous reports of police impunity, including of high-ranking members… [Independent Police Investigative Directorate] IPID, an independent and external body, investigates all complaints and makes recommendations to the SAPS inspectorate division that handles disciplinary matters and to the NPA on which cases to prosecute. IPID examines all SAPS killings and evaluates whether they occurred in the line of duty or were otherwise justifiable. IPID also investigates cases of police abuse, although it was unable to fulfill its mandate due to funding shortages, inadequate cooperation by police, and lack of investigative capacity. When it did complete investigations, the NPA often declined to prosecute cases involving criminal actions by police and rarely obtained convictions. In cases in which IPID recommended disciplinary action, SAPS often failed to follow IPID disciplinary recommendations.

'The law provides IPID with additional enforcement powers and requires SAPS and metropolitan police departments to report any suspected legal violations by their own officers to IPID. The law criminalizes the failure to report wrongdoing, and in 2015-16, IPID recorded 41 cases in which SAPS or metropolitan police departments failed to report wrongdoing to IPID. During the year IPID took the additional step of investigating cases that resulted in civil lawsuits, even if police or the public had not reported those cases to IPID. Civil society groups reported they used IPID investigations as evidence in civil lawsuits. As a result SAPS often settled out-of-court civil lawsuits it previously would have challenged.

'Security forces failed to prevent or adequately respond to societal violence, particularly in response to attacks on foreigners…

'Officers from SAPS and metropolitan police departments received training in ethics, human rights, corruption, sexual offenses, domestic violence, gender

[40] Interpol, 'South Africa', undated, https://www.interpol.int/Member-countries/Africa/South-Africa. Date accessed 16 May 2017.

violence, and violence against LGBTI persons. Training, however, was inconsistent. Many officers went years between refresher courses. SAPS also provided officers with access to social workers, psychologists, and chaplains.'[41]

6.3.3 UN Special Rapporteur on violence against women observed in her report of April 2016:

'The [South Africa Police Service] SAPS agents are the first responders to [gender based violence] GBV. They operate in a difficult context and are confronted with many challenges, including the extreme level of everyday violence and the lack of human resources and equipment. 941 victims friendly rooms have been established in police stations throughout the country. However, information received by the Rapporteur concurs with the findings of the Civilian Secretariat for Police that not all of them are functional or resourced.

'In relation to conduct of the police, and while good services does exist within the SAPS, the Rapporteur heard repetitively that women seeking protection had been turned down and told to go back to their abusive partner or communities. Some police members do not believe rape survivors, especially when they are young, and treat them badly. Treatment of groups of women at heightened risk of GBV, including women and girls with disabilities, LGBTI persons, prostitutes, refugees and undocumented migrants has been reported to be even more discriminatory causing secondary victimisation.'[42]

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6.4 South African Human Rights Commission

6.4.1 The website of the South African Human Rights Commission (SAHRC) explained: 'The South African Human Rights Commission is the national institution established to support constitutional democracy. It is committed to promote respect for, observance of and protection of human rights for everyone without fear or favour.' [43] The same source stated that its mandate included:

'The Commission has the powers, as regulated by the national legislation, necessary to perform its functions, including the power -

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[41] US State Department, 'Country Reports on Human Rights Practices for 2016' (section 1d), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Date accessed at 10 April 2017.

[42] UN Human Rights Council, 'Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (based on a visit to South Africa undertaken between 4 and 11 December 2015) (para 34), http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZAIndex.aspx. Date accessed 26 April 2017.]

[43] South African Human Rights Commission, 'About', undated, http://www.sahrc.org.za/index.php/about-us/about-the-sahrc. Date accessed 16 May 2017.

‘a) investigate and report on the observance of human rights;

‘b) take steps and secure appropriate redress where human rights have been violated;

‘c) carry out research; and

‘d) educate.

‘Each year, the Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, healthcare, food, water, social security, education and the environment.’[44]

6.4.2 The USSD report for 2016 observed that:

‘Although created by the government, the [South Africa Human Rights Commission] SAHRC operated independently and was responsible for promoting the observance of fundamental human rights at all levels of government and throughout the general population. The SAHRC also has the authority to conduct investigations, issue subpoenas, and take testimony under oath. The government reacted positively to SAHRC reports and was responsive to its views. Despite a large backlog of cases and lack of funding, the SAHRC was considered moderately effective.’[45]

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6.5 Access to Healthcare

6.5.1 Section 27 of the Constitution states that everyone has the right to have access to healthcare services – including reproductive health care. Section 27(3) states that no one may be refused emergency medical treatment[46]. Activists also argue that the National Health Act 61 of 2003 does not include transgender and intersex people as a vulnerable group, although the Act does have specific provisions protecting healthcare users ‘confidentiality’[47].

