

# Lived realities of LGBT people

## - South Africa

### DISCLAIMER

We have pointed out before that the terminology used to talk about sexual and gender diversity differs according to place and time. Additionally, it is up to every person individually to determine if and in what way they/she/he prefers to describe their/her/his sexual and gender identity. We recognize that the acronym LGBT cannot capture the different views in South Africa on sexual and gender diversity and diverse wordings. We however stick to 'LGBT', which is predominantly used in the resources about South Africa and in this module in general.

In **1996**, South Africa was the **first country in the world** to install a **constitution that banned discrimination on the basis of sexual orientation**. Despite the introduction of other protective measures, 25 years later, many challenges remain for LGBT individuals.

### Societal acceptance

A first impression of how South Africans look at 'non-normative' sexual orientation and gender identity is given by the [Williams Institute Global Acceptance Index](#). For the period 2014-2017 South Africa ranked 33<sup>rd</sup> out of 174 countries with a score of 6.2. This is a considerable improvement from its 5.1 score for 2000-2003. The '[Progressive Prudes](#)' study of 2016 gives more details about public attitudes towards 'deviating sexual orientation'. Some numbers:

- 55% of South Africans said they would 'accept' a gay family member
- 51% of South Africans believed that gay people should have the same human rights as all other citizens
- 72% of South Africans believed same-sex sexual activity is 'morally wrong'
- 52% of South Africans believed that gay and lesbian people should be included in 'their culture and tradition'
- 450,000 South Africans had physically harmed women "who dress and behave like men in public' in the 12 months prior to the study.

### Underlying causes

We need to link these views to the history and high levels of inequality in South Africa. Before colonisation, **same-sex relationships and gender boundary-crossing spiritual practices existed in indigenous societies in Southern Africa**.

When the Dutch Calvinist and English Puritan settlers came, they introduced a political system of segregation based on race. This required keeping people of different races separate, including by regulations of sexual activities. **Interracial and homosexual**

**relationships were prohibited to 'maintain racial superiority'**. Homosexuality had to be eradicated in any population, also amongst white civilians. It was seen as a cause of social breakdown and an impediment to good citizenship. This led to forceful therapy conversion that included body mutilation.

From the 1980s onward, **sexual and gender minorities joined the struggle against oppression by the Apartheid State**. While sexual orientation was included in the constitution, LGBT individuals met and continue to meet with strong opposition. **Post-Apartheid did therefore not automatically mean equal rights and opportunities for LGBT people.**<sup>1</sup>

## Legal context

The following overview is based on the [Iqga World State-Sponsored Homophobia report](#):

<p><b>Same-sex sexual acts legal</b> 1998</p>	<p>Following a case decided by the Constitutional Court of South Africa, the State abrogated laws carried through from the 1955 Penal Code in which Article 600(1) and 601 criminalised consensual same-sex sexual conduct between adults, including the common-law crime of sodomy.</p>
<p><b>Constitutional protection</b> 1994 &amp; 1996</p>	<p>Prohibition of sexual orientation discrimination was first included in Section 8 of the Interim Constitution that came into force in April 1994 and was carried through Section 9(3) of the Constitution of South Africa in 1996.</p>
<p><b>Broad protection</b> 2000</p>	<p>Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 includes sexual orientation as one of the prohibited grounds of discrimination.</p>
<p><b>Employment protection</b> 1996 &amp; 1998</p>	<p>Section 187(1)(f) of the Labour Relations Act (1995) stated that a dismissal is "automatically unfair" when based on the employee's sexual orientation (among other grounds). Section 6(1) of the Employment Equity Act (1998) prohibits direct and indirect discrimination on the basis of, inter alia, sexual orientation.</p>
<p><b>Protection against SOGIE hate crimes, prohibition on incitement to hatred, violence or discrimination</b> 2000</p>	<p>The Promotion of Equality and Prevention of Unfair Discrimination Act (2000) prohibits unfair discrimination, hate speech and harassment. Section 1(22) includes "sexual orientation" within the definition of "prohibited grounds".</p>

<sup>1</sup> The Williams Institute, 'The economic cost of LGBT discrimination in South Africa', Dec 2019. Available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Cost-Discrim-So-Africa-Dec-2019.pdf>.

<p><b>Same-sex marriage</b> 2006</p>	<p>Despite the title of the law, the Civil Union Act (2006) confers the right to marriage to persons of the same sex. In December 2018, the Civil Union Amendment Act (2018) repealed Section 6, which allowed a marriage officer to inform the Minister that they objected on the ground of conscience, religion, and belief to solemnising a civil union between persons of the same sex.</p>
<p><b>Partnership recognition for same-sex couples</b> 2006</p>	<p>The Civil Union Act of 2006 confers the right to civil unions to people of the same sex. This is the same piece of legislation that allows for same-sex marriage.</p>
<p><b>Joint adoption by same-sex couples</b> 2002</p>	<p>In the 2002 Constitutional Court case <i>Du Toit &amp; Or</i>, it was ordered that the words “or by a person whose permanent same-sex life partner is the parent of the child” be adjoined to bring Section 17(c) of the 1983 Child Care Act in line with the Constitution.</p>
<p><b>Second parent adoption by same-sex couples</b> 2006</p>	<p>Section 231(1)(c) of the Children’s Act (2005) stipulates that married persons or those in life partnerships are eligible to adopt, and the Civil Union Act (2006) confers those rights to persons of the same sex.</p>

## Struggles of the LGBT community

We will highlight some of the struggles LGBT individuals face under relevant SDGs, with a focus on SDG 8.



