

Masiphephe Network

Advancing LGBTQIA+ Rights Against Gender Based Violence

POLICY BRIEF

Gauteng, KwaZulu-Natal &
Mpumalanga

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Key Facts

- In May 1996, South Africa became the first jurisdiction in the world to provide constitutional protection to Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other Non-heterosexual people (LGBTQIA+), under section 9(3) of the South African Constitution, prohibits discrimination on race, gender, sexual orientation, and other grounds.
- About two to three LGBTQIA+ people are killed in KwaZulu-Natal (KZN) per month.
- Four gay men were murdered in South Africa in one month.
- A number of murders among LGBTQIA+ people happen in impoverished areas, where there is less policing.
- Victimisation of LGBTQIA+ people is very high in schools, colleges and public institutions.
- LGBTQIA+ people often experience barriers to economic and social inclusion related to structural inequality and social stigma along multiple axes.
- LGBTQIA+ people struggle to find housing and jobs, and are regularly subjected to physical, sexual, and emotional abuse.
- LGBTQIA+ community encounter discrimination from government officials, police officers, medical personnel and others tasked with providing care and support[1].

Synopsis

Violence against the LGBTQIA+ community is a violation of human rights. The protection of LGBTQIA+[1] rights in South Africa is based on section 9 of the Constitution, which forbids discrimination on the basis of sex, gender or sexual orientation, and applies to government and private parties. South Africa has one of the most advanced laws that protect LGBTQIA+ community and the only country in Africa, to legalise same-sex marriage. However, violence, rejection and discrimination against the LGBTQIA+ communities is experienced across all provinces in South Africa.

Despite such a progressive legal framework, LGBTQIA+ communities are still not safe. This shows the disconnection between the law and reality. LGBTQIA+ communities face hate speech, violence, rape, sexual assault, murder and; are often discriminated when trying to access public services, particularly sexual reproductive health at local clinics. For many, such experiences

[1] LGBTQIA+ is an inclusive phrase that encompasses all genders and sexual orientation, including lesbian, gay, bisexual, transgender, questioning, queer, intersex, asexual, pansexual, and allied individuals. Although each letter in LGBTQIA+ represents a unique group of individuals, the phrase embraces the entire spectrum of gender fluidity and sexual identities.

cause fear to participate fully in personal and public development daily activities. Under-reporting also renders everyday violence against the LGBTQIA+ community invisible, particularly as it relates to non-fatal attacks.

To address violations against LGBTQIA+ community because of their sexual orientation, gender identity and expression, concerted policy advocacy and community-level social behaviour change communication activities are important. This policy brief focuses on Gauteng, KZN and Mpumalanga provinces, where the Masiphephe Network operates. It is based on evidence from an assessment of significant legal, policy, and programmatic measures to protect and support LGBTQIA+ community in South Africa.

Background

LGBTQIA+ community in South Africa are under siege^[2] as they are threatened daily, discriminated, and face all kinds of violence. They are further dehumanised when reporting violent cases at police stations.^[3] Over 7 out of 10 South Africans still regard LGBTQIA+ people as intrinsically evil and "un-African." LGBTQIA+ community also face difficulties accessing health services, often experience barriers to economic and social inclusion related to structural inequality and social stigma along multiple axes.^[4] Across the country, victimisation of the LGBTQIA+ people based on sexual orientation is very high in schools. This traumatic and humiliation experience even from childhood. The Masiphephe Network site specific contexts provide examples on the plight of LGBTQIA+ community in South Africa:

