



SOUTH AFRICA

# “We’ll Show You You’re a Woman”

Violence and Discrimination against Black Lesbians and Transgender Men in South Africa

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and Transgender Men in South Africa**

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## Glossary

**Biological Sex:** The biological classification of bodies as female or male, based on such factors as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.

**Bisexual:** The sexual orientation of a person who is sexually and romantically attracted to both women and men.

**Black:** In this report we use the term “black” to refer to black Africans.

**Butch:** Masculine gender expression; a popular term within lesbian and transgender communities to describe lesbians whose gender expression is masculine.

**Closeted/Being in the Closet:** A person who does not acknowledge their sexual orientation to others. People may be “fully” in the closet (not admitting their sexual orientation to anyone), fully out, or somewhere in between.

**Femme:** Feminine gender expression; a popular term within lesbian and transgender communities to describe lesbians and bisexual women whose gender expression is feminine.

**Gay:** A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is towards other men.

**Gender:** The social and cultural codes (as opposed to biological sex) used to distinguish between society’s conceptions of “femininity” and “masculinity.”

**Gender Expression:** The external characteristics and behaviors that societies define as “feminine,” “androgynous,” or “masculine,” including such attributes as dress appearance, mannerisms, hair style, speech patterns, and social behavior and interactions. “Butch,” “soft butch,” and “femme” are examples of categories of gender expression.

**Gender Identity:** A person’s internal, deeply felt sense of being female or male, both, or something other than female and male.

**Gender-based Violence:** Violence directed against a person on the basis of gender or sex. Gender-based violence can include sexual violence, domestic violence, psychological abuse, sexual exploitation, sexual harassment, harmful traditional practices, and discriminatory practices based on gender. The term originally described violence against women but is now widely understood to include violence targeting women, transgender persons, and men because of how they experience and express their genders and sexualities.

**Heterosexual:** A person whose primary sexual and romantic attraction, or sexual orientation, is toward people of the other sex.

**Homophobia:** Fear and contempt of homosexuals, usually based on negative stereotypes of homosexuality.

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

**Intersex:** A term referring to a variety of conditions in which a person's sexual and/or reproductive features and organs do not conform to dominant and typical definitions of "female" or "male."

**Lesbian:** The sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.

**LGBT:** Lesbian, gay, bisexual, and transgender; an inclusive term for groups and identities sometimes also grouped as "sexual minorities."

**Out/To be Outed:** This refers either to be in a position where one's sexual orientation is openly known and acknowledged, or the occurrence of one's sexual orientation being revealed (perhaps inadvertently) either through words or actions, or when one is exposed as homosexual or bisexual by another person without one's consent.

**Passing:** Instances in which a person who identifies with, and/or is classified by society as belonging to one category of race, gender, sexual orientation, or ability, is identified some or all of the time as belonging to another. In this report, instances of passing include female-born people being identified as male-born because of their gender expression, and instances in which lesbian-identified people are read as heterosexual, also usually because of their gender expression.

**Sexual Orientation:** The way in which a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or other sex, or to both.

**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.

**Transgender man:** A female-born person who identifies as male and often expresses his preferred gender through dress and mannerisms.

**Transphobia:** Fear and contempt of transgender and transsexual persons, usually based on negative stereotypes about transgenderism and transsexuality.



# Map of South Africa



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## Summary

In 1996, two years after the formal end of apartheid, South Africa's new constitution became the first in the world to include provisions of non-discrimination based on sexual orientation. This protection was enshrined in the "equality clause" of the Bill of Rights.

At the time, demands of equality and non-discrimination by lesbian, gay, bisexual, and transgender (LGBT) and sexual rights activists resonated with the political claims of other constituencies and groups. As one South African scholar noted, "The discourse of diversity, the celebration of difference and, especially, the right to freedom of sexual orientation were defended as part of the challenge of building a diverse, pluralistic society."<sup>1</sup>

The constitution also mandated the creation of six state institutions to support constitutional democracy, including the Commission for Gender Equality and the South African Human Rights Commission. During the next decade, South African LGBT communities won major legal battles, including overturning "sodomy" laws, gaining rights in adoption, medical aid, child custody, insurance, immigration, alteration in sex description and sex status, inheritance, and state recognition of same-sex marriage.

While these are significant advances, lesbians, gay men, and transgender people in South Africa continue to face hostility and violence. Social attitudes lag: recent social surveys demonstrate a wide gap between the ideals of the constitution and public attitudes toward such individuals. Negative public attitudes towards homosexuality go hand in hand with a broader pattern of discrimination, violence, hatred, and extreme prejudice against people known or assumed to be lesbian, gay, and transgender, or those who violate gender and sexual norms in appearance or conduct (such as women playing soccer, dressing in a masculine manner, and refusing to date men). And constitutional protections are greatly weakened by the state's failure to adequately enforce them.

This report documents discrimination and abuse against black lesbians, transgender men, and individuals who, while born female, do not conform to feminine gender norms and expectations. These individuals and groups experience discrimination, harassment, and violence at the hands of private individuals and sometimes state agents. They may be thrown out of home; ridiculed and abused at school; harassed, insulted, and beaten on the streets, in church, and at work; and threatened by neighbors and strangers. The abuse

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<sup>1</sup> Jacklyn Cock, "Engendering Gay and Lesbian Rights: the Equality Clause in the South African Constitution," *Women's Studies International Forum*, 2003, vol. 26, no. 1, pp. 35-45.

they face may be verbal, physical, or sexual, and may even result in murder. This is a far cry from the promise of equality and non-discrimination on the basis of “sexual orientation” contained in the constitution.

The economic and social position of lesbian, gay, bisexual, or transgender people in South Africa has a significant impact on their experience. 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. Lack of access to such things as secure housing and transport options greatly increases people’s vulnerability to violence. Most of the respondents in this report are working-class lesbians, transgender men, and gender non-conforming people, many of whom have experienced abuse, threats, violence, and discrimination throughout their lives, and have few resources for mitigating their vulnerability.

Many of the 121 people we interviewed for this report told us that rigid social and cultural norms for appropriate feminine and masculine behavior resulted in them living a life of fear and self-policing, sometimes impeding their ability to finish school or get and keep a job, and exposing them to rejection and ridicule in public spaces and at home. Most crimes committed against them go unreported. As is the case with sexual abuse in the broader population, the fear and stigma attached to sexual assault makes it probable that such crimes are particularly underreported. The few who do report abuse and violence often face hostility, and discrimination from police and, sometimes, from other service providers.

This report focuses on economically marginalized black communities because reports of violence documented by LGBT rights organizations over the last two decades suggest that, for historical reasons, black lesbians and transgender men living in townships, peri-urban and rural areas, and informal settlements are among the most marginalized and vulnerable members of South Africa’s LGBT population. The fact that this report focuses on the experiences of black lesbians, bisexual women, and transgender men is not intended to suggest that discrimination, abuse, and violence based on sexual orientation and/or gender expression is separable from, or “worse” than, violence faced by other disenfranchised groups, such as sex workers, immigrants, disabled people, people living with HIV, and women as a whole. Rather, it aims to understand abuse and gender-based violence in a broader context of discrimination and disadvantage.

Much of the recent media coverage of violence against lesbians and transgender men has been characterized by a focus on “corrective rape,” a phenomenon in which men rape people they presume or know to be lesbians in order to “convert” them to heterosexuality. While the

focus on “corrective rape” draws attention to an important aspect of the problem, it also detracts from the larger set of issues fueling violence and discrimination against lesbians and transgender men. A narrow focus on “corrective rape” can give the mistaken impression that only “butch lesbians” are subject to sexual assault, or that rape is the only issue of concern, or that sexual assault faced by a lesbian is qualitatively different from and more serious than sexual assault against a person who is not identified as a lesbian. Local and international campaigns have condemned the practice and state responses have also focused on so-called “corrective rape.” Based on research conducted in six provinces, this report broadens the scope of the problem by looking more holistically at the range and impact of violence, discrimination, and governmental neglect of lesbians and transgender men.

\* \* \*

The report begins by placing the prejudice and violence faced by lesbians and transgender men in context, looking both at South Africa’s high rates of violence, including sexual violence, and the curtailment of women’s sexual and social agency in South Africa.

Next, the report documents verbal, physical, and sexual threats, abuse, and violence faced by lesbians, transgender men, and gender non-conforming people. As the testimonies here show, such violence is often perpetrated by men who are complete strangers keen to establish what they view to be the transgressor’s “proper” femininity, but it is also perpetrated by acquaintances, friends, and family. The report documents the climate of fear and impunity within which lesbians and transgender men attempt to negotiate their safety, sometimes even when performing routine tasks such as buying bread at the corner shop. It also highlights some of the strategies they employ to avoid being attacked.

The following section examines police inaction and unwillingness to provide services to lesbians and transgender men and how this contributes to their vulnerability. The section also looks at the lack of faith among lesbians and transgender men in the police, from whom many fear secondary victimization rather than protection. Such concerns are not without justification; in several instances, police themselves have perpetrated abuse and violence.

Legislative measures prohibit discrimination in workplaces and schools but, as this report shows, such laws are still implemented inconsistently.

Finally, the report looks at South Africa’s legal obligations in domestic, regional, and international forums and makes concrete recommendations to various stakeholders, including several departments of the South African government.

South Africa already has in place many laws and policies to address sexual violence and discrimination; what is sorely lacking is effective implementation of those provisions. It is incumbent upon the South African government to take immediate steps to honor its promise of equality, non-discrimination, and a life of dignity for lesbians, gay men, and bisexual and transgender people; failing to do so betrays the constitution, imperiling the rights of all South Africans.

# Key Recommendations

## To the South African President and Government Leaders

- Publicly condemn gender-based violence, including homophobic and transphobic violence, and institute public education initiatives to increase awareness in all sectors of society of the Equality Clause of the Constitution and principles of non-discrimination.
- Establish systems of monitoring and evaluation in key government departments—including in the departments of education, health, police, women and children, and the National Prosecuting Authority—to ensure implementation of existing anti-discrimination laws and standards.

## To the Department of Justice and Constitutional Development

- Work with the National Prosecution Authority to address barriers to prosecuting cases of sexual and physical violence, including on the grounds of sexual orientation and gender expression, and ensure that such cases are resolved in a timely manner.
- The Department's Gender Directorate should develop, in collaboration with civil society, a