



INCLUSIVE & AFFIRMING MINISTRIES

Durbanville, Western Cape, South Africa

+27 (0)21 975 8142

info@iam.org.za

1st Floor, Die Fakkelsentrum, 22 Oxford Street.
Durbanville, 7550 ☎ 021 9758142

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INDEPENDENT EXPERT

The Office of the UN High Commissioner for Human Rights

Response to Call for inputs

Freedom of religion or belief and freedom from violence and discrimination based on sexual orientation and gender identity

Thank you for the opportunity to contribute to the call for inputs.

1. Question 1

- *Religion informs how LGBTIQ+ people are treated and has a ripple effect on society, the law, healthcare, and education, and these interweave and impact on Queer people, women, the LGBTIQ+ community and PLHIV in Africa. They are faced with many socio-economic ills which are more prevalent in rural and peri-urban contexts, where patriarchal and religious fundamentalist influences on local government and social norms exist. In the African landscape, it is cis gender women who constitute most of church membership. This however does not correlate with the leadership of church councils and bodies, which are largely made up of men. Add another layer to the marginalisation of already oppressed groups, and you discover how religion continues to uphold patriarchy, homo-, bi- and transphobia, racism, sexism, and classism. These oppressive systems give rise to the inaccessibility of sexual reproductive health, mental health treatment, spiritual guidance, and general healthcare and services matter to faith communities?*
- *Various denominations are having heated discussions around LGBTIQ+ SOGIESC, solemnisation of LGBTIQ+ marriages, and the ordination of LGBTIQ+ people. The Constitutional Courts' unanimous decision penned by Justice Majiedt says the following about hate speech:*
- *"Speech is powerful – it has the ability to build, promote and nurture, but it can also denigrate, humiliate and destroy. Hate speech is one of the most devastating modes of subverting the dignity and self-worth of human beings."¹*
- *Freedom of speech is a right and a privilege for Christians. As a right and privilege, it is an instrument for good, a means of proclaiming the truth and encouraging justice. It does not mean that everything that comes out of our mouths is holy. What we do have is an ethical and moral responsibility to speak the truth. We have no ethical or moral right to denigrate, torment or insult. What we need is a new language.*
- *The Family Policy Institutes has publicly opposed the implementation of Comprehensive Sexuality Education by spreading the misinformation that "if you're a parent who's been told that your child's sex-ed program at school is comprehensive, evidenced-based, age-appropriate, and that it promotes healthy relationships, then you, and every other parent who's been sold the same message, have essentially been lied to", and further asserting that the South African Government supports this evil at the UN.":*

BOARD MEMBERS:

Rev Ecclesia de Lange (ex-officio)

Director

Rev Michelle Boonzaaier (ex-officio)

Programs Manager

Rev Lauren Matthew (Chairperson)

Mrs Vandy Fourie (Treasurer)

Mr. Tashwill Esterhuizen

Dr Zama Dlamini

NPO. Reg. no. 012-328 - PBO Reg no. 18/11/13/337

- *The notoriously queerphobic political party, African Christian Democratic Party (ACDP) has previously demanded that the rainbow crossing recently installed in Cape Town to celebrate the LGBTIQ+ community be scrapped. The colourful pedestrian crossing had been unveiled to the media by the city's Mayor, Geordin Hill-Lewis.*

2. Question 2

- *The Dutch Reformed Church (DRC) revised its policy following the Gauteng High Court in Pretoria finding that the Church's policy against solemnising same-sex marriages diminished the integrity of gay congregants. Judges Sulette Potterill, Joseph Raulinga and Daisy Molefe handed down the judgment in which it found that the church's 2016 policy was unlawful and invalid, and set it aside. The court found that it was unfair to exclude members of the church, on the basis of their sexual orientation, from the full and equal enjoyment of all rights and freedoms that the church offered.*
- *In the Ecclesia De Lange case v The Presiding Bishop of the Methodist Church case, the church and community engaged on SOGIE, on the right to get married and defining the process. IAM Director, Ecclesia de Lange was "discontinued" from the ministry of the Methodist Church of Southern Africa (MCSA) in 2010 after being suspended in 2009 when she announced her same-sex nuptials. She went to the Western Cape High Court, (with the case ending up at the apex court, the Constitutional Court 2018) asking for reinstatement, but lost.*
- *The Anglican Church expanded their 'Safe churches program and sexual misconduct' to engage on SOGIE: In 2016, the Anglican International Safe Church Commission was formed with ACSA as a leading member. A meeting of the Commission was held in George in May 2018. The Commission set in place a framework for dealing with and responding to complaints and the process to create a safe church.*

