SOUTH AFRICA LGBTI

Landscape Analysis of Political, Economic & Social Conditions

Astraea LESBIAN FOUNDATION FOR JUSTICE

LGBT GLOBAL DEVELOPMENT PARTNERSHIP

South Africa LGBTI: Landscape Analysis of Political, Economic & Social Conditions

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INTRODUCTION

In 1994, South Africa's legally-enshrined racial segregation under apartheid came to an end after decades of social unrest, legal challenges and international pressure. As policymakers in the post-apartheid state developed new legal frameworks, they established bold protections for a range of human rights. One such area was legal rights for lesbian, gay, bisexual, trans* and intersex (LGBTI) people.[1] Setting international precedent, South Africa was the first country in the world to formally recognize LGBTI human rights, codified as such, in its constitution, which was adopted in 1996.

For the past 20 years, South Africa has continued to serve as a model for LGBTI rights globally. In 2006, South Africa became the fifth country in the world and the second outside of Europe to legalize marriage between same-sex couples. In 2011, South Africa initiated a resolution in the United Nations (UN) Human Rights Council that resulted in the first-ever UN declaration in support of LGBTI human rights. Prominent national figures have also taken a stand for LGBTI rights. For example, Nobel Peace Laureate Desmond Tutu publically stated, "…the persecution of people because of their sexual orientation…is every bit as unjust as that crime against humanity, apartheid."[2]

Within the country, the injustices of apartheid and LGBTI discrimination share a complicated past. South Africa's contemporary LGBTI activism came of age during apartheid, and despite historic alliances across social movements, racial tensions and homophobia divided the struggles at times. Today, apartheid's long-lasting economic and social effects translate into poor conditions for many black LGBTI South Africans, while the broader LGBTI movement struggles not to reproduce the stratification of class and race that affects South African society at large.

Against this backdrop, South African LGBTI activists are determined to implement their country's progressive laws and protect LGBTI people, particularly those most vulnerable to abuse: black lesbians, trans* and intersex individuals. Within a larger context of high unemployment and other gross inequalities, activists are advancing strategies for inclusive change that promote a vision of justice for all people across race, gender, sexual orientation and class.

> "…the persecution of people because of their sexual orientation…is every bit as unjust as that crime against humanity, apartheid."
>
> -Nobel Peace Laureate Desmond Tutu

What follows is a landscape analysis of the social, political and economic landscape for LGBTI people in South Africa. This report developed out of research by Tamara Spira, PhD, and produced by Astraea Lesbian Foundation for Justice as part of the Lesbian, Gay, Bisexual and Transgender (LGBT) Global Development Partnership.[3]

The study draws on a unique combination of data and expertise from policy, development, government, news, legal and academic sources, and most critically, South African LGBTI organizations and activists themselves.[4] In synthesizing diverse material and firsthand insight, the report provides a window into what life is like for LGBTI South Africans, an overview of South Africa's LGBTI social movement, and a summary of the opportunities and challenges activists face as they work to advance LGBTI rights protections and translate them into meaningful change. The snapshot concludes with recommendations for advocates and funders on the strategic and timely areas in which to support enduring rights gains.

1 A note on terms: The notation "trans*" is used to be inclusive of transgender, transsexual and transvestite. In addition, this report uses the acronym LGBTI (lesbian, gay, bisexual, trans* and intersex) to be broadly inclusive of sexual orientation and gender identity. The term LGBT or the identification of specific groups, such as lesbians or trans* people, are used where these are reflective of organizations or activities referenced.

2 Tutu, D. (2011, June 11). All are God's children: On including gays and lesbians in the church and society. Huffington Post. Retrieved from http://www.huffingtonpost.com/desmond-tutu/religion-homosexuality_b_874804.html

3 For more information on the LGBT Global Development Partnership, see page 2.

4 Methodology: In her research, Dr. Tamara Lea Spira consulted policy and development reports, academic research, news sources, historical archives, civil society organizations' (CSO) websites and published interviews with key leaders. Additionally, she sent out email surveys to several movement leaders and had informal conversations with legal experts, advocates and academics possessing expertise in LGBTI social justice movements in South Africa.