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6.6 Treatment of persons with HIV

6.6.1 The OutRight Action International’s 2016 survey reported:

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[44] South African Human Rights Commission, ‘About’, undated, http://www.sahrc.org.za/index.php/about-us/about-the-sahrc. Date accessed 16 May 2017.
[45] US State Department, ‘Country Reports on Human Rights Practices for 2016’ (section 5), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Date accessed at 16 May 2017.
[46] Western Cape Government, ‘Bill of Rights (Chapter 2 of the Constitution of the Republic of South Africa)’, 15 January 1996, available at: https://www.westerncape.gov.za/legislation/bill-rights-chapter-2-constitution-republic-south-africa#27 [accessed 20 March 2017)
[47] Southern Africa Litigation Centre, ‘Transgender Rights in South Africa’, available at: http://www.southernafricalitigationcentre.org/1/wp-content/uploads/2016/09/Transgender-rights-in-South-Africa.pdf. Date accessed 20 March 2017.

’According to a 2013 UNAIDS report, approximately 6.1 million South Africans were living with HIV or AIDS in 2012, equivalent to about 12% of the country’s population of 51 million, constituting the largest HIV epidemic in the world.Total deaths (from all causes) increased 87% between 1997 and 2005, with 40% of deaths believed to be attributable to HIV. The Constitution of South Africa requires the government to devise and implement within its available resources “a comprehensive and coordinated programme to realize progressively the rights of pregnant women and their newborn children to have access to health services to combat mother-to-child transmission of HIV,” including counseling and testing of pregnant women for HIV, counseling HIV-positive pregnant women on ways to reduce the risk of parent-to-child transmission, and providing appropriate treatment. PEPUDA also lists HIV/AIDS status as a basis on which people may not be “unfairly disadvantage[d],” including being unfairly and unreasonably refused insurance services, and the Employment Equity Act prohibits discrimination in employment policies and practices on the basis of HIV status, as discussed above.

‘The South African government established a South African National AIDS Council (“SANAC”), an association of institutions with the objective of “build[ing consensus across government, civil society and all other stakeholders to drive an enhanced country response to the scourges of HIV, tuberculosis and sexually transmitted infections.Of note is that the SANAC established an “LGBTI sector” consisting of service providers with experience in lesbian, gay, bisexual, transgender and intersex (“LGBTI”) research, advocacy, treatment and care for the LGBTI community. This sector is involved in, among other things, building government relationships and advocacy within the National Department of Health.’ [48]

6.6.2 For more info on the SANAC’s LGBTI Sector website[49].

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7. Societal treatment and attitudes

7.1 Public attitudes

7.1.1 A number of surveys have been undertaken in order to obtain views of society’s attitudes towards sexual orientation and gender identity. The results vary, influenced by factors such as the questions asked, sample size and profiles of those asked.

[48]OutRight Action International, ‘A Survey of Laws Impacting the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons in Selected Southern African Countries’, 16 March 2016, http://www.refworld.org/docid/58c2b9de4.html. Date accessed 17 March 2017.

[49] SANAC, ‘The LGBTI Sector’, 1 July 2013, available at: http://sanac.org.za/2013/07/01/the-lgbti-sector/ [accessed at 10 April 2017]

7.1.2 A 2013 survey by the Pew Research Centre noted that 61 per cent of South Africans believe society should not accept 'homosexuality', while 32% said it should[50]. An International Lesbian and Gay Association (ILGA) – Riwi Corp study released in May 2016 found that 61% of South Africans surveyed did not think that being a LGBTI person should be a crime (against 23% who did, the remainder did not know). The study observed in its commentary: 'In the only African country where significant headway has been made on the legal and policy-front regarding [sexual orientation, gender identity and expression, sex characteristics] SOGIESC issues, the figures from South Africa (61% against criminalisation) speak to the relationship between law's function in changing social attitudes, and how those same attitudes inform the shaping and dialogues in making law and policy'[51].

7.1.3 The same study also found that of those South Africans surveyed, 77% would have no concerns if their neighbour was gay or lesbian and observed that 'South Africa shows a huge level of ease, with only 15% feeling very uncomfortable.'[52]

7.1.4 A further ILGA report released in October 2016 included data from the May 2016 report as well as the results of further questions about gender identity and sexual orientation not reported in the earlier report (see pages 41 to 58). The responses revealed nuances in people's attitudes to sexuality, and included the following:

- 64% knew someone who was openly LGBT or was attracted to others of the same sex
- 36% knew of someone who did not identify with the sex that they were or openly identified as being transgender
- 76% agreed that human rights should apply to everyone regardless of their sexual orientation / gender identity [53]

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[50] Pew Research Center, 'The Global Divide on Homosexuality Greater Acceptance in More Secular and Affluent Countries' (Overview), 4 June 2013, http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/. Date accessed 10 May 2017.

[51] Internal Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) – RIWI Corp (RIWI), 'The ILGA-RIWI 2016 Global Attitudes Survey on LGBTI People in Partnership with LOGO' (p5), 17 May 2016, http://ilga.org/downloads/07_THE_ILGA_RIWI_2016_GLOBAL_ATTITUDES_SURVEY_ON_LGBTI_PEOPLE.pdf. Date accessed 10 May 2017.