A 2019 study of more than 800 South African LGBTI individuals<sup>2</sup> showed the precarious financial situations many of them live in:

- > 1/3 did not have a paid job
- 18% worked informally
- 60% said to have enough money to cover their basic needs.
  - 52% of black participants
  - 51% transgender people.

A [2019 study by the Williams Institute](#) showed that heterosexual, gender non-conforming/trans people face the highest levels of poverty.

<sup>2</sup> Müller, A., Daskilewicz, K. and the Southern and East African Research Collective on Health (2019). 'Are we doing alright? Realities of violence, mental health, and access to healthcare related to sexual orientation and gender identity and expression in South Africa: Research report based on a community-led study in nine countries'. Amsterdam: COC Netherlands.



The most pressing health issues amongst the South African LGBT community are **low mental health** and **HIV infection**. Several studies found high rates of depression and suicide amongst LGB individuals. While exact numbers vary, **levels of stress, anxiety and depression are about 3 to 4 times higher**.



Much of the LGBT youth experiences **bullying and harassment in school**.

Anecdotal reports from secondary schools note high drop-out rates amongst LGBT students, often coinciding with lower grades, homelessness and substance abuse.



The current situation for LGBT individuals in South Africa needs to be analysed in light of the global state of SDG 8 in the country.

We for instance see a high level of **unemployment**, which makes it unlikely for LGBT employees to take actions that can damage their employment prospects. As a result, LGBT employees tend to stay in the closet, out of fear of giving their employer an extra reason to dismiss them.

Additionally, **inequality** between population groups is omnipresent, for instance between white and black South Africans, younger and older generations, men and women, gender conforming and gender nonconforming people. The phenomenon of **intersectionality** is thus unfortunately very visible and LGBT employees can have very different experiences.

In 2016, the ILO published '[Pride at work: a study on discrimination at work on the basis of sexual orientation and gender identity in South Africa](#)'. It describes the discrimination LGBT people experience in the workplace and in securing employment, as well as in access to social protection. It is a must-read to understand the stereotypes and unsafe working situations they experience. It touches upon:

- obvious and more subtle ways people are being **forced out of their jobs** because of their SOGIE

- how **heteronormative dress codes** are a must to obtain or maintain employment
- the **fear of coming out**
- the lack of leadership on LGBT rights by employers that obstructs improvement
- the specific challenges trans individuals experience and intersecting patterns of discrimination.

**Protective measures** do, however, exist. Key pieces of legislation are:

- 1996 Labour Relations Act (LRA) of 1996
- 1997 Basic Conditions of Employment Act
- 1998 Employment Equity Act (EEA) of 1998
- 2000 Promotion of Equality and Prevention of Unfair Discrimination Act

Together, these regulations give LGBT employees the right to fair and equitable treatment, including the right not to be unfairly discriminated against on, amongst others, their sex, gender or sexual orientation.

**Case law** has additionally helped to equalise obligations towards LGBT employees. Some important judgements are:

- [Satchwell](#) (2002): the Constitutional Court ordered that sections 8 and 9 of the Judges' Remuneration and Conditions of Services Act be read as according benefits also to permanent same-sex life partners of judges where reciprocal duties of support had been undertaken
- [Ehlers](#) (2010): the dismissal of a transsexual person undergoing gender reassignment procedures was found unconstitutional

### 8.3. Promote development-oriented policies that support [...] **decent job creation** [...]

Gender conforming women and lesbian, gay, and bisexual individuals – regardless of their sex – face **unemployment rates that are respectively 9 and 20 % higher in comparison to heterosexual, gender conforming men.**

LGBT individuals are overall more likely to have jobs in **semi-skilled occupations, unclassified/unsure positions and informal self-employment.**

### 8.5. Achieve **full and productive employment** and **decent work** [...], and **equal pay** for work of equal value

The **monthly earnings of heterosexual trans individuals; gay and bisexual men is on average 30% lower** than that of gender conforming heterosexual men.

In general, women earn about 25% to 35% less than men. However, female workers in same sex relationships have a similar income to heterosexual women in relationships and more than single women.

### 8.8. Protect **labour rights** and promote **safe and secure working environments** [...]

As mentioned, the ILO report describes the challenges that LGBT employees face in the workplace. It also found that there was generally a lack of focus and knowledge on workplace benefits and remedies for LGBT workers. Researchers saw that **LGBT employees did not seek remedies**, unless in severe cases of discrimination; presumably out of fear of losing their job. LGBT employees are however **left behind when it comes to medical aid, family leave and other benefits** because the law focuses on heterosexual families with gender stereotypes of 'stay-at-home mothers' and 'bread-winning fathers'. In other cases, **LGBT employees felt pressured to share personal and health-related information** to obtain access to benefits, causing a risk of negative repercussions.

**Few labour unions actively take on LGBT labour dignity** in an active manner. When issues are raised, this mostly goes to their gender departments, which are very often under-resourced and struggle to mainstream gender equality into all union branches.