COUNTRY BACKGROUND

The realities faced by LGBTI South Africans today have deep roots in colonialism and apartheid governance. Colonial rulers attempted to regulate non-heterosexual kinship arrangements and strictly enforced racial segregation.[1] Under apartheid, sexuality and race remained targets of political intervention. The Morality Act of 1957, for instance, criminalized both interracial relationships and homosexuality.[2] Apartheid-era "pass laws" required identity documents with race and gender and served to track and limit the movement of black South Africans.[3]

The end of apartheid ushered in a new era for formal LGBTI rights with sweeping legal victories. However, as discussed below, the legacy of racial segregation continues to bear its mark on the lived realities of LGBTI individuals and their movements, and it limits the promise of the country's cutting-edge legal precedents. This is particularly the case within an economic system that reproduces such inequalities along the lines of race, sexuality, gender, gender identity and ethnicity, as is elaborated below. And, while some sectors of the movement prioritize the attainment of formal rights (such as marriage and the recognition of hate crimes), many activists—and particularly those with less access to resources—maintain that the conditions of LGBTI peoples' lives cannot be improved outside the struggle to eradicate racism, capitalism and the legacies of colonialism. This, as we next elaborate, flows out of a history of LGBTI movements that were integral to anti-colonial movements and the struggle to formally abolish apartheid.

Legal Protections for LGBTI Rights

Signaling the dawn of a new era, South Africa became the first country in the world to explicitly prohibit discrimination based on sexual orientation when it wrote the following words into its post-apartheid constitution in 1996: "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."[4]

In 1996, South Africa became the first country in the world to explicitly prohibit discrimination based on sexual orientation.

This watershed moment led to additional legal wins in the formal arena, including marriage equality, immigration rights for LGBT spouses, adoption rights for same-sex couples, the decriminalization of homosexuality and a number of other protections in the areas of housing, labor, the military and education.

In 2003, South Africa passed Act 49, enabling trans* people to alter their gender on formal identification documents.[5] This law emerged from advocacy that highlighted the need for relevant documents in order for trans* individuals to access social services, jobs, housing and more—a crucial step in support of the lives and livelihoods of trans* people.

Despite this policy gain, Gender DynamiX, the first trans*-focused South African civil society organization (CSO), reports that many trans* people who are fully eligible under the law to make changes to their documentation have been denied the right to do so.[6] Advocates argue that general ignorance about trans* issues, combined with vague language in the act, leave trans* people at the mercy of each individual official's prejudices and subjective interpretation of the law.[7]

TABLE 1: SOUTH AFRICAN LGBTQI-RELATED POLICIES

POLICY	YEAR	CASE / LEGISLATION / ACT
Inclusion in Military Service	1996 / 1998	South African National Defence Force Policy on Equal Opportunity and Affirmative Action
De-Criminalization of Sodomy	1996	National Coalition for Gay and Lesbian Equality v. Minister of Justice
Immigration Rights for LGBTQI Partners (changed to legal spouses in 2002)	1999 / 2002	National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs
Trans Access to Gender Marker Changes (Act 49)	2003	Amendment of Births and Deaths Registration Act of 1992 to Alteration of Sex Description and Sex Status Act
Adoption Rights (Children's Act 38)	2005	Children's Act 38
Marriage Rights (Civil Union Act 17)	2006	Minister of Home Affairs and Another v Fourie and Another; Lesbian and Gay Equality Project and Others v Minister of Home Affairs and Others
South Africa sponsors first UN resolution affirming that LGBT rights are recognized as Human Rights	2011	UN Human Rights Council Resolution on Human Rights, Sexual Orientation and Gender Identity

MOVEMENT BACKGROUND

"I'm fighting for the abolition of apartheid, and I fight for the right of freedom of sexual orientation. These are inextricably linked with each other. I cannot be free as a black man if I am not free as a gay man."[8]

–Simon Nkoli, legendary anti-apartheid, gay rights and AIDS activist at one of the first public lesbian and gay parades in 1990.

Historically, South Africa's movement for LGBTI rights has occurred within the context of and in relationship to broader social movements, including, most notably, the movement to end apartheid. Activists like Simon Nkoli and other black gay, lesbian and trans* South Africans fought hard to link these struggles explicitly, understanding that the multiple forms of oppression they experienced were deeply intertwined.

Still, significant tensions with LGBTI and anti-apartheid activists permeated both movements. The question of whether or not to oppose apartheid divided gay and lesbian organizations. The Gay Association of South Africa (GASA), for example, refused to take a strong stance against apartheid, leading the International Lesbian and Gay Association (ILGA, now the International Lesbian, Gay, Bisexual, Trans and Intersex Association) to expel GASA from its ranks. Conversely, South African CSOs like the Organization for Lesbian and Gay Activists (OLGA), the Gay and Lesbian Organization of the Witwatersrand (GLOW) and the Rand Gay Organization took overt stances against apartheid. The African National Congress (ANC) took a supportive position on LGBTI rights in the 1980s, but only after they were persuaded by campaigns from groups such as OLGA. Thanks to this advocacy, the ANC's ascendance to power in 1994 brought LGBTI issues into the limelight on a national scale.