3. Question 3

- *IAM) was founded by Pieter Oberholzer - a human rights activist who, during the Apartheid era in South Africa, positioned himself against the government's policies of discrimination and was imprisoned for his belief in racial equality. In 1995 Pieter started the Gay and Lesbian Outreach (GLCO) to counter homophobia, negative beliefs and condemning attitudes within religious communities regarding homosexuality. Pieter saw first-hand the negative impact these beliefs have on the lives of LGBTI people. In 1999 the name was changed to ["Inclusive and Affirming Ministries"](#) (IAM) to counter homophobia. IAM was the first organisations to work to in the space where spirituality and sexuality overlap, aiming to build welcoming, inclusive and affirming religious communities where LGBTI people could participate fully and be strengthened in their spiritual, psychological and sexual identities through **dialogue**. IAM was founded on the belief that patriarchy and religious fundamentalism fuels ever-increasing homophobia and excludes LGBTIQ+ people from basic human rights. As we enter our 28th year, IAM continues to position itself as an alternative, constructive religious voice in Africa taking action against these detrimental practices. To address cultural and religious practices, IAM draws from Queer and Feminist Theologies. Feminist theologies place the experiences of gender - and particularly women - at the center of our theological reading, interpretation, learning and reflection on the biblical text. Queer Theology, in turn, places the experiences of Queer or LGBTIQ+ people central to the reading, interpretation, learning and reflection of the biblical text. We do this while offering an equal place to knowledge from science and individual faith traditions. IAM develops resources, methodologies, and process that we draw from our praxis and reflection of diverse theologies.*

- *IAM has partnered with the University of KwaZulu-Natal Ujamaa Centre in research and developing alternative narratives when engaging on faith, gender, and human sexuality. Partnering with the Gender and Religion program, we continue to work towards the development and promotion of Queer, Feminist, and Post-Colonial work engaging the intersection of gender, sexuality, and religion in Africa, exploring alternative knowledge production spaces, and developing resources that capture from learnings being made in contextual change-making sectors. These IAM resources consist of toolkits, training manuals, training videos on how to engage clergy and faith leaders in dialogue on human sexuality, process methods on contextual bible reading and the use of dialogue.*
- *IAM has collaborated with the South African Council of Churches in facilitating human sexuality and diversity training to members of the Western Cape South African Police Services. The training also incorporated the South African Police services LGBTQI+ Standard Operating Procedures (SOP) in which stipulate the guidelines for search, seizure, arrest, and detainment protocols, that police members are to follow when arresting or responding to any crime that involves LGBTQI+ persons. The SOPs were developed in consultation with members of the LGBTQI+ community and the National task team on hate crimes. Each police station has a file of the SOP's but the gap that exist is training. Civil Society partners embark on trainings dependent on the availability of funding and buy-in from the police.*
- *Philanthropic organizations such as The Other foundation have hosted interventions to measure and contextualize community attitudes towards the LGBTQI+ community and faith. Through research papers such as Progressive prudes that measured communities' attitudes to LGBTQI+ persons; to papers such as [When faith does violence](#) and [Stabanization](#) paper aim to reflect on the intersection of sexuality, gender, and faith and how faith communities can move towards becoming inclusive and affirming.*

4. Question 4

- *Media has reported on the increase of service providers that discriminate against same-sex couples in the use of their [venues](#) (for wedding ceremonies) or denying them [wedding bands](#). In 2020, A same-sex couple was rejected the use of a wedding venue in Beloftebos Wedding Venues in the Western Cape (South Africa) as the owners cited that it was against their Christian beliefs. The venue had previously rejected a same-sex couple in 2017. The second couple has taken the owners to the Commission on Human rights to challenge their use of religion as a basis of discrimination. On the 25th November 2022, the media reported another same-sex couple rejected the design of their wedding bands. The jeweller stated that they only produced rings that were 'for men and women' as per their faith and was willing to refer them to other providers. These are the most recent in South Africa.*

5. Question 5

- *The SA Constitution protects all citizens from discrimination based on sexual orientation and gender. The Equality court has been used to file complaints against those found violating the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) which addresses hate speech. In 2008, Jon Qwelane, a journalist and activist published an article entitled "Call me names, but gay is not okay" which was an opinion piece reflecting on same-sex marriage. This led to an uproar (with the South African Human rights Commission receiving 350 complaints) that led to the South African Human rights Commission filing a hate speech case. Jon Qwelane was a vocal supporter of anti-gay rhetoric's made by the former Zimbabwean President, Robert Mugabe. Despite the ongoing case, he was appointed as a State Ambassador to Ghana (in 2010) where he served until his death (2021). This 'promotion' was seen as the State's way of protecting perpetrators that enable and promote hate speech against the LGBTQI+ community.*

- Cape Town church leader Oscar Bougardt was sentenced to 30 days in prison and suspended for five years for contempt of court after he disregarded a court order barring him from making anti-gay comments. Judge Lee Bozalek, in the Equality Court in Cape Town said Bougardt's comments advocated hatred and were clearly discriminatory. Bougardt reached a settlement with the SA Human Rights Commission in 2014 following anti-gay statements. He agreed to stop making hateful comments about the LGBTQ community, but has since continued.