[52] Internal Lesbian and Gay Association (ILGA) – RIWI Corp (RIWI), 'The ILGA-RIWI 2016 Global Attitudes Survey on LGBTI People in Partnership with LOGO' (p10), 17 May 2016, available at: http://ilga.org/downloads/07_THE_ILGA_RIWI_2016_GLOBAL_ATTITUDES_SURVEY_ON_LGBTI_PEOPLE.pdf. Date accessed 10 May 2017.

[53] International Lesbian, Gay, Bisexual, Trans and Intersex Association, 'Personal and the Political: A itudes to LGBTI People Around the World' (ps 41-42), October 2016. http://ilga.org/downloads/07_THE_ILGA_RIWI_2016_GLOBAL_ATTITUDES_SURVEY_ON_LGBTI_PEOPLE.pdf. Date accessed 10 May 2017.

7.1.5 The Other Foundation (TOF) 2016 Progressive Prudes report, a survey of public opinions towards the LGBT community noted:

'One in four people (27 percent) in South Africa report having a friend or family member who is homosexual and well over half the population (55 percent) said that they would 'accept' a gay family member. Despite almost three quarters (72 percent) of the South African population feeling that same-sex sexual activity is morally 'wrong', more than half (51 percent) believe that gay and lesbian people in South Africa should have the same human rights as all South Africans and that gay and lesbian people should be included in 'my culture and tradition' (52 percent)' [54]

7.1.6 OutRight in its survey of laws affecting LGBT persons noted that '… homophobia and transphobia remains widespread in South Africa and are more prevalent in rural, tradition-bound townships than in modern, progressive cities.'[55]

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7.2 Religious attitudes

7.2.1 The Other Foundation (TOF) 2017 'Silent no Longer' report noted: 'Southern Africa is predominantly Christian. Although there are multiple manifestations of the faith, Christianity in the region is largely unreceptive to progress on social issues such as women's empowerment, gender diversity and advances in the understanding of human sexuality.'[56] The same source in a report released in 2016 based on a survey of 3,000 South Africans undertaken in 2015 observed that:

'Three quarters (76 percent) of respondents agreed with the statement "God's laws about abortion, pornography and marriage must be strictly followed before it is too late", with one in three people voicing "very strong" support. A very similar pattern of responses was recorded for the statement "Women should obey their husbands", demonstrating the continuing strength of patriarchal norms and values in South Africa.

'The strength of these opinions, across all demographic categories, shows that a very large segment, if not the majority, of the South African population

[54] The Other Foundations, 'Progressive Prudes: A Survey of South African Attitudes to Homosexuality and Gender Non-Conformity', 9 September 2016, available at: http://theotherfoundation.org/wp-content/uploads/2016/09/ProgPrudes_Report_d5.pdf [accessed 10 April 2017]

[55] OutRight International, 'A survey of laws impacting the human rights of LGBT person in selected southern African countries'. 16 March 2016 (A. South Africa, 1 Background), https://www.outrightinternational.org/content/survey-laws-impacting-human-rights-lgbt-person-selected-southern-african-countries. Date accessed 26 April 2017.

[56] The Other Foundation, 'Silent No Longer - Narratives of engagement between LGBTI groups and the churches in southern Africa', 16 March 2017, available at: http://theotherfoundation.org/mwg-internal/de5fs23hu73ds/progress?id=TLASJzXicWMp2isH_WRXpIeJkDl6unJXAYxVsPz63o0, [10 April 2017]

hold conservative moral beliefs about individual sexual activity and gender roles, which corresponds with their religious affiliation. This suggests that engagement of the population about equality, safety, and social inclusion for LGBTI people should necessarily pay attention to religious affinities and raises questions about the efficacy of advancing LGBTI equality and freedom at asocial level through a moral argument based on individual sexual rights.'[57]

7.2.2 However there are churches that support the LGBT community, the ENCA reported on the 22 of February 2016: 'Anglican bishops from across southern Africa has resolved that gay and lesbian partners who enter same-sex civil unions under South African law should be welcomed into congregations as full members of the church. This is according to a letter issued by Archbishop Thabo Makgoba of Cape Town on the 15th of February 2016.'[58]

7.2.3 Christian Today's October 2015 article reported:

"The Dutch Reformed Church (DRC) in South Africa is drawing sharp criticisms from Christians, including Roman Catholics for its recent decision to recognise gay marriages and allow the ordination of openly homosexual ministers without requiring them to be celibate after a 64% vote from the church synod."

'Catholic Church spokesman Archbishop William Slatter states:

"We would not accept active homosexuals as priests, but no doubt there may be a priest who is an active homosexual in our church, but he is so without the bishop knowing it. As the Catholic Church, we do not accept that position of the Dutch Reformed Church." [59]

7.2.4 The Other Foundation noted in its report of a survey of 3,000 South Africans undertaken in 2015 that:

'Highly religious people most strongly agree that homosexuality is "wrong" and "disgusting" when compared with the general South African population. "Moderately religious" people tend to be the most tolerant, however, even when compared with the least religious. Moderately and highly religious people are less likely than the general population to keep well away from gay

