In 1996, South Africa signed a new liberal constitution guaranteeing many freedoms and rights for minority groups. This new constitution became one of the most progressive in the world, in part because it prohibited any form of discrimination on the grounds of sexual orientation. Even with this constitutional protection, however, many LGBT individuals still encounter discrimination and violence on a regular basis today.\(^1\)

Two years after the formal end of apartheid, South Africa passed this new constitution into law. Upon doing so, it also became one of the first states in the world to include provisions of non-discrimination based on sexual orientation.\(^2\) In its Equality Clause, the constitution explicitly affirms that “the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, … , [or] sexual orientation.”\(^3\)

During the following decade, South African LGBT communities began a campaign of legal battles. For instance, in the 1998 court case National Coalition for Gay and Lesbian Equality et. al. v Minister of Justice et. al., the Constitutional Court of South Africa overturned the offence of sodomy. This decision was made because anti-sodomy laws violated constitutional protections for “equality, privacy, and dignity”, which in turn created precedence for LGBT rights in other court cases.\(^4\) Ultimately, the LGBT community won multiple legal battles, which led to freedoms such as adoption rights and state recognition of same-sex marriage.\(^5\) In effect, these legal challenges removed almost every legal provision restricting the rights of LGBT individuals. Today, same-sex couples enjoy

“The conditions that LGBT individuals live through are a distant reality from the promises of equality and non-discrimination proclaimed in the constitution”
many, if not all, of the same legal comforts and protections afforded to heterosexual couples.  

While these are significant advances in terms of legal protections, the LGBT community in South Africa still faces much hostility and violence. In particular, negative public attitudes towards both the homosexual and transgender communities coupled with the state’s failure to adequately enforce legal and constitutional protections have led to a pattern of discrimination, violence, and extreme prejudice against people known or assumed to be LGBT.

Faced with constant hostility and little reason to believe that the government or the police will protect them, many LGBT individuals have developed strategies to stay safe. These strategies greatly curtail their personal freedoms and essentially make them second-class citizens. Some of the common strategies LGBT individuals have employed to deal with discrimination include avoiding appearing alone in public and not dating people in the same area that they live. Ultimately, the conditions that LGBT individuals live through are a distant reality from the promises of equality and non-discrimination proclaimed in the constitution.

One reason for this discrimination is the strong societal bias against LGBT individuals. This bias occurs because identifying as LGBT goes against a set of established cultural norms and is thus seen as un-African. These cultural and gender norms are deeply embedded in South African culture and society. One source of these gender norms is the previous apartheid state, which was characterized by rigid patriarchal norms expressed in dominant, violent, and authoritarian forms of masculinity. In fact, hyper-masculinization and militarization were explicit goals of the apartheid state. This hyper-masculinization instilled a strong distinction between masculine and feminine behavior into the minds of the South Africans. Therefore, many South Africans today understand gender as binary and absolute.

For many lesbians, hyper-visibility and defiance of gender norms have led to the phenomenon of “corrective rape”, in which men rape women presumed, or known, to be lesbians in order to “convert” them to heterosexuality. This problem is so prevalent that in 2011, the Triangle Project, South Africa’s largest lesbian and gay rights organization, reportedly received a weekly average of ten new cases of “corrective rape” in Cape Town alone. Cape Town is considered to be the most liberal and progressive city in South Africa, and one can only imagine how many “corrective rapes” occur in more rural, conservative areas of South Africa.

Figure 1: Gay rights in Africa (ILGA is the International Lesbian, Gay, Bisexual, Trans and Intersex Association)
Two women performers outside the Johannesburg High Court in 2009 performing the piece “Kutheni” ("Why?" in isiXhosa), choreographed by Mamela Nyamza. The performance was part of a protest against repeated delays in a rape case, organized by the One in Nine Campaign, a South African non-profit organization that engages in direct action, research, media visibility, and advocacy to address sexual violence.

