

Butler, A.H. and Astbury, G. (2005). South African LGBT youth. In James T. Sears (Ed.), *Youth, education, and sexualities: An international encyclopedia*. Pp 814 – 817. Westport, CT: Greenwood Publishing Group.

South Africa, LGBT Issues in

South Africa has undergone significant sociopolitical transformation in the last six decades, from the “legal” adoption of apartheid in 1948 to the first democratic election in 1994, and a new constitution two years later. The lesbian, gay, bisexual, and transgender (LGBT) community in South Africa is at the forefront of constitutional and sociopolitical reform. Numerous issues are currently facing the South African LGBT community. While significant strides have been made toward racial equality, there is still disparity in accessing health and social services between the white and historically disadvantaged LGBT communities. Furthermore, the LGBT social activist movements have to maintain vigilance in ensuring that the progressive Constitution becomes a reality for LGBT people. Issues such as equal access to antiretroviral HIV/**AIDS** medication, protection of LGBT people against homophobic **hate crimes**, homophobic abuse and **bullying** in secondary education, protection of same-sex domestic partnership rights, equity and removal of discrimination in the **workplace**, and decriminalization of same-sex conduct are primary areas that LGBT advocacy and lobbying groups are placing on the national agenda.

There are three historical markers that kindled and gave impetus to the gay and lesbian struggle in a South African context. The “Raid in Forest Town,” a suburb north of Johannesburg, took place in 1966 (three years before **Stonewall** in the United States). Police raided and arrested nine men

for “masquerading as women.” This was followed by a parliamentary threat to widen antihomosexual legislation. The result, in opposition to this threat, was the instigation of the Homosexual Law Reform movement (1968), the sole aim of which was to prevent the proposed antigay bill from becoming law. This movement consisted of gay professionals, led by a prominent gay advocate, whose task was to raise funds needed to retain a firm of attorneys to prepare evidence and lead the case against the proposed antihomosexual **discrimination**. In the late 1970s, the second important marker occurred when Johannesburg police raided New Mandy’s bar. This was South Africa’s “Stonewall,” as patrons fought back and demanded their civil rights be protected (Gevisser and Cameron 1994). The final marker was the adoption of the new Constitution, in 1996, which was the first in the world to recognize gay rights.

Today, in postapartheid South Africa, homophobic behaviors and attitudes are anticonstitutional; **sexual orientation** is a basic human right. Despite these guarantees and although other disadvantaged groups such as black South Africans and women have had their human rights upheld and legal discrimination removed, social, legal, and religious discrimination against homosexuals—adult and youth alike—continues. Numerous instances of discrimination range from employment opportunities and serving in the military to the rights of gay and lesbian parents and sexual minority students in secondary and tertiary educational systems.

The case of a high school gay youth expelled from a high school in Port Elizabeth (1999) based solely on his sexual orientation aptly reflects this

discrimination in the educational system. This **gay youth** was expelled because he “dressed in drag,” entered, and then won his high school’s Miss Beauty competition. This was the first publicized demonstration of the gap between the 1996 Constitution and the reality of **homophobia**, which still exists in South African high schools.

Gay and lesbian couples also have long been denied equal status to their heterosexual colleagues. This was highlighted in the case of *JL Langemat vs the Minister of Safety and Security*. Langemat sued the South African Police Services in order to gain equality-based domestic partnership benefits for herself and her partner. In a landmark decision, the judge of the South Africa High Court ruled favourably: The stability and permanence of same-sex relationships is no different from the many married couples I know. Both types of unions are deserving of respect and protection. If our law does not accord protection to this type of union then I suggest it is time to do so. (NCGLE legal database 1999, 4-5)

In 2003, the South African Constitutional Court decided that same-sex couples may jointly adopt children. The court, therefore, found the constitutional provision against discrimination on the grounds of sexual orientation to be of more weight than provisions of the Child Care Act banning gay couples from adopting children. Nevertheless, gay and lesbian couples were still barred from legal marriage. A significant setback occurred in October 2003 where the Pretoria High Court dismissed the legalization of marriage between a same-sex couple based on the preexisting (and

outdated) definition of marriage. This decision is in direct contradiction to the legal right for lesbian and gay couples to adopt children. Paradoxes like these are at the forefront of the current struggle. In December 2004, however, South Africa's Supreme Court of Appeal ruled that the marriage ban directly conflicted with the Constitution and has left it to the Parliament to reform the Marriage Act.