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[57] The Other Foundation, 'Progressive Prudes' (p23), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017.
[58] ENCA, 'Anglican Church says yes to homosexual', 22 February 2016, available: http://www.enca.com/south-africa/anglican-church-says-yes-homosexuals [accessed 13 March 2017]
[59] Christian Today, 'Christians criticise South African Church for allowing gay marriages, ordination of openly homosexual ministers', 19 October 2015, available at: http://www.christiantoday.com/article/christians.criticise.south.african.church.for.allowing.gay.marriage.ordination.of.gay.ministers/67935.htm [accessed 27 March 2017]

and lesbian people, but report roughly the same levels of violence and abuse against nonconforming men and women.'[60]

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7.3 Other factors influencing public attitudes

7.3.1 The TOF also noted in their report of 2016 based on a survey of 3,000 South Africans in 2015 that:

'While roughly equal proportions of all race groups feel strongly that sex between two men is just plain wrong (46.2%), black African and coloured people are twice as likely to express strong disgust about homosexual people than Indian/ Asian and white people. However, much stronger clustering of attitudes is apparent when looking at income, education and geography than by race.

'Given that income and education levels as well as geographic areas still very much reflect racial patterns as a result of the legacy of apartheid, those factors are likely to be much stronger influencers tha[n] race in this indicator. About two thirds of people who have no schooling think sex between two men is wrong, compared with less than half of people holding tertiary level qualifications. A similar profile emerges when looking at income.

'However, as the tables […] also show, there is a solid core of South Africans (around 1 in 5) who disagree with these dominant viewpoints. Tolerant views are held across all race groups, with the strongest disagreement with dominant views that homosexuality is wrong being held by Black Africans (at a ratio of around 2:1 when compared with Coloured and White people holding the same viewpoint).

'More than half of all South Africans think that gay people "should be allowed to be part of my culture and tradition", with only 1 in 10 respondents "strongly disagreeing" with this statement… Well over half (55 percent) of respondents agreed (17.7% strongly) that they would "accept" a gay family member.'[61]

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7.4 Violence and discrimination

7.4.1 A Human Right Watch report dated December 2011, 'South Africa: LGBT Rights in Name Only?' observed that: 'The threat of violence that dominates the lives of lesbians, bisexual women, and transgender men, particularly in poorer and non-urban areas, beggar's belief. Black lesbians and transgender men in South African townships and rural areas face an overwhelming

[60] The Other Foundation, 'Progressive Prudes' (p39), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017.
[61] The Other Foundation, 'Progressive Prudes' (p39), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Accessed 12 May 2017.

climate of discrimination and violence despite protections promised them in the country's constitution.'[62]

7.4.2 The OutRight Action International survey of laws on LGBT persons in southern Africa observed in 2016 that: '… evidence suggests that South African cultural attitudes lag behind the country's liberal post-apartheid constitution. Violence against South Africa's Violence LGBT population appears to be rampant, with a number of well-publicized cases documenting the rape and murder of openly gay and transgender men and women.'[63]

7.4.3 The Other Foundation (TOF) 2016 Progressive Prudes report stated: 'There is a continued existence of hate crimes throughout South Africa as well as recent campaigns from groups like the Congress of Traditional Leaders of South Africa, who are seeking to repeal the inclusion of sexual orientation as a protected class in the bill of rights'.[64]

7.4.4 The Freedom House's Freedom in the World report covering events in 2016 observed: 'South Africa has one of the world's most liberal legal environments for LGBT (lesbian, gay, bisexual, and transgender) people… However, there are frequent reports of physical attacks against LGBT people, including instances of so-called corrective rape, in which lesbians are raped by men who claim that the action can change the victim's sexual orientation.'[65]

7.4.5 The UN Human Rights Committee report, Concluding observations on the initial report of South Africa, of April 2016 observed that: 'It is also concerned about the persistence of stigma against persons based on their real or perceived sexual or gender orientation, gender identity or bodily diversity, and that such persons are subject to harassment, acts of

7.4.6 The Other Foundation estimated, based on extrapolating data from a survey of 3,000 South Africans in 2015 (the original data sets were embargoed for 1 year from September 2016) that:

'Although almost 90 percent of respondents say that they have not been physically violent against gender nonconforming people and "would never do that", there are still disturbingly high levels of self-reported prejudice, abuse

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[62] Human Rights Watch, 'South Africa: LGBT Rights in Name Only?', 5 December 2011, available at: https://www.hrw.org/news/2011/12/05/south-africa-lgbt-rights-name-only. Accessed 13 March 2017.
[63] OutRight International, 'A survey of laws impacting the human rights of LGBT person in selected southern African countries'. 16 March 2016 (A. South Africa, 1 Background), https://www.outrightinternational.org/content/survey-laws-impacting-human-rights-lgbt-person-selected-southern-african-countries. Accessed 26 April 2017.
[64] The Other Foundations, 'Progressive Prudes: A Survey of South African Attitudes to Homosexuality and Gender Non-Conformity', 9 September 2016, available at: http://theotherfoundation.org/wp-content/uploads/2016/09/ProgPrudes_Report_d5.pdf [accessed 10 April 2017]
[65] Freedom House, 'Freedom in the World 2017 - South Africa', April 2017, available at: https://freedomhouse.org/report/freedom-world/2017/south-africa [accessed 16 January 2017]

and violence against people who are gay and lesbian, and in particular those who do not conform to gender norms in South Africa.