- **KwaZulu-Natal Province:** While violence against LGBTQIA+ communities is rife nation wide, KZN province is a hotspot. LGBTQIA+ community are gang raped and gruesomely killed on the basis of their sexual orientation. Two to three people are reportedly killed monthly, while many cases are struck off the roll because witnesses are reluctant to attest to the incident and testify in court, because they are afraid of being victimised, stigmatised or even killed. It is evident that most LGBTQIA+ crimes are most likely perpetrated by people that the survivor knows. Bodies of violently killed members of the LGBTQIA+ community are found almost weekly in the rural areas', townships and shack settlements of KZN where there is police visibility.^[5]
- **Mpumalanga Province:** Anti-LGBTQIA+ attitudes are deep rooted in Mpumalanga Province communities. Anecdotal evidence from Masiphephe Network primary research, site dialogues and structured interventions indicates high unemployment amongst the LGBTQIA+ community in Mpumalanga. In the City of Emalahleni, the LGBTQIA+ communities are often promised jobs in exchange for money by scammers.^[6] Such job scams are part of human trafficking syndicates.
- **Gauteng Province:** LGBTQIA+ community are more open about their sexuality in the province.^[7] Johannesburg in Gauteng is a safe haven for the LGBTQIA+ community after Cape Town in the Western Cape, as people escape fatal discrimination and Gender Based Violence (GBV) in the other provinces.

[2] Makhaye C. (2021) LGBTQIA+ people in South Africa 'are under siege'. New Frame. Available at <https://www.newframe.com/lgbtqia-people-in-south-africa-are-under-siege/>. Accessed on 25 May 2022.

[3] Ibid

[4] THE ECONOMIC COST OF LGBT STIGMA AND DISCRIMINATION IN SOUTH AFRICA

[5] Durban Lesbian and Gay Community and Health Centre

[6] AIDS Foundation South Africa

[7] The Conversation

LGBTQIA+ community from other African countries reach South Africa with hope that the country's progressive laws will shield them from the experiences left behind – beatings, extortion, familial abuse, forced marriage; or simply having to hide their identities, desires and relationships. Gauteng has a number of safe places for the LGBTQIA+ community such as the Holy Trinity Catholic Church, which opened its doors to LGBTQIA+ community of all faiths and nationalities in 2009. It remains popular with migrants, refugees, and asylum seekers. In addition to shelters, Gauteng also has friendly hangout places for LGBTQIA+ people.

While Gauteng is generally viewed as a welcoming place where LGBTQIA+ communities can be open about their gender identities and sexual orientation, research also shows that local migrants, refugees, and asylum seeker LGBTQIA+ people also struggle to find housing and jobs. They are regularly subjected to physical, sexual, and emotional abuse. They encounter discrimination from government officials, police officers, medical personnel and others tasked with providing care and support for all people in South Africa.[9]

Widely, cyber violence including discrimination, threats and insults against LGBTQIA+ people has also been reported on social media platforms. In light of all these different factors, the constitutional mandate of freedom and human rights for all remains unfulfilled.

Legal framework

The South African parliament legalised same-sex marriage in November 2006, one year after the country's highest court ruled that the previous marriage laws violated the South African constitution's guarantee of equal rights[10].

The Prevention and Combating of Hate Crimes and Hate Speech Bill aims at reducing offensive speech and criminal acts motivated by prejudice towards minorities. The bill was drafted in 2016 and approved by Cabinet in 2018, but is yet to become law. The bill has been delayed due to complex legal holdups, while some journalists and religious groups fear it could limit free expression. According to the Family Policy Institute (FPI), the Hate Crimes and Hate Speech Bill could criminalise parts of the Bible. Freedom of Religion South Africa (FOR SA) has similarly argued that the bill will come into conflict with what should be the equally important and equally protected rights of freedom of speech as well as freedom of religion, conscience, belief, and opinion.

In May 1996, South Africa became the first jurisdiction in the world to provide constitutional protection to LGBTQIA+ people, under section 9(3) of the South African Constitution, which prohibits discrimination on race, gender, sexual orientation, and other grounds. The revised Sexual Offences Act (2007) criminalises sexual violence against and by people of all genders and sexual orientation. Section 10, guarantees that everyone has inherent dignity and the right to have their dignity respected and protected.