The Employment Equity Act 55 of 1998 deals primarily with elimination of unfair discrimination in the workplace. LGBT people are thus protected from discrimination in the workplace. However, discrimination of LGBT people is common in the workplace (Vimba 2003). For example, recently lesbian judge Kathleen Satchwell sued her employer and, in turn, won the right for her partner to enjoy the same workplace benefits as spouses of heterosexual employees. In a similar vein, LGBT people are legally permitted to serve in the military and are protected from discrimination and abuse by the Constitution. However, the Lesbian and Gay Equality Project is currently investigating numerous cases of abuse experienced by LGBT military personnel.

Despite such political and legal progress, overt homophobic behaviors exist at all institutional levels of South African society. Antigay sentiment is compounded by a strong patriarchal **Christian** ethic that views same-sex sexual encounters as sinful and wrong. In this context, reaction against homosexual rights is seen, for many, as upholding religious beliefs and, therefore, something to be proud of and actively encouraged. The cultural

context is also critical as the concept of “sexual orientation” is unfamiliar in many African cultures. It is clear that homosexual *conduct* has always existed throughout Africa, yet homosexual *identity*, and the concept of sexual orientation, has not (Murray and Roscoe 1998).

Education also has carried a conservative legacy, which has typically been discriminatory toward minority groups. Currently, “conscious attempts to transform South African education” are largely driven by “the legislative flagship” of the 1996 South African Schools Act (Deacon, Morrell, and Prinsloo 1999, 164). Schools are now viewed as inclusive with a strong emphasis on national unity while recognizing cultural diversity and the individual rights of each student. Nevertheless, South African gay and **lesbian youth** still report homophobic attitudes and actions perpetrated by students and their teachers.

There is a gap between legislative reform and the social transformation. “Gay activists have been successful in influencing policy-makers to enshrine their rights in law” (Deacon, Morrell, and Prinsloo 1999, 169), yet “homophobia and discrimination against gays have been and remain unquestioned features of African and white schooling.” And, while the experiences of gay and lesbian people in South Africa have improved, in **Africa** as a whole: “Virulent homophobia, incubated in the right-wing movements of the imperialist metropolises and also an outgrowth of Africa’s own indigenous patriarchal systems, is finding a home in the political agendas of desperate African leaders” (Brock, Walls, and Campbell 2001, 4).

Key organizations address LGBT issues in South Africa, through international, national, and regional frameworks. Internationally, South Africa is one of the eighty countries affiliated with the International Lesbian and Gay Association. This affiliation has granted South Africa's LGBT movement international recognition, as well as an impetus to furthering its sociopolitical and constitutional reform. The Lesbian and Gay Equality project (formerly known as the National Coalition on Gay and Lesbian Equality), established in 1999, serves as the national agency representing the needs of the LGBT community in South Africa. This nongovernmental organization works toward achieving full legal and social equality for lesbian, gay, **bisexual**, **transgender**, and **intersex** South Africans. Their endeavors are achieved through advocacy, public policy, education and legal reform, strategic/impact litigation and the provision of access to justice.

Three organizations address the needs of the LGBT community at a regional level. OUT, in Gauteng province, provides health and mental health services to the LGBT community, primarily in the Tshwana and Mamelodi townships. The Durban Lesbian and Gay Community and Health Centre, located in the province of Kwazulu Natal, empowers LGBT community by providing services and training. For example, the HIV/AIDS and Care Outreach Volunteer Trainers coordinate forum discussions regarding sexual practices among lesbian, bisexual, and transgender women. Finally, in the Western Cape province, the Triangle Project serves the LGBT community through health and social development programs that promote individual and community well-being and pride, as well as building individual and community

capacity. Here, community outreach teams access new communities to network organizations and individuals in surrounding communities.

The development of these national and regional initiatives has significantly addressed the changing needs of the LGBT communities in South Africa. However, these organizations are primarily based in large **urban** cities (Cape Town, Durban, Johannesburg, and Pretoria). There is, however, a significant absence of organizational infrastructure in the large **rural** areas where the many LGBT youth live and whose communities are historically disadvantaged, socially deprived, and marginalized. Increasing rates of lesbian **sexual assault** in the townships, lack of affordable access to social activities and service providers in the urban centers, as well as a lack of safe meeting places (recreational or support groups) for LGBT people are only a few issues facing this rural population. **See also Activism, LGBT Youth; Africa, LGBT Youth and Issues in; Community LGBT Youth Groups; South Africa, LGBT Youth in; Legal Issues, Students; Parents, LGBT.**

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