

Thematic Paper: Advancing LGBTQIA+ Rights
Against Gender Based Violence



SYNOPSIS

South Africa is considered a progressive country in Africa because of the country's laws that give rights to all people including people with diverse sexual orientation and identify as Lesbian, Gay, Bi-sexual, Trans-sexual, Queer, Intersex, Asexual and other non-heterosexual (LGBTQIA+) people. Despite the legislative protection, LGBTQIA+ people still live-in fear as they are continuously subjected to discrimination, hate speech, violence, rape, sexual assault, murder, and lack of access to sexual reproductive rights services. As a result of these constant attacks, members of the LGBTQIA+ community are traumatised and depressed and often require support in terms of safe places where they can deal with it. Activists feel that the government and its agencies, including the police, are doing nothing to stem the tide of LGBTQIA+ attacks across South Africa. While violence against LGBTQIA+ people is prevalent all provinces, this thematic paper pays special attention to Gauteng, KZN and Mpumalanga provinces where Masiphephe network works. The papers draw literature from research papers, the media, as well as lived experiences of the LGBTQIA+ people.

There has been a rapid growth in the number of hate crimes against the LGBTQIA+ people in KZN. The violence, rejection and discrimination cut across all races and religion.

South Africa is leading the fight for LGBTQIA+ fight in the African continent, however there is more that needs to be done.

A BRIEF OVERVIEW LGBTQIA+ CRIMES IN KZN, GAUTENG AND MPUMALANGA PROVINCES.

Research shows that almost seven out ten people living in South Africa still consider the LGBTQIA+ individuals as inherently immoral and 'un-African' hence paying little attention to the abuse they endure on a daily basis.¹ Anecdotal evidence shows that the crime against the LGBTQIA+ community is very high in impoverished areas where these people face the threat of murder, rape and violent assaults on a daily basis.² People in suburbs are freer to practise their sexuality with little or no threat of attack. The LGBTQIA+ people face discrimination, threats, and insults even in social media platforms; highly discriminated by government authorities, religious institutions; and many are rejected by their families owing to their sexual orientation and gender identity as they claim to be preserving traditional values.

The stories of LGBTQIA+' lived experiences in the media show that most LGBTQIA+ people face challenges in going to public.³ Some are daily threatened by people who tell them straight that they will rape them in order to change their gender. They highlight that they are dehumanised when reporting violence cases at police stations. The police often do not take LGBTQIA+ issues seriously and never open cases for victims who report, rather they discriminate them based on their gender. If ever a case is open, they are often sent from pillar to post without any information or steps to guide them when reporting such cases.

¹ Progressive Prudes A survey of attitudes towards homosexuality & gender non-conformity in South Africa, The Other Foundation, 2016, accessed at <https://bit.ly/3ycSusq>, accessed on 1 October 2022.

² Commission on Gender Equality Act, 1996, The Commission for Gender Equality, 2021, accessed at <https://bit.ly/3M00KSg>, accessed on 1 October 2022.

³ Commission on Gender Equality Act, 1996, The Commission for Gender Equality, 2021, accessed at <https://bit.ly/3M00KSg>, accessed on 1 October 2022.

The LGBTQIA+ people struggle to access adequate healthcare which puts their lives at risk and also hindered the global fight against access to sexual reproductive health rights. Gauteng is considered home for the LGBTQIA+ community particularly Johannesburg. In Gauteng, LGBTQIA+ people are most likely to be completely open about their sexuality. In Gauteng there are various friendly hang out places for the LGBTQIA+ people. However, this does not stop people from discrimination, victimisation, and murder. In Gauteng, victimisation of the LGBTQIA+ people based on sexual orientation is very high in schools⁴ and in public institutions. This demonstrate that accessing services in traumatic and LGBTQIA+ people often face humiliation.⁵

There has been a rapid growth in the number of hate crimes against the LGBTQIA+ people in KZN. The violence, rejection and discrimination cut across all races and religion. From February to July 10 people were gruesomely killed in KZN⁶, this means that two to three people are killed every month – not even mentioning unofficial statistics. Activists and community leaders state that LGBTQIA+ crimes are most likely perpetrated by people known by the victim. A rapid assessment by Masiphephe Network notes that the bodies of violently killed members of the LGBTQIA+ community are found almost weekly in the rural area's townships and shack settlements of KZN. Activists at the Durban Lesbian and Gay Community and Health Centre state that they receive large number of cases of abuse, but many go unreported because the victims fear for their lives.