[9] Thomson Reuters Foundation

[10] Pew Research Center. <https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/>

Further rights enumerated in the Bill of Rights include the right to life (Section 11), as well as the right to security of the person, including the right “to be free from all forms of violence from either public or private sources,” the right “to security in and control over their body,” and the right “not to be treated or punished in a cruel, inhuman or degrading way” (Section 12). The Civil Union Act 17 2006 ('Civil Union Act'), that came into operation on 30 November 2006 provisions that same-sex couples may enter into a marriage or a civil partnership.[11] The requirements for, and consequences of that marriage are the same as for those afforded to heterosexual couples entering into a marriage.[12] This Civil Union Act was a momentous step in the right direction for the development and protection of same-sex partners' rights. However, it still presented with hurdles for same-sex partners that wished to get married. In terms of Section 6 of the Civil Union Act, non-religious marriage officers had the right to object to solemnise a marriage between persons of the same sex on the grounds of conscience, religion, and belief.[13] Research showed that 37% of marriage officers objected to solemnising a union between same-sex partners.[14] Significantly in December 2018, Parliament approved the Civil Union Amendment Bill, which aims to repeal Section 6 of the Civil Union Act in its entirety.[15]

Advocacy and actions

In April 2022, the online publication, Them, reported that four gay men had been murdered in South Africa in less than a month. The disturbing report made national headlines with dozens of LGBTQIA+ community members and supporters to march to parliament demanding urgent action against homophobic, transphobic hate crimes and killings that are rife in the country. They also demanded Parliament's approval of the Prevention and Combating of Hate Crimes and Hate Speech Bill. They began fundraising to support families of the victims. However, some conservative groups such as the Family Policy Institute (FPI), Freedom of Religion South Africa, Cause for Justice, and the African Christian Democratic Party, have been mobilising against anti-LGBTQIA+ campaigns in a bid to block a long-awaited Hate Crimes Bill and other policy developments that challenge conservative, gender stereotypical and binary beliefs and practices.

Analysis of anti-LGBTQIA+ group's advocacy efforts offers some insights into current attempts to challenge democratic principles of equality, civility, respecting diversity and inclusion. Although anti-LGBTQIA+ groups may appear to be relatively small and ineffectual in their local contexts, their efforts have deeper implications for making discrimination unconstitutional.

[11] Venter L. (n.d.) LGBTQIA+ Rights in South Africa. Miller du Toit Cloete Inc, Cape Town. Available at <https://www.ibanet.org/article/854B8E51-E931-403D-BDC3-1386B30F9591>. Accessed on 25 May 2022.

[12] Ibid.

[13] Ibid.

[14] Zodidi D. (29 November 2019) LGBT+ groups welcome same-sex marriage amendment to bill. IOL. Available at www.iol.co.za/capeargus/news/lgbt-groups-welcome-same-sex-marriage-amendment-to-bill-18309878. Accessed on 25 May 2022.

[15] Moloto M. (6 December 2018) National Assembly Passes the Civil Union Amendment Bill. Parliament of the Republic of South Africa. Available at www.parliament.gov.za/press-releases/national-assembly-passes-civil-union-amendment-bill. Accessed on 25 May 2022.

Challenges and gaps

- The country is struggling with misconceptions on LGBTQIA+ people which often leads to discrimination against the LGBTQIA+ communities.
- Some individuals commit these crimes due to lack of knowledge and in turn directly infringe on the rights of others.
- Only few LGBTQIA+ people report cases of sexual violence to the police, including bias-motivated incidents. Even fewer make it to court.
- LGBTQIA+ people face several barriers when reporting sexual violence, assaults, and other related cases, because of their sexual orientation. These barriers include experiences of discrimination within the criminal justice system that are rooted in societal homophobia and transphobia.
- The police often do not take LGBTQIA+ issues seriously and sometimes do not open cases for victims who report instead, they discriminate them based on their gender. When cases are opened, survivors and victim's families are not adequately supported.

The impact of the COVID-19 pandemic

GBV and hate crimes against minorities are exacerbated by the Covid-19 pandemic. Prior to the Covid-19 pandemic, the year 2020 began with the gruesome murder of Durban-based LGBTQIA+ activist, Lindokuhle Cele, who was stabbed multiple times by a 30-year-old male who has since been arrested and charged with Cele's killing.[17] Many LGBTQIA+ people face increased discrimination, threatening society's wellbeing. The pandemic had a negative impact on advocacy particularly towards legal reforms such as delays in legal procedures followed on the Prevention and Combating the Prevention and Combating of Hate Crimes and Hate Speech Bill.