Additionally, in some communities, raping lesbians can make men “heroes”, further fueling a climate where sexual assaults, especially against lesbian women, are the norm.14

Nevertheless, it should be pointed out that South Africa already has one of the world’s highest rates of sexual abuse. In 2012, about 60,000 women filed reports stating that they had been raped; many cases likely remain unreported.15 Therefore, these instances of “corrective rape” may not be caused entirely by LGBT intolerance and discrimination, but instead by the extreme domestic violence already common in South Africa. In reality, both are likely interrelated, as expressed by former Chair of the South African Human Rights Commission Jody Kollapen in 2010. Kollapen traced violence directed against lesbians to two factors: institutionalized prejudice deriving from historical separation of people into different categories, and the widespread problem of violence within South African society.16 This reasoning accounts for the higher rates of sexual abuse among lesbians.

Another reason for LGBT discrimination is the view that that LGBT behavior and conduct is un-African. One of the oldest arguments against homosexuality in the region maintains that it is not part of traditional African culture. In particular, some believe that homosexuality was brought by Western culture.17 Robert Mugabe, the President of Zimbabwe, best expressed this
view when he declared that “gays are perverts and their behavior is worse than that of pigs”, adding that homosexuality is “un-African and in conflict with black culture.” Moreover, he asserted that the population should “take the law into its own hands and arrest homosexuals.”  As a consequence of this hostile view, many individuals have justified their intolerance against LGBT persons and taken matters into their own hands.

The Ubuntu philosophy, an important pillar of South African culture, indirectly perpetuates the belief that homosexuality is un-African. In the southern African socio-communal philosophy of Ubuntu, individual existence is expressed through communal interdependencies, sharing, reciprocal obligations, and responsibilities. Therefore, belonging to a community circumscribes individual freedom, and is primarily symbolized through kinship and family. As a result, family is one the most significant aspects of life. Opponents of LGBT rights claim that same-sex couples threaten the very meaning and construction of “the family” by jeopardizing heterosexual-based patriarchy. For instance, traditional African women are expected to be subservient wives to men. By not conforming to this view, lesbians threaten the traditionally patriarchal power structures.

The South African church also maintains the belief that homosexuality is un-Christian. Approximately 80 percent of South Africans identify as Christian, highlighting how central the church is to South African culture. In poor townships especially, the church acts as a central part of communal life, providing spiritual and material aid for the community. Many church leaders hold great influence over the populace and can readily shift the morals of the community. Since homosexuality is considered un-Christian, many church leaders use their influence to demonize LGBT individuals, thus creating an atmosphere of intolerance, which further fuels discrimination and violence.

In the absence of strong state support, the Constitution’s Equality Clause remains largely unfulfilled for many LGBT individuals. Police and government inaction has led to an environment in which people can discriminate and commit violent acts with little repercussions. The police is even said to perpetuate intolerance against LGBT persons, as they are known to subject them to verbal abuse or worse. At times, the police “seem more preoccupied by how lesbians have sex than with securing justice.” The police tend to be ineffective or unwilling to help because they view human rights code, specifically on how to handle cases dealing with LGBT persons, as a threat to their interpretation of law enforcement. They ignore guidelines for dealing with LGBT cases, and do not understand or recognize different views of gender behavior, often questioning LGBT citizens about their sexual behaviors or verbally abusing them. Unfortunately, the police are not considered effective for seeking protection and justice, despite the legal recognition of LGBT rights.

As noted, the police themselves are often the primary perpetrators of violence against LGBT individuals. For example, one citizen recounted an occasion where police officers pulled up to a restaurant and started beating and abusing lesbians standing outside. The police eventually took several of them to
the station where they “taunted, attempted to extort, and beat them.”\textsuperscript{27} It is then no surprise that a sense of distrust in the police has been cemented. Distrust now causes many LGBT victims to avoid approaching the police for help at all. As a consequence, perpetrators of violent acts against such individuals continue to walk the streets freely, and continue to foster an environment of intolerance and discrimination against the LGBT community.

