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Submission to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions

By Access Chapter 2 Law Clinic

Introduction

[Access Chapter 2](#) (AC2) is a national human rights organization and law clinic established under the Legal Practice Act that focuses on the rights of LGBTI+ people (Lesbians, Gay, Bisexual, Transgender, and Intersex), women and girls in all their diversities in South Africa. AC2's priorities include direct service provision, capacity building and awareness, legal support, advocacy, research, and knowledge production.

This submission aims to contribute to the UN Special Rapporteur on extrajudicial, summary or arbitrary execution's report on killings of lesbian, gay, bisexual, trans, queer, intersex, and other gender diverse persons (LGBTIQ+) persons (see [call for input](#)).

Drawing from AC2's experience representing LGBTIQ+ victims and their families, this submission explores the nature of these killings in South Africa and the need for improved State action to address these violations. In recent years, cases of violence and killings of LGBTIQ+ persons in South Africa have been reported by activists and the media. Yet, little has been done by the government to address this issue; until an intervention is made by human rights organizations, State authorities do not respond to reported cases.

Legal Framework

The South African [Constitution](#) recognizes the rights of LGBTIQ+ individuals, making South Africa the first country in the world to include sexual orientation as a protected category in its Constitution. South Africa remains one of the few African States to have legalized same-sex marriage. Additionally, South Africa has played an important role in the UN resolutions concerning sexual orientation and gender identity or expression (SOGIE) and has demonstrated regional commitment to equality and non-discrimination through its involvement in the African Union (AU) and the Southern African Development Community (SADC).

The constitutional protection has laid the foundation for other laws and policies that promote equality and non-discrimination for LGBTIQ+ individuals. For instance, the [Promotion of Equality and Prevention of Unfair Discrimination Act](#), introduced in 2000, prohibits discrimination based on sexual orientation, among other protected characteristics, and

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provides a framework for addressing discrimination in various areas of public life, including employment, education, and healthcare. The Act also establishes [Equality Courts](#) competent to examine cases of discrimination.

In May 2024, South Africa passed the [Hate Speech Bill](#), which creates criminal penalties for offenses motivated by prejudice/discrimination and creates mechanisms for reporting and investigations of hate crimes, including against LGBTIQ+ persons. Concerted efforts will be required to implement this law and encourage law enforcement and prosecutors to make use of this piece of legislation.

South Africa also adopted a [National Intervention Strategy](#) for the LGBTIQ+ community through the Department of Justice in different provinces, and established a National Task Team on Gender and Sexual Orientation-based Violence Perpetrated against LGBTIQ+ Persons (NTT) .

While these are essential protection of LGBTIQ+ persons, as outlined below, gaps in law and practice perpetuate the cycle of violence against LGBTIQ+ people, hinder investigations and accountability, and prevent victims and their families from receiving reparation.

The Context of LGBTIQ+ Violence

South Africa is not a safe country for LGBTIQ+ persons – violence against this community remains prevalent and queer people are targeted for their SOGIE. Killings of LGBTIQ+ people occur in a broader context of discrimination and violence, including torture and other ill-treatment.

Killings of LGBTIQ+ persons in South Africa are a tragically common occurrence. In 2021, [at least 24](#) LGBTIQ+ individuals were reported killed, with many targeted due to their sexual orientation or gender identity. An [open letter](#) of January 2022 to the South African Minister of Justice, signed by the now UN Independent Expert on SOGIE in his previous capacity of Director of LGBT Rights Programme at Human Rights Watch, highlighted the alarming increase in such killings of LGBTIQ+ persons. Cases of [‘corrective’ rapes](#) or other ‘conversion’ practices are also not uncommon, especially in rural areas where people do not have access to legal assistance. Between 2001 and 2011, 31 lesbians were [killed](#) during sexual assaults aimed at “changing” their sexual orientation.

This cycle of violence against LGBTIQ+ individuals in South Africa is fuelled by traditional beliefs, structural discrimination, and societal stigma. Many people in the country still hold

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conservative views on SOGIE, perceiving sexual and gender diversity as unnatural or immoral. There is also a lack of comprehensive sex education which includes SOGIE education in schools. These issues contribute to the marginalization of LGBTIQ+ individuals and perpetuate harmful stereotypes.

This environment fosters a culture of fear and insecurity within the wider LGBTIQ+ community, forcing many to hide their true identities to avoid becoming targets, preventing them from living openly and authentically. This self-censorship can have long-lasting psychological effects in LGBTIQ+ persons and hinder the community's ability to advocate for their rights and demand justice for violations.