As Mark Gevisser and Edwin Cameron cautioned in their now-classic 1995 text *Defiant Desire: Gay and Lesbian Lives in South Africa,* "Given South Africa's brutal history of racial discrimination and deliberate economic impoverishment of its majority, gay and lesbian South Africans have to endeavor, more than ever, to fold their concerns into this country's growing culture of human rights. Single-issue gay politics have never worked here."[9] Indeed, many scholars and activists contend that South Africa's movement to advance LGBTI rights cannot be understood—or ultimately succeed—without an open examination of the complex interplay between race, ethnicity, class, gender, sexuality and geography—including attendant issues of extreme inequality and violence that permeate so many South Africans' lives.

LIFE FOR LGBTI SOUTH AFRICANS

Indeed, the lives of LGBTI South Africans cannot be divorced from the nation's gross disparities across race and class.[10] A 2013 article in *The New York Times* asserts, "apartheid geography and superficial racial integration are (still) social realities."[11] The country's poverty rate is an astounding 45 to 50%, while its unemployment rate—approximately 25%—is among the highest in the world.[12] [13]

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South Africa's extreme stratification translates directly into the LGBTI community. According to a Human Rights Watch report: "Those who are able to afford a middle-class lifestyle may not experience the same degree of prejudice and discrimination on the basis of sexual orientation. But for those who are socially and economically vulnerable, the picture is often grim."[14]

As detailed below, many LGBTI South Africans continue to face grave threats to their well-being—from violent harassment and poor access to health care, to weak public support for LGBTI rights and a rise in conservative evangelical forces that openly propagate anti-LGBTI beliefs. As activists emphasize, the worst of it is experienced by those already marginalized by virtue of their race, class or gender.

Violence Against LGBTI South Africans

Violence against LGBTI individuals takes place within the context of extreme gender-based violence in South Africa. South Africa has one of the highest rates of sexual violence in the world: An estimated one in four South African women will experience rape in her lifetime, but, according to a 2012 police report, less than one in 36 will report it.[15] This high incidence of sexual violence must be traced back historically to colonialism and its implementation of highly rigid binary gender hierarchies forged and enforced through violence. "Rooted in the patri-archies of oppression found in colonialism, apartheid and the

RATES OF VIOLENCE

*Source: U.S. Department of State 2010 Human Rights Report on South Africa
**Source: Sex Workers Education & Advocacy Taskforce (SWEAT)

Cold War," political scientist Hannah Briton demonstrates, "these deeply ingrained patterns of sexual violence did not end with the transition to democracy."[16]

"Corrective rape," sexual assault on women believed to be lesbians, has garnered significant international and national attention. According to the U.S. Department of State 2010 Human Rights Report on South Africa, an average of ten "corrective rape" cases *per week* have been tracked by LGBTI groups.[17] This horrifying trend has been tied to HIV infection, with recent studies suggesting that approximately 10% of lesbians in South Africa may be HIV-positive.[18] [19] A 2011 Human Rights Watch report further argues that these atrocities reflect a larger pattern of violence against LGBTI communities.[20]

Black lesbians and trans* men are especially vulnerable to violence, particularly in rural areas and townships, and to economic insecurity and poor health, as described below. According to an activist report, *most* black lesbians and trans* men face "violent

forms of homophobia," in addition to being denied "access to affordable housing, health care, education and jobs." [21] In their study of 121 black lesbians, bisexual women and transgender men, Human Rights Watch found that a majority of participants had been verbally abused, ridiculed or harassed. Sex Workers Education & Advocacy Taskforce (SWEAT) estimates that one transgender person is murdered each month.[22]

