

Human Rights Violations Against LGBTQI Individuals within South African Public Sector Services

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The 10th of December marks International Human Rights Day, a day that commemorates the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948. The Universal Declaration of Human Rights “is the foundation of all international human rights law” and provides that human rights are inalienable and that all are equally entitled to human rights. South Africa has incorporated these notions of human rights into its Constitution by granting equality to all, with no distinction made based on race, gender, sexuality, etc. In fact, South Africa has specifically made mention of factors such as race, ethnicity, and sexual orientation because of the long history of discrimination experienced by Black individuals and LGBTQI communities as a result of colonialism and apartheid. Section 9(3) of the Bill of Rights specifically protects the rights of LGBTQI individuals. The [Constitutional Court of South Africa](#) explains that the “explicit mentioning [of sexual orientation] gives our Bill of Rights a special place in the world: South Africa was the first country to enshrine gay rights in its Constitution and, in so doing, provide its citizens with constitutional protection from discrimination on the basis of their sexual orientation.”

While these rights are granted to LGBTQI individuals through the Constitution and the Universal Declaration of Human Rights, it is clear that in the everyday lived experiences of LGBTQI individuals in South Africa, these rights are not respected nor guaranteed. In this context, rights for LGBTQI communities are secured vertically, through the Constitution and various other legal instruments; however, these are not guaranteed horizontally, despite section 9(4) of the Constitution, which says, “No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3),” thereby aiming to guard against discrimination on the grounds of sexual orientation.

In other words, despite the adoption of the universal mandates set out around equality through the UDHR and the corresponding mandates found in the South African Constitution, it is evident that LGBTQI persons face vast amounts of discrimination and violence in their daily lives within South Africa. Because of the discriminatory attitudes around homosexuality and diverse gender expressions, many LGBTQI individuals have difficulty accessing public resources, such as schooling, health care, an adequate police protection. [Matshidiso, an LGBTQI activist speaking to ActionAid](#), explained that often in schools and clinics, lesbian women, for example, are labelled ‘males’. She states: “When I was eleven, I [dropped out of] school, because the discrimination and homophobia was too much... We cannot access health institutions due to the attitude of nurses. They’re more interested in your sexual orientation than why are you sick or why are you here” (Matshidiso in ActionAid, n.d.). Matshidiso’s is only one story in a litany of reports of discrimination and harassment that LGBTQI individuals experience on a day-to-day basis, both within their communities and from those in services that should be available and accessible to all.

Roché Kester ([in Langat, 2021](#)), director of the Gauteng LGBTI Desk, similarly claims that medical professionals, directly and indirectly, discriminate against LGBTI persons by misgendering individuals, breaking confidentiality at facilities, and asking intrusive questions. Luvuno, Ncama, and Mchunu (2019) further explain that transgender individuals experience health risks such as an increased risk of

mental illness, substance abuse, and suicide, as well as an increased prevalence of HIV. Due to discrimination, which ranges from verbal abuse to the denial of care, many LGBTQI individuals are hesitant to visit health care providers and will often delay seeking health services. This is particularly concerning as LGBTQI individuals are often already in precarious socio-economic positions and exposed to high levels of violence, thereby positioning them as a markedly vulnerable sector of South African society.

However, because of the legal and constitutional rights afforded to LGBTQI persons, South Africa is considered to be ahead (in terms of legal recourse afforded to LGBTQI communities) of many other African nations (and nations more globally) where homosexuality is still criminalised. South African jurisprudence allows LGBTQI individuals to seek recourse for any violence or discrimination that they experience through the legal justice system. However, while this is, again, exemplary on paper, in reality this system is flawed and often leads to members of LGBTQI communities facing further discrimination and revictimisation. A study carried out by Human Rights Watch ([2011a](#) & HRW, [2011b](#)) indicated that of nearly 121 LGBTQI people that were interviewed, nearly all of them had been ridiculed, harassed, or experienced secondary victimization when reporting incidents of physical or sexual violence to the police. In addition, many gay, lesbian, and transgender individuals who have reported cases of sexual or physical assault to the police have been met with incompetence and a failure to act. Aside from ridiculing survivors of such violence, police also often refuse to take statements and send survivors away, or when they do take cases, later claim that the dockets have been lost or were never filed to begin with. Such incompetence leaves these individuals “dangerously exposed to their attackers, who move about freely and terrorize them” ([HRW, 2011a](#)). Finally, the police are often complicit in committing crimes against members of sexual and gender minority groups. Interviewees in the above-mentioned HRW study explained that they had been raped, assaulted, and sexually harassed by members of the South African Police Service (SAPS). With the problematic attitudes towards LGBTQI individuals and the violence committed against them by members of the SAPS it is little wonder that LGBTQI individuals are reticent to report incidences of violence or to attempt to gain justice for the violence and/or discrimination they experience.

What is evident then is, despite the goals of the UDHR and the various legal and constitutional instruments in South Africa, LGBTQI people are denied many of the rights found in [South Africa’s Bill of Rights](#), including but certainly not limited to: freedom “from all forms of violence from either public or private sources”; “not to be treated or punished in a cruel, inhuman or degrading way”; “access to health care services, including reproductive health care”; and the right to inherent human dignity where “everyone has [...] the right to have their dignity respected and protected.” These clearly correspond with the basic human rights as outlined by the [UDHR](#), again, including but not limited to: “the right to life, liberty and security of person”; freedom from “cruel, inhuman or degrading treatment”; being “equal before the law and entitled without discrimination to equal protection of the law”; and the “right to a standard of living adequate for health and well-being [...] including medical care and necessary social services.” Consequently, it is evident that despite the human rights and equality afforded to members of LGBTQI communities on paper, these basic human rights are denied or constrained in their everyday lives and encounters, even with those who are employed by the State to enforce, maintain, and protect equality and freedom from violence and discrimination.

The government has taken some important steps towards improving services to LGBTQI people, including, for example, establishing the LGBTI Desk within the Office of the Gauteng Premier. According to [Kester](#) (2021) the LGBTI Desk aims to “champion issues of LGBTI communities” in Gauteng and work with the provincial government to develop and implement policies and programmes specifically aimed at the LGBTQI community. However, the slow pace at which the

government has addressed matters related to service delivery for LGBTQI communities as well as the violence and discrimination such communities face is often criticised. As such, it is clear that there is a need for the State to do more and in a more urgent manner in order for the human rights of LGBTQI individuals to be ensured and protected. One important aspect that the State need to address is evidently the discriminatory attitudes emanating from public sectors, such as the healthcare sector and the police service. A stringent programme that focuses on sensitivity training for persons in the public sector should be implemented as a matter of urgency. In so doing, it will create more accessible health care for LGBTQI individuals, which would go some way to ensuring that the right to health care, including sexual health care is upheld, as well as to ensuring that LGBTQI individuals are treated with respect and dignity. Similarly, there is a dire need for a police service that is sensitive to LGBTQI individuals, takes violence and discrimination against them seriously, and that implements strict punishments for any police officers who fail to fulfil their duties, and who, furthermore, commit crimes against LGBTQI individuals. Without this, the first point of contact within the justice system fails and despite there being the means for legal recourse against violence and discrimination, such recourse becomes inaccessible, or at its worst, a space of further violence for survivors of such crimes.

The State needs to be taking much more proactive measures to ensure that South African LGBTQI communities, some of the most marginalized and vulnerable members of our society, are ensured of their human rights, and are protected against the inordinate levels of violence and discrimination that they experience, particularly as it emanates from State institutions. Such violation of the human rights of a large portion of South African society clearly goes against the UDHR and serves as a threat to the very foundations of South Africa's democratic ideals.