'Based on the survey it is estimated that over the previous 12 months, around half a million (450,000) [around 1% of the population] South Africans have physically harmed women who dressed and behaved like men in public,[…] and 240,000 have beaten up men who dressed like women[…] Approximately 700,000 South Africans verbally abused (shouted at or teased) gender non-conforming people. […] Perhaps of most concern is that between 6.2 and 7.4 percent of South Africans felt that they might use violence against gender non-conforming people in the future. This is about three million South Africans who think that they might commit acts of violence against gender non-conforming people[…]'[66].

7.4.7 The same source reported that:

'Unsurprisingly, men are around two times more likely than women to report using violence against gender non-conforming people, and to report that they keep well away from people they think are likely to be gay and lesbian. Of most concern is that young people (16 - 19 years old) are up to three times more likely than other age categories to report on the use of violence, especially towards gender non-conforming women. However, verbal abuse and physical violence was reported across all age categories, including people over 65 years.

'Prejudice, abuse and violence is reported across all racial categories.'[67]

7.4.8 The same report opined that:

'Violence against men who dress and act like women, whilst less common, is still widely prevalent. Men and young people are much more likely to engage in this kind of violence. From an initial analysis of the survey responses there appear to be two "clusters" of demographics reporting on violence against non-conforming men. The first cluster consists of young, less educated and less well-off men who live in traditional authority rural areas. The second cluster comprises middle aged men who are well educated, relatively well-off and living in urban areas.'[68]

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7.5 Corrective rape: women

7.5.1 South Africa has high levels of rape (and sexual violence), of which corrective rape is a sub-category. Africa Check, a non profit organisation set

[66] The Other Foundation, 'Progressive Prudes' (p36), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017.
[67] The Other Foundation, 'Progressive Prudes' (p34), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017.
[68] The Other Foundation, 'Progressive Prudes' (p37), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017.

up in 2012 to promote accuracy in public debate and the media in Africa[69], observed in an introduction to its guide on the subject: 'South Africa is notorious for its levels of rape. But the true extent of the problem is unknown.' The guide further noted that statistics used in public discourse 'often suffer from accuracy problems.'[70] The problems with the accuracy of data on rape generally apply to gender-based violence against LGBT persons in particular.

7.5.2 The Other Foundation report of a survey of 3,000 South Africans about undertaken in 2015 considered that:

'Violence directed towards sexual minorities is best understood within the broader context of gender-based violence. The pervasive nature of violence against women in South Africa has been widely documented, and there is increasing attention being given to develop a better understanding of the nature and extent of violence against men as well. South Africa's rate of rape as a particular form of gender-based violence, has been found to be one of the highest in the world.

'Most compelling explanations of gender based violence point to gender inequality and the prevalence of strong patriarchal norms and values, including ones that excuse or legitimate the use of violence. Patriarchy can be understood as any social system which has a genderbased hierarchy, in which most power is assigned to men. It is rooted in a deeply binary notion of gender, in which men are seen as very different from, and more highly valued than women. It is maintained, in part, by strongly defined and enforced gender roles.'[71]

7.5.3 New York Time's 'The Brutality of Corrective Rape', which was published July 27, 2013 defined corrective as: 'The rape of gay men and lesbians to 'cure' them of their sexual orientation'[72] The News Deeply's 2016 Hate Crime article provided a definition of corrective rape as: 'The belief that heterosexual rape can "cure" or "correct" a woman's homosexuality, is known to be common in South Africa, although the exact number of incidents is impossible to calculate.' [73] The News Deeply article also observed:

'There is no separate category for corrective rape in the law, which means incidents are not officially recorded. Despite promises of a law to deal

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[69] Africa Check, About us, undated, https://africacheck.org/about-us/. Date accessed 15 May 2017.
[70] Africa Check, 'GUIDE: Rape statistics in South Africa', undated, https://africacheck.org/factsheets/guide-rape-statistics-in-south-africa/. Date accessed 15 May 2017.
[71] The Other Foundation, 'Progressive Prudes' (p11), 9 September 2016, http://theotherfoundation.org/progressive-prudes/. Date accessed 12 May 2017
[72] The New York Times, 'The Brutality of 'Corrective Rape', 27 July 2013, available at: http://www.nytimes.com/interactive/2013/07/26/opinion/26corrective-rape.html?_r=0 [accessed 10 April 2017]
[73] News Deeply, 'Hate Crime' Call for Corrective Rape Receives Boost in South Africa', 25 October 2016, available at: https://www.newsdeeply.com/womenandgirls/articles/2016/10/25/hate-crime-call-corrective-rape-receives-boost-south-africa [accessed 10 April]

specifically with corrective rape in 2010, and years of pressure from lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) groups in South Africa, activists say concrete government action has been slow to materialize' [74]