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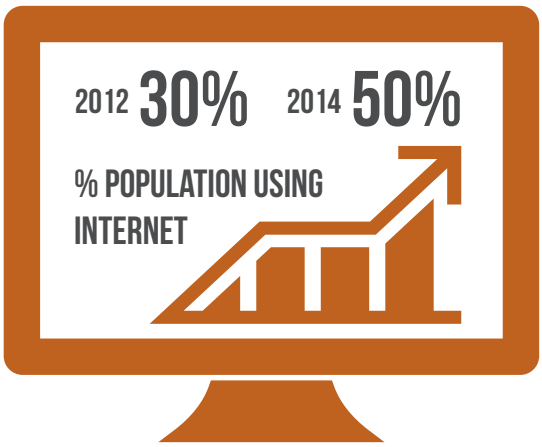
Human Rights Watch research finds that hate crimes against LGBTI people in South Africa are committed with extraordinary impunity. [23] Iranti-org, a leading CSO, has documented more than 40 murders of LGBTI people for whom justice has never been served. [24] Attack survivors who do seek police intervention report high rates of abuse and discrimination by the police. [25] In response, the organization Gender DynamiX has created a set of protocols and procedures to train police on dealing with trans* and intersex people. [26]

Legal frameworks around such violence are emerging. As a result of growing LGBTI and feminist advocacy to address impunity for violence, the Department of Justice and Constitutional Development established the National Task Team (NTT) on Gender and Sexual Orientation-Based Violence. The NTT aims to strengthen government's accountability for protecting LGBTI rights and coordination around forms of violence, including racial discrimination and xenophobia.

South Africa currently does not have comprehensive legislation to manage hate crimes, though in 2014 the Department of Justice and Constitutional Development (DOJ and CD) started drafting a "Policy Framework on Combating Hate Crimes, Hate Speech and Unfair Discrimination." Some activists support hate crimes legislation, while others critique the framework of "hate crimes" as relying too heavily on an ever-expanding prison system that reinforces racial divisions, unfairly penalizes the poor and relies on brutal policing tactics. A 2014 article highlights significant divisions in access to fair and swift trials by class, as well as harsh conditions and high rates of assault—including over 4,000 assaults by prison officials in 2013-2014—of those in custody. [27] In the broader criminal justice context in South Africa, a worrying trend toward increased incarceration has compounded racial inequalities and, according to activists, constitutes a major impediment to the creation of a democratic society. [28]

INTERNET USAGE IN SOUTH AFRICA



SHOW THAT 2/3 ARE BLACK, 42% LOW-INCOME

Building Community, Breaking Silence Online

For LGBTI South Africans, going online is an invaluable way to connect to broader services and communities. [29] In 2012, according to the South African Network Society Survey, nearly one third of the country used the Internet, though only infrequently. Two out of three Internet users were black, and 42% were low-income or living below the poverty line. By 2014, more than half of adults are estimated to use the Internet, and women account for a majority of new users.[30]

With data like this in mind, **Iranti-org**, a media advocacy collective, knows the Internet is becoming an increasingly powerful tool for reaching marginalized populations, like LGBTI people in rural areas, and serves to target a larger online community to stand up for LGBTI rights.[31]

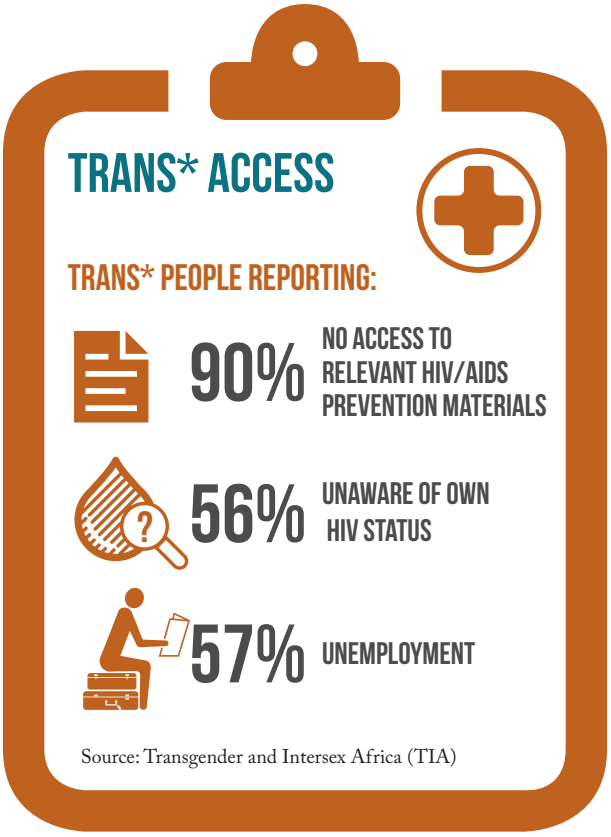
Today, Iranti-org is making strategic use of the Internet to raise the visibility of LGBTI people's stories and struggles, to connect LGBTI people with one another and to generate public support for LGBTI rights.[32] Iranti-org has led the charge to document human rights abuses and is the only local CSO to monitor and publish reports of hate crimes. Iranti-org also trains LGBTI activists in documentation and media techniques, and recently launched a groundbreaking new African LGBTIQ Media Makers Network. [33]