A few queer individuals and couples say they have come to understand that the discrimination against them is a fact of life, and they are doing their best to live with it. Some brave LGBTQIA+ people have learnt to fight back and tell people where to get off. It is noted that at times violent threats become very serious forcing the victims to flee and find refuge. In Mpumalanga, anti-LGBTQIA+ attitudes are still in full force and the LGBTQIA+ community continues to face discrimination and violence at all levels.

LAW AND POLICIES

South Africa's constitution gives the LGBTQIA+ people equal rights and making it illegal to discriminate people based on their sexual orientation. South Africa was one of the first countries in the world to legalise same-sex marriage. The Prevention and Combating of Hate Crimes and Hate Speech Bill of 2018 outlaw hate speech on the grounds of race, gender identity and sexual orientation, among others. The Bill is languishing in the National Assembly due to the concerns that it may prohibit freedom of speech. If finally passed, a charge of hate crime could be added to those who attack and kill LGBTQIA+ people.

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The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA or the Equality Act, Act No. 4 of 2000) is a comprehensive South African anti-discrimination law that prohibits unfair discrimination by the government, private organisations and individuals and forbids hate speech and harassment in its entirety.

⁴ A report on levels of empowerment among LGBT people living in Gauteng, South Africa, 2004, accessed at <https://bit.ly/3yb85sw>, accessed on 1 October 2022.

⁵ Educators' perceptions of homophobic victimisation of learners at private secondary schools, Psychology Association of SA, 2015, accessed at <https://bit.ly/3RqBDt2>, accessed on 1 October 2022.

⁶ Access to Justice for LGBTQ+ Survivors of Sexual Offences in SA: Report, USAIDS; University of Cape Town; The Gender Health & Justice Research Unit, 2018, accessed at <https://bit.ly/3SEtjal>, accessed on 2 October 2022.

Legislative and policy reforms (and the development of equality jurisprudence) after 1996 have sought to remove or amend any law that criminalises or discriminates against LGBT people and ensure equal treatment regardless of sexual orientation and gender identity. This included the revision of the Sexual Offences Act, in form of the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act 2 (herein referred to as the Sexual Offences Act). The Sexual Offences Act definition of rape is gender-neutral – an act of sexual penetration that is both unlawful and intentional – criminalising sexual violence against and by people of all genders and sexual orientations.

COVID-19

The Covid-19 pandemic further exacerbated the prosecution of LGBTQIA+ communities. Many faced increased discrimination, and unjust framing as threats to the society's wellbeing. The LGBTQIA+ communities were attributed to Covid-19. The situation was so dire during the hard lockdown that we had to find alternative accommodation for the victims. and often need to receive counselling and the time to process their rejection.

RECOMMENDATIONS

- Looking ahead to 2021, South Africa needs to respond decisively to the growing problem of violence against LGBTQIA+ people by adopting preventative measures against homophobic hate speech and hate crimes.
- There is a need for the law enforcement and the criminal justice systems to tighten laws and act urgently to stop the violence against the LGBTQIA+ community.
- A need to advocate for funds to support victims and survivors of such hate crimes.
- Role players in this space need to demonstrate bold moral leadership by relooking at the rights of the LGBTQIA+ people and ratify not only the proposed Bill but also responses to support victims and survivors.
- The government working closely or collaborating with the civil society, grassroots organisations, institutions, and other role players should increase the level of awareness about LGBTQIA+ rights at home, schools, workplaces and beyond so that other African countries can learn from South Africa.

CONCLUSION

Despite sophisticated laws that protect LGBTQIA+, many of them do not feel safe as they are discriminated, assaulted and various hate crimes. Only few LGBTQIA+ people report cases of sexual violence to the police, including bias-motivated incidents, and even fewer make it to court. Activist working in this space continue to highlight that LGBT people face several barriers when reporting sexual violence, assaults, and other related cases that they face because of their gender. These barriers include experiences of discrimination within the criminal justice system and are rooted in societal homophobia and transphobia.

There have been various conferences, workshops, task teams and statements, but truthfully there has been little action. South Africa has strong SRHR policies however they should enable a more effective realisation of SRHR rights for LGBTQIA+ persons and the country is still far from achieving this. South Africa remains a divided society on many fronts, and these divisions are reflected in the treatment and quality of services that most LGBTQIA+ individuals receive. Different role players should work together to strengthening responses to protect and ensure safety for LGBTQIA+ communities.