7.5.4 The UN Special Raporteur on discrimination against women noted in a report following a visit to South Africa that

'Despite an explicit prohibition of discrimination based on sexual orientation in the Constitution, lesbian women and other sexual minorities are very vulnerable to extreme forms of violence purported at "correcting" their bodies, including the so-called "corrective rape" often accompanied by a particularly heinous murder. This type of extreme violence was reported on the rise, despite the difficulty to detect it since victims are unlikely to spontaneously report their sexual orientation and police do not record this information.'[75]

7.5.5 An article by Tiffani Wesley, a US lawyer who had volunteered with an NGO in Cape Town[76], dated 25 November 2012 writing on the Open Society Initiative for Southern Africa (OSISA) website observed:

'Corrective rape, also known as curative rape, is a brutal act of violence in which African women and teenagers who are, or are at least assumed to be, lesbians are raped to 'cure' them of their homosexuality. Although South Africa has some of the most progressive legislation pertaining to homosexuality (i.e. the legalisation of same-sex marriage and legalised adoption for homosexuals) many still view homosexuality as a sin. Some see it as an 'imported white disease'. (Silvio, 2011) Perpetrators seek to 'correct' the women's behaviour through rape by 'teaching them a lesson' on how to behave like a 'real African woman' (J. A Nel, 2008). Some men view lesbians as a threat to their concept of masculinity because they fear that lesbians could possibly steal their girlfriends. In an interview with the BBC, Thulani Bhengu said "...when someone is a lesbian, it's like saying to us men that we are not good enough." (Fihlani, 2011) In a video featured on The Guardian's website, one man stated that:

'["]If there is someone who is trying to rape a lesbian, I can appreciate their thing. It's just to let them know that they must be straight. For me, I have no time to rape them but if another guy wants to teach them the way, they must

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[74] News Deeply, 'Hate Crime' Call for Corrective Rape Receives Boost in South Africa', 25 October 2016, available at: https://www.newsdeeply.com/womenandgirls/articles/2016/10/25/hate-crime-call-corrective-rape-receives-boost-south-africa [accessed 10 April]

[75] UN Human Rights Council, 'Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (based on a visit to South Africa undertaken between 4 and 11 December 2015) (para 33), http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZAIndex.aspx. Date accessed 26 April 2017.

[76] Open Society Initiative for Southern Africa, 'Tiffani Wesley – Personal informaiton', undated, http://www.osisa.org/users/tiffani-wesley. Date accessed 10 May 2017.

rape them, they must rock them. Once she gets raped, I think she'll know which way is nice.["] (Mieses, 2009)

'Lesbians, mostly those who live in poor black communities, live in constant fear. They could be attacked not just by strangers, but also by family members, friends, acquaintances or neighbours. They are taunted and harassed and are unable to live a life of dignity and equality. One victim told ActionAid: "We get insults every day, beatings if we walk alone…you are constantly reminded that you deserve to be raped. They yell '…if I rape you then you will go straight, you will buy skirts and start to cook because you will have learnt how to be a real woman'." (Geen, Rise of 'Corrective Rapes' on Lesbians in South Africa, 2009)

'The most well known case of 'corrective' rape involved Eudy Simelane, the former star of South Africa's Banyana Banyana national female football team. She was training to be the first female referee for the 2010 World Cup (Funda, 2011). On 28 April 2011, she was found in a creek in a park in Kwa Thema on the outskirts of Johannesburg. Her attackers had dragged her across the ground, stabbed her 25 times in the face, chest and legs, gang raped her, and left her, half-naked, in a ditch to die (Ahmed, 2009). Simelane's case has been one of the only cases so far that has resulted in a conviction when one of the perpetrators pleaded guilty. The two other men on trial were found not guilty due to lack of evidence (Bearek, 2009). During sentencing, however, the judge stated that Simelane's sexual orientation played no part in the crime. Moreover, the judge made no effort to hide his own prejudice when he showed how uncomfortable he was using the world 'lesbian' during the trial. At one point, he asked the prosecutor if there was another word he could use in its place (Bearek, 2009).

'While Simelane's case brought international attention to the issue of 'corrective' rape, there have been many other victims – some as young as 13 years of age (Smith, Teenage Lesbian is Latest Victim of 'Corrective Rape' in South Africa, 2011).'[77]

7.5.6 The same article added

'Reliable statistics are few and far between because police do not systematically collect data on suspected hate crimes based on sexual orientation (Long, 2003). Some officers, because of their beliefs, refuse to even consider sexual orientation as a motivating factor, and simply refuse to investigate because of their hatred of homosexuality. When interviewed by the BBC, Thando Sibya, a lesbian from Soweto said that... "Some policemen in the township mock you saying: 'How can you be raped by a man if you are not attracted to them?' They ask you to explain how the rape felt. It is

[77] Open Society Initiative for Southern Africa, 'Classify "Corrective" Rape as Hate Crime', 25 November 2012, http://www.osisa.org/buwa/south-africa/classify-%E2%80%98corrective%E2%80%99-rape-hate-crime. Date accessed 10 May 2017.

humiliating." (Fihlani, 2011) Consequently, many women are too afraid to make a police report when they have been raped. According to one study, at least 500 lesbians are victims of 'corrective' rape each year (Middleton, 2011). On record, 31 lesbians have been reported murdered in homophobic attacks since 1998, and yet there have only been two convictions. Support groups claim that the actual number is much higher. A report from Triangle, a South African gay rights organisation, revealed that a staggering 86 percent of black lesbians from the Western Cape said they lived in fear of sexual assault. The group says it is dealing with up to 10 new cases of 'corrective' rape every week.