Health Care, Education and Employment

According to activists and researchers, black lesbians, trans* and intersex South Africans face especially steep barriers to quality health care. There are only four hospitals in South Africa that explicitly serve the needs of trans* and intersex people, and, as a result, waiting lists for hormone treatments can be as long as ten years.[34] In a 2013 survey conducted by Transgender and Intersex Africa (TIA), a majority of trans* and intersex respondents reported inadequate treatment by health care providers, and many experienced verbal abuse, slander or an overall lack of information about how to care for their particular medical needs. These barriers to health-care and knowledge surrounding one's health have significant implications. For example, TIA found that 56% of their interviewees were unaware of their HIV status. According to UNAIDS, transgender people in South Africa are a key population for HIV/AIDS prevention. And yet, in TIA's needs assessment survey, 90% of the interviewees reported having never seen any prevention information that was targeted for trans* populations. The combination of limited access and discriminatory health care prevents many LGBTI people from seeking vital services. [35]

Numerous reports also point to high levels of unemployment among trans* and intersex South Africans. For example, 57% of respondents in TIA's survey reported being unemployed. Disproportionately low levels of education magnify the cycle of unemployment. Alarmingly, a 2008 South African Human Rights Commission Report found that school is one of the most dangerous places for gay and lesbian youth.[36] Family violence and bullying contribute to high dropout rates among LGBTI youth. [37] A 2015 study by Higher Education & Training HIV/AIDS Programme (HEAIDS) and the Networking HIV/AIDS Community of South Africa (NACOSA) found that homophobia, stigmatization and discrimination against LGBTI students led to lower levels of educational attainment and affected their access to health resources. [38]

In early 2015, the #RhodesMustFall student-led campaign sought to address racial and economic inequalities in the education sector. Transgender students and activists that were part of these mobilizations are now using that momentum to advocate for changing in policy to make tertiary institutions more accessible and supportive to transgender people.



Source: Transgender and Intersex Africa (TIA)

Overcoming Barriers to Health & Human Rights

Transgender and Intersex Africa (TIA) is the first organization led by and for black transgender and intersex people in South Africa. By offering peer-support groups and conducting grassroots outreach, research and advocacy, TIA is improving access to quality, comprehensive health care for transgender and intersex people in townships and rural areas. TIA's research has been key to raising awareness at hospitals and among health care professionals.

Thanks to their efforts, more trans* and intersex South Africans are now receiving access to gender-reaffirming services, including hormones and surgery, at hospitals that, before TIA intervened, were reluctant or refused to provide these services. "This is by far," says TIA, "our proudest moment as we realize that we are slowly creating change in the medical sector, but most of all we are creating change in people's lives."[39]

Cultural and Religious Beliefs

Bullying of LGBTI young people in schools is just one manifestation of widespread anti-LGBTI sentiment in South Africa. According to a 2013 PEW Research Center report, only 32% of South Africans believe that "homosexuality should be accepted by society."[40] Such attitudes contribute directly to pervasive violence and discrimination experienced by LGBTI communities. In one 2012 report, researchers reviewed three different surveys of LGBT people[41] in diverse regions and socio-economic communities and concluded that "most people…were victims of verbal abuse (including hurtful jokes), physical abuse, sexual assault and/or rape, domestic violence and attacks on property, and these abuses were suffered by men and women." [42]

South African media plays an important role in this cultural landscape. "Outside the Safety Zone," a 2013 report commissioned by the CSO Gay and Lesbian Memory in Action, found that typical mainstream media coverage of anti-LGBTI violence reinforced traditional gender norms and sensationalized LGBTI lives. LGBTI media organizations also report frustration in getting their perspectives represented in the mainstream press.[43]

Only 32% of South Africans believe that homosexuality should be accepted by society.