The role of the media

Media is frequently cited as critical for changing attitudes. The media pays close attention to the killings of LGBTQIA+ persons, with both role players and anti-LGBTQIA+ people expressing their opinions. Civil society has also been at the forefront of research, but this is insufficient. More talks and television programs featuring more LGBTQIA+ communities are needed. The media must cover all types of stories, including personal accounts, that have the potential to enhance policies and the legal framework.

Conclusion and Recommendations

Despite South Africa leading the way in the fight for the LGBTQIA+ rights on the African continent, there is still a need for upholding human rights of LGBTQIA+ community. The legal framework is currently progressive on paper, but there is a stark contrast between the written policies and lived experiences. While the South African government and civil society have made great strides towards safeguarding LGBTQIA+ rights, the rise of the killings, assaults, threats, fear for life and discrimination that LGBTQIA+ community still face, waters down all efforts that have been made. Given South Africa's progressive human-rights centered legislation and recognised need for LGBTQIA+ people to realise these rights, the following recommendations expand on existing policies for the full inclusion of LGBTQIA+ community in South Africa, particularly in the provinces where the Masiphephe Network works.

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[17] The Frame

- **Intentional government-led efforts** - the South African government and civil society should ensure comprehensive services that meet the needs of LGBTQIA+ people. If South Africa is to achieve progress in promoting and safeguarding the rights of LGBTQIA+ populations, it must make concerted efforts to raise awareness about hate crimes. The South African Government should vocalise advocacy for the rest of the continent in order to propel change in the unprogressive narrative that to be gay is un-African.
- **Urgent need for GBV sensitive and responsive LGBTQIA+ strategies, plans and programmes** - There is a need to implement clear LGBTQIA+ protection and support strategies to ensure that all community members are sensitised and are able to act in preventing occurrence of hate crimes and secondary victimisation within the justice system.
- **Local community leadership in advancing LGBTQIA+ human rights** - community leaders need to challenge the patriarchal and discriminatory attitudes and perceptions that fuel violence.
- **Improved policy implementation and social behaviour change efforts** - Reduce stigma through structural change that supports education and norm change to prevent violence, harassment, and discrimination against LGBTQIA+ and other Gender Non-Conforming (GNC) people, support reporting and appropriate responses to cases.

DISCLAIMER

This policy brief is for the “Strengthening Local Governance to Improve Gender Based Violence” Project also known as the “Masiphephe Network” (“Let’s Be Safe”). The project is funded by the United States Agency for International Development (USAID), through its Democracy, Human Rights and Governance (DRG) unit, and led by the Centre for Communication Impact (CCI). The Masiphephe Network community-based gender-based violence (GBV) prevention and response partners across three provinces in South Africa, believe that GBV is the grave consequence of complex social and structural problems. Our programme encourages inclusive GBV interventions through strategic policy advocacy, community-led collaborative supportive multi-sectoral partnerships, building awareness and promoting behaviour change to shift GBV social norms. Our views are informed by community engagements and recommendations. The contents of this policy brief are the responsibility of CCI and do not necessarily reflect the views of USAID.

Break the silence, call 0800 428 428 (GBV Command Centre) to report and get GBV support.



Contact Details

Masiphephe Network Strategic and Civil Society Implementing Partners

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Gender Health and Justice Research Unit (GHJRU), University of Cape Town	Strategic research and policy partner across sites	021 406 6023
Agisanang Domestic Abuse Prevention and Training (ADAPT)	Gauteng City of Johannesburg Region E	011 786 6608
Sonke Gender Justice (Sonke) Gauteng	City of Johannesburg Region D	011 339 3589
Ethembeni Crisis Care Centre (ECCC)	eThekwini West, KwaZulu Natal	031 704 6860
Gugu Dlamini Foundation KwaZulu Natal	eThekwini INK Area	031 292 2852
Project Support Association Southern Africa (PSASA)	City of Mbombela. Emalahleni Local Municipality	013 752 5624

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