"What we're seeing is a spike in the numbers of women coming to us having been raped and who have been told throughout the attack that being a lesbian was to blame for what was happening to them," said Vanessa Ludwig, the chief executive at Triangle" (Kelly, 2009).'[78]

7.5.7 The Independent's 2014 article titled 'Crisis in South Africa: The shocking practice of 'corrective rape' observed that:

'Ever since a 1998-2000 report by the United Nations Office on Crime and Drugs ranked South Africa as highest for rapes per capita, it has repeatedly been described as the rape capital of the world: 500,000 rapes a year; one every 17 seconds; one in every two women will be raped in her lifetime [NB Africa Check observed, in response to a similar statistic cited Sky News in 2016, that 'Due to a lack of research the number of rapes committed each year in South Africa can't be accurately estimated'[79]]. Twenty per cent of men say the victim "asked for it", according to a survey by the anti-violence NGO, CIET. A quarter of men in the Eastern Cape Provinces, when asked anonymously by the Medical Research Council, admitted to raping at least once – three quarters of whom said their victim was under 20, a tenth said under 10. A quarter of schoolboys in Soweto described "jackrolling" – the local term for gang rape – as "fun".

'Although statistics for corrective rape have not been compiled nationally, one support group in Cape Town told ActionAid researchers in 2009 they deal with 10 new cases every week.'[80]

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[78] Open Society Initiative for Southern Africa, 'Classify "Corrective" Rape as Hate Crime', 25 November 2012, http://www.osisa.org/buwa/south-africa/classify-%E2%80%98corrective%E2%80%99-rape-hate-crime. Accessed 10 May 2017.

[79] Africa Check, 'UN stats don't show a rape occurs every 26 seconds in SA, as Sky News reported', 13 January 2016, https://africacheck.org/reports/un-stats-dont-show-a-rape-occurs-every-26-seconds-in-sa-as-sky-news-reported/. Date accessed 15 May 2017.

[80] Independent, 'Crisis in South Africa: The shocking practice of 'corrective rape' - aimed at "curing" lesbians', 4 January 2014: http://www.independent.co.uk/news/world/africa/crisis-in-south-africa-the-shocking-practice-of-corrective-rape-aimed-at-curing-lesbians-9033224.html. Date accessed 12 May 2017.

7.5.8 The same Independent article reported that between 1999 and 2015 at least 31 known lesbians / bisexual women who had been raped were also killed. The article further reported:

‘"The constitution is there but it doesn't mean anything to anyone," says Funeka, who founded Free Gender after being correctively gang raped and stabbed multiple times ("My body was there, but I was far, far away," she says).

‘"Even if you know how the constitution works, you don't know how to use it to protect yourself. If you don't have money you don't have access to the justice system. Violence in the townships is normal. Homosexuality is [seen as] un-African. Patriarchy is everywhere. The way religious leaders read scripture is painful. Children start raping at 14, 15 and take pictures. We're sitting on a time bomb."

‘One such religious leader is Reverend Oscar Peter Bougardt, a senior pastor in the Mitchell's Plain township, 20 miles from Cape Town. "Homosexuals can change," he told Carter. "Homosexuality is a curse... a wicked influence... they come after our young people. Any clergy or priest that approves [of] homosexuality is from the pit of hell."

‘David Hessey, who works for the Gay and Lesbian Association, also blames the courts for failing to deal with corrective rape cases.

‘"It is not treated as a serious offence. We are awaiting the sentencing of a corrective rape case – a father raped his daughter's girlfriend to 'cure' her and he has been convicted – but it took two years to get the case to court and this is fast for South Africa. Most take six years which is why most people don't report it."

‘Witnesses are often disregarded in court, as even seeing and hearing a victim screaming is deemed "hearsay, as the woman may be screaming in pleasure and this may be the way they like having sex".

‘The police routinely have neither the resources nor inclination to investigate.’[81]

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7.6 Corrective: men

7.6.1 Although instances of corrective rape of men are thought to be uncommon, a 2003 study conducted by Out LGBT Well-Being (Out) and the University of South Africa Centre for Applied Psychology (UCAP) observed: ‘We found that the percentage of black gay men who said they have experienced

[81] Independent, ‘Crisis in South Africa: The shocking practice of 'corrective rape' - aimed at “curing” lesbians’, 4 January 2014: http://www.independent.co.uk/news/world/africa/crisis-in-south-africa-the-shocking-practice-of-corrective-rape-aimed-at-curing-lesbians-9033224.html. Date accessed 12 May 2017.

corrective rape matched that of the black lesbians who partook in the study,' says Professor Juan Nel, a specialist in hate-crime criminology at UCAP.' [82]

7.6.2 CPIT was unable to identify further data on corrective rape of men in the sources consulted in this note as of June 2017.