This kind of corruption doesn’t localize its attention towards the LGBT community. It extends beyond that, affecting the entire South African population. Corruption in the police force has led to increased instability at senior levels.\textsuperscript{28} Consequently, corruption has impacted the character and efficiency of law enforcement by hindering its ability to achieve constitutional objectives and build public trust.\textsuperscript{29} The South African Police Service has tried to address these concerns by developing anti-corruption strategies targeting corrupt individuals.

However, the Service falls short in addressing the fundamental organizational and management flaws that allow corruption to continue.\textsuperscript{30} Ultimately, corruption within the police force has eroded the integrity of the criminal justice system within South Africa, a symptom of which threatens justice for the LGBT community.

The government’s inability to combat prejudice against LGBT people has allowed for this discriminatory and hostile environment to remain. Specifically, the government has failed to provide an adequate system to spread awareness about LGBT individuals and issues, stagnating the move towards some form of understanding. Since the passing of the 1996 Constitution, South Africa has conducted campaigns of human rights education, however, the state produces no campaigns or materials to inform communities about the constitutional protections for sexual orientation.\textsuperscript{31} Therefore, many citizens remain ignorant about the challenges faced by the LGBT community, and thus continue to propagate negative attitudes. Moreover, many schools and social institutions lack proper education programs, thus perpetuating existing social biases.\textsuperscript{32}

This is not to say that the government has done absolutely nothing to combat social stigmas against LGBT individuals. The South African government has set up a national “task team” aimed at investigating and combating hate crimes against members of the LGBT community.\textsuperscript{33} Justice Ministry officials publicly condemn such hate crimes and gender-based violence as “an assault on the right to life and human dignity.”\textsuperscript{34} While these actions represent a positive trajectory for LGBT rights in South Africa, it should be noted that there is still much to be done. The “task team” set up
in 2011 has made steady, but slow, progress. It is going to take time to erode the embedded stigmas against LGBT individuals and dismantle the segments of society where “lesbians are still being raped and... gay men are still being bashed.”

“It is going to take time to erode the embedded stigmas against LGBT individuals”

Ultimately, South Africa is a country that has had its fair share of repression. Human rights, however, have greatly improved since the era of apartheid. Specifically, South Africa has become the first state in the world to include provisions of non-discrimination based on sexual orientation in its constitution. Today, same-sex couples are able to marry, adopt, and enjoy the same legal protections given to heterosexual couples. Nevertheless, LGBT individuals still face much discrimination, prejudice, and violence, stemming from societal biases. Ineffectual police and relative governmental inaction do little to ameliorate this hostile situation in society. As a result, the legal protections guaranteed by the South African Constitution have yet to be truly realized.

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LGBT rights activists march in Soweto, South Africa. © Reuters
LGBT Discrimination in South Africa
By Adam Rosenbloom

1. Lesbian, gay, bisexual, and transgender: an inclusive term for groups and identities also grouped as “sexual minorities”.

2. Ibid., 10


4. Long, 181

5. Nath, 10

6. Ibid., 13

7. Homosexual: The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex (Ibid.)

8. Transgender: An adjective used to describe the gender identity of people whose birth gender (the gender they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express, if given a choice). A transgender person usually adopts or would prefer to adopt a gender expression in consonance with their preferred gender, but may or may not desire to permanently alter their bodily characteristics in order to conform to their preferred gender (Ibid.)

9. Ibid., 10

10. Ibid., 44


13. Nath, 11

14. Ibid., 38

15. "Freedom in the World 2013: South Africa"

16. Nath, 14

17. Long, 187

18. Cock 2003, 41


22. Nath, 21

23. Ibid., 21-22

24. Long, 1993

25. Nath, 46


27. Nath, 53


30. Newham, vi

31. Long, 207

32. Nath, 60

33. Nath, 24

34. "Annual Report 2013: South Africa"

35. Long, 200

Image 1: EPOC Figure 1: http://www.bbc.com/news/world-africa-23033423

Image 2: 2009 Dipika Nath/Human Rights Watch

Image 3: http://4.bp.blogspot.com/-R-iYv1cy3jw/UctYffFsVEI/AAAAAAAAlqE/SgFWTQfOh6Y/s1600/africa+gay+protest.jpg