6. Question 6

- In relation to the Jon Qwelane case, despite him being 'promoted' to being an ambassador, the case continued. In response, Mr Qwelane instituted a constitutional challenge against section 10(1) of the Equality Act, which defines and prohibits hate speech. The proceedings were consolidated for hearing before a single Judge sitting as both the Equality Court and the High Court of South Africa. The outcome can be found [here](#).
- Despite the Constitution and local cases, South Africa, sadly, refrained from voting at the renewal of the UN SOGIE expert mandate as well as not being vocal at the African Commission to call out the homophobic laws in Zambia and Ghana. South Africa remains silent in holding other states accountable for the perpetuating.

7. Question 7

- Incorrect or partial interpretation of statutes remains prevalent: i.e. freedom of religion, association, speech etc. being misconstrued as allowing for bigoted behaviour.
- The Promotion of Equality and Prevention of Unfair Discrimination (PEPUDA) Act seeks to distinguish between the duty of the State and public bodies that must eliminate discrimination, promote equality and achieve equality; and the duty of all persons to eliminate discrimination and promote equality. Those convicted and subsequently sentenced for contravening the act are given lenient sentences, which typically don't match the gravity of their crimes.

8. Question 8

- South Africa became the first country on the African continent, and the fifth in the world to legalize same-sex marriages on the 30th of November 1996 (Judge, Manion & De Waal.2008). The litigation process led by the National Coalition for Gay and Lesbian Equality (NCGLE) opened the gates for series of landmark cases for the legal recognition of homosexual relationships and families (2008: p. 3). However, there were limitations, that allowed marriage officers to recuse themselves on the basis of conscience. This was challenged in 2018, leading to an amendment of the Civil Union Bill in 2019. If need be a copy of the process can be requested.

9. Question 9

- In relation to the Civil Union amendment, the state did not define the scope or provide regulations on the marriage officers use of conscience. A marriage officer could refuse to marry same-sex couples because of his dislike/hatred of same-sex couples and the Civil Union Act would permit it. This is because Section 6 lists "same-sex unions" as the only reason a civil marriage officer may object, meaning that it endorses discrimination by state officials based on sexual orientation alone. The State did not provide alternative access to services, hence the appeal to repeal of Section 6 of Act 17 of 2006. This repeal was successful in 2019.

10. Question – No response

11. Good Practices:

a. Subsection A

- *In 2013, the South African Department of Justice and Constitutional Development (DOJCD) LGBTI portfolio established working groups and in turn launched the LGBTI portfolio in response to CSOs lobbying for State response to the prevalence of hate crimes. The portfolio consisted of provincial task teams, which would be monthly meeting at provincial level with multi-stakeholders who respond to hate crime incidents (representatives from the police service; Department of health; Forensics etc). A rapid response team was established which consists of the two civil society first respondents to hate crimes; a high-ranking police officer coordinated by the DOJCD. A National task team as established, which characterized with provincial representatives from CSO's, national leaders from the multi-stakeholders.*
- *In Botswana, the Christian council of Churches was very vocal in its support of the Lesbians, Gays, Bisexuals of Botswana (LEGABIBO) case on the decriminalization of identities.*

b. Subsection B

- *The MCSA at its 2001 conference adopted the principle that “... MCSA seeks to be a community of love rather than rejection...” and in 2014 “that any form of victimization, hatred or violence towards homosexual people should be condemned in the strongest possible terms.” However, this principle was challenged by Rev [Ecclesia de Lange vs MCSA](#) in Constitutional Court, see question 2. [This case led to the change in policy in 2020.](#)*
 - *In 2019 eleven members of the DRC contested a General Synod decision in the SA High Court. This decision excluded all DRC clergy from acting as officiants at same gender marriages and further excluded LGBTIQ+ clergy from being ordained in the DRC, unless they remained celibate. [Pretoria High Court delivered judgment in the case of Gaum & Others v Janse van Rensburg & Others](#), declaring the decision on same-sex relationships adopted during the Extraordinary General Synod meeting in 2016 as unlawful, invalid, and the decision was reviewed and set aside. At the 2019 General Synod, a new policy decision was taken that was more inclusive of LGBTIQ+ members and clergy*
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Should you need more information, kindly contact me on +27 83611 2124 or ecclesia@iam.org.za .

Yours faithfully

Ecclesia

Rev Ecclesia de Lange
Director

Cell: +27 83 611 212