Lack of accountability and reparation

As [reported](#) by AC2 and REDRESS,

“Accountability for LGBTIQ+ violence in the States researched [which include South Africa] is either absent, or severely limited. The reasons for this include inadequate legal frameworks, absence of political will and ongoing institutional discrimination, lack of independent complaints mechanisms and investigative bodies, lack of appropriate training of State officials – particularly law enforcement, prosecutors, and members of the judiciary – and absence of gender sensitive protocols on the effective investigation of such violence” (p. 67).

In South Africa, the pervasive context of violence and fear deters LGBTIQ+ victims and their families from reporting crimes to the authorities. LGBTIQ+ victims of violence or their families may face not only social exclusion and stigmatisation within their communities, but also risks of further harassment or abuse from authorities upon reporting cases. In a 2009 [poll](#) conducted among survivors of homophobic hate crimes in the Western Cape, 66% indicated that they did not report their assault due to concerns that they would not be taken seriously, fears of revealing their sexual orientation, and potential abuse from the police.

Even when reported, cases are rarely adequately addressed. Discriminatory attitudes among police result in reluctance to investigate and identify perpetrators. According to a 2011 [report](#) which recorded LGBTIQ+ persons' experiences reporting to the police, one individual who reported being raped was immediately dismissed by an officer who asked why she was “dressing like a man.” Several other people mentioned that the police questioned about their

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private sexual life, and demonstrated little concern in assisting them or investigating the violations they suffered.

In cases of torture or other ill-treatment against LGBTIQ+ persons, acts are often not characterised as such. At the time of writing, to the extent of our knowledge, there has been no prosecution of LGBTIQ+ violence under the national Prevention of Torture Act, despite numerous instances amounting to torture or ill-treatment under international and domestic law.

Additionally, investigations often fall short of [international standards](#), failing to unmask the discriminatory motives behind the acts of violence, and to adopt a gender-sensitive approach. For instance, in reported cases of sexual violence, the South African police [failed](#) to investigate and identify the perpetrator's motive or the victim's SOGIE. This impedes the understanding of possible violence trends and its full scale. Additionally, it prevents accountability of perpetrators for discriminatory crimes and hinders victims from receiving appropriate reparation.

One of the issues on investigations concerns the absence of specific guidelines and protocols for investigating torture or other violence against LGBTIQ+ persons. While the South African Police Service has a Standard Operating Procedure concerning LGBTIQ+ persons, this procedure does not provide guidance on how to conduct investigations of crimes committed against LGBTIQ+ victims. The lack of detailed, targeted protocols hinders effective and sensitive handling of cases, leading to inadequate support and justice for the victims.

Considering the challenges that the LGBTIQ+ community faces in South Africa, there is a need for continued advocacy and legal reforms to ensure full equality for all.

Conclusion and Recommendations

Efforts are being made to address the violence and discrimination faced by queer people in South Africa. Organizations and activists are working tirelessly to raise awareness, provide support to victims, and advocate for legal protections. These efforts are vital in challenging societal attitudes and creating a more inclusive society for queer individuals. For example, the South African government established a National Task Team to reduce hate crimes in response to a global [outcry](#) following the murders of several lesbian women in 2011 and the signature of a petition by 170,000 people calling on the South African government to act.

However, progress is slow, and strengthened efforts are needed to end the killing of LGBTIQ+ persons in South Africa. Despite existing legal protections, significant challenges continued to

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be experienced by the LGBTIQ+ community in South Africa, including high levels of violence and discrimination.

To address these issues, South Africa must introduce further legislative and policy reforms, improve the practice of investigations and adopt initiatives to address the root causes of violence against the LGBTIQ community. We therefore invite the Special Rapporteur to consider specific recommendations to States – including South Africa – to address these issues, including:

- a. The development and adoption of guidelines or a protocol into the effective investigation of LGBTIQ+ violence, based on international standards and in consultation with civil society organisations;
- b. Specific measures to ensure victims and their families have effective access to complaints mechanisms and justice, and to protect them from reprisals and further harassment;
- c. Collate disaggregated data on forms of violence by motive to track incidents of homophobic and transphobic violence;
- d. Ensure that perpetrators are held accountable and victims receive comprehensive reparation;
- e. Encourage State representatives and officials to issue public statements in support of the protection of LGBTIQ+ individuals, and publicly condemn violence based on sexual orientation and gender identity perpetrated by State and non-State actors in South Africa;
- f. Incorporate comprehensive education on issues around sexual orientation and gender identity into the school curriculum, with a view to promote acceptance and eradicate practices that may legitimise or exacerbate violence and discrimination against LGBTIQ+ persons;
- g. Adopt other legislative, policy, institutional, and practical measures to address the root causes of LGBTIQ+ violence.

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