Importantly, such culturally expressed beliefs are not endemic to South African society, but must be understood within a historical context of colonialism and apartheid, alongside con-temporary global forces. For example, the influence of evan-gelical Christianity is increasingly significant in South Africa. In October 2012, 4,000 evangelical leaders converged in Cape Town for a global event supported by figures with ties to the U.S. religious right, such as Billy Graham and Rick Warren, as well as members of Exodus Global Alliance, an interna-tional network of "ex-gay" groups.[44] The "ex-gay" movement, which advocates for the conversion of LGBT people to heterosexuality, has come under particular scrutiny in South Africa in the wake of the alleged murder and torture of 15-year-old Raymond Buys who was undergoing "training" at a "conver-sion camp."[45] The U.S.-based Christian Action Network also promotes anti-gay initiatives in South Africa, promulgating beliefs that link "homosexual behavior…to crime, violence, suicide, substance abuse, pedophilia and disease." [46] [47]

SOUTH AFRICA'S LGBTI MOVEMENT

Despite the grave realities many LGBTI South Africans face, the country's LGBTI movement is employing dynamic strategies to realize LGBTI people's human rights. Activists are organizing pride parades and cultural activities to support those who live in townships and rural areas. They are conducting crucial research to document the lives of the LGBTI community, particularly the experiences of black lesbians and trans* and intersex people. They are working to eliminate barriers to medical care and social services, while pressing for protocols in health care, education and law enforcement that will ensure stronger protection of LGBTI rights. South African activists continue to exercise their leadership in the international arena to promote the development of global and regional norms that advance LGBTI rights as human rights.

Still, movement challenges do persist. First and foremost, activists highlight a dearth of funding for LGBTI issues. Activists and scholars also raise concerns that mainstream LGBTI organizations do not address the major needs of black, trans*, intersex, working class and rural or semi-rural LGBTI communities. For example, in 2012, black lesbian, bisexual and gender non-conforming activists from the feminist coalition the One in Nine Campaign protested Johannesburg Pride, staging a "die-in" to highlight the immense disparities between an urban white male-dominated gay rights movement and the life conditions, health crises and violence they faced. As organizers from the One in Nine Campaign argued, this was a step toward transforming the highly commercial-ized "anti-poor" agenda of the movement and "imagining ways forward for reclaiming our Pride."[48] What this event serves to demonstrate is the extent to which the legacies of racial, classed and geographical asymmetry continue to shape South African society and filter into LGBTI movements. Moreover, organizations led by under-served communities continue to have deeper capacity challenges, organizational development needs and lack of access to funding.

Even as they continue to build on outstanding legal wins, LGBTI activists are engaged in dialogue to craft an LGBTI movement that is inclusive of all LGBTI South Africans, one that faces the legacy of apartheid—and the necessity of advancing racial, economic and gender justice simultaneously—head on.

CONCLUSION

South Africa's legal protections for LGBTI rights are among the world's strongest. However, the law's intent confronts a very different reality for people's lives on the ground. LGBTI advocates concede that a progressive constitution is far from enough, just as many acknowledge that a singular focus on LGBTI rights—without racial and economic justice—falls short. [49] Real inclusion, they say, will come from an approach that addresses the intersecting injustices so many LGBTI South Africans face.

Though much work remains, South Africa stands as a human rights beacon for other countries. Its LGBTI movement faces challenges familiar the world over—a gulf between law and reality and overlapping oppressions—but its strategies model successful ways to change social, cultural and legal conditions piece by piece. With their rich history and commitment to true change, South African LGBTI activists are especially well-positioned to continue to lay the path for a more comprehensive, enduring justice.

Recommendations for Advocates, Allies & Funders

The following recommendations are based on analysis presented in this report and reflect the needs and priorities identified by LGBTI movement actors in South Africa.

1. Support the full implementation of existing legal protections for LGBTI rights, including Act 49 (identification documents for trans* people). Promote accountability for implementation, including among government officials and police.
2. Invest in organizing, education and advocacy in the public sector to increase LGBTI access to culturally competent, inclusive public services.
3. Prioritize the rights, leadership and care of LGBTI people most vulnerable to human rights violations, such as black lesbians, trans* and intersex people, and poor, working class and rural communities.
4. Promote integrated strategies to end hate crimes. Incorporate prevention, education and leadership development and address hate crimes within a broader context of abuse–from violence and discrimination to unemployment and access to health care.
5. Address rights related to gender identity and sexuality as they relate to race, class and political inclusion.
6. Raise awareness and shift public perceptions and cultural beliefs in favor of LGBTI rights.
7. Build the fundraising capacity of LGBTI CSOs, particularly those with the least access to stable funding streams and those who represent marginalized LGBTI communities.
8. Invest resources in the study and piloting of alternatives to incarceration as a key component of seeking accountability for hate crimes against LGBTI people.[50]

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