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8. Civil society

8.1 NGOs - general

8.1.1 Freedom House observed in its report covering events in 2016 that: 'South Africa hosts a vibrant civil society. Nongovernmental organizations (NGOs) can register and operate freely, and lawmakers regularly accept input from NGOs on pending legislation. However, in April David Mahlobo, the minister of state security, accused some NGOs of working with foreign powers against South African interests.'[83]

8.1.2 The USSD report for 2016 observed that:

'A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views.

'… Although created by the government, the [South Africa Human Rights Commission] SAHRC operated independently and was responsible for promoting the observance of fundamental human rights at all levels of government and throughout the general population. The SAHRC also has the authority to conduct investigations, issue subpoenas, and take testimony under oath. The government reacted positively to SAHRC reports and was responsive to its views. Despite a large backlog of cases and lack of funding, the SAHRC was considered moderately effective.'[84]

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8.2 LGBT groups

8.2.1 Several gay rights organizations were formed in the late 1970s in opposition to the strengthening of the national sodomy law in 1976, and many such organizations are active today, [85] such as:

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[82] Bhekisisa, 'Men are also Corrective Rape Victims', 11 April 2014, http://bhekisisa.org/article/2014-04-11-men-are-also-corrective-rape-victims. Accessed 10 April 2017.
[83] Freedom House, 'Freedom in the World in 2017', April 2017, https://freedomhouse.org/report/freedom-world/2017/south-africa. Accessed April 2017.
[84] USSD, 'Country Reports on Human Rights Practices for 2016' (section 5), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Accessed at 12 May 2017.
[85] OutRight Action International, 'A Survey of Laws Impacting the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons in Selected Southern African Countries', 16 March

- The Durban Lesbian & Gay Community & Health Centre (a project of the KZN Coalition for Gay & Lesbian Equality) is a Drop-In Centre, safe and secure space for lesbian, transgender, gay, bisexual, and intersex communities in Durban and KwaZulu-Natal. [86]
- OUT is an organisation that provides direct health services to the lesbian, gay, bisexual and transgender (LGBT) community, MSM, sex workers, and injecting drug users, including HIV testing, counselling, treatment and general lifestyle advice and support. [87]
- Triangle Project is a non-profit human rights organisation offering professional services to ensure the full realisation of constitutional and human rights for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, their partners and families. Their three core services centre on Health & Support, Community Engagement & Empowerment and Research and Advocacy.[88]

8.2.2 The South African website, mambaonline, aimed at LGBT persons noted, in an undated entry, that 'South Africa's major cities have a thriving nightlife, with most boasting at least some gay clubs or venues. Cape Town and Johannesburg (Joburg or Jozi as it is also known) are the country's gay capitals and there are many hotspots to look out for - including clubs, bars and gay friendly restaurants.' [89] The OutRight International survey, referencing mambaonline, observed that there are gay nightclubs in all of South Africa's major cities, and Johannesburg and Cape Town each host annual Gay Pride events.[90]

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9. Freedom of movement

9.1.1 The USSD human rights report for 2016 observed that: 'The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, but the government did not always respect these rights.'[91]

2016, http://www.refworld.org/docid/58c2b9de4.html. Accessed 17 March 2017.
[86] Durban Lesbian & Gay Community & Health Centre, 'Introduction to The Durban LGBT Community Centre', 6 January 2012, http://www.gaycentre.org.za/about.asp. Accessed 10 April 2017.
[87] OUT, 'About OUT', undated, http://www.out.org.za/#. Accessed 10 April 2017.
[88] Triangle, 'About', undated, http://triangle.org.za/about/. Accessed 10 April 2017.
[89] Mamba Online, 'Hotspots', undated, http://www.mambaonline.com/i_hotspots.asp. Accessed 10 April 2017.
[90] OutRight Action International, 'A Survey of Laws Impacting the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons in Selected Southern African Countries' (Expression and Assembly), 16 March 2016, (accessed via) http://www.refworld.org/docid/58c2b9de4.html. Accessed 12 May 2017.
[91] US State Department, 'Country Reports on Human Rights Practices for 2016' (section 2d), 3 March 2017, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=265302. Accessed at 12 May 2017.

9.1.2 Freedom House observed that: 'While there are no official restrictions on housing, employment, or freedom of movement for most South Africans, travel and some other personal freedoms are inhibited by the country's high crime rate… The legacy of apartheid continues to segregate the population and restrict nonwhite opportunity for employment and education.'[92]

9.1.3 South Africa has a number of towns and cities, the largest are Johannesburg, Cape Town, Durban and Port Elizabeth.[93]

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[92] Freedom House, 'Freedom in the World in 2017', April 2017, https://freedomhouse.org/report/freedom-world/2017/south-africa. Date accessed 15 May 2017.
[93] Encyclopaedia Britannica, 'List of cities and towns in South Africa', undated, https://www.britannica.com/topic/list-of-cities-and-towns-in-South-Africa-2043172#toc2043172main. Date accessed 15 May 2017.

Version control and contacts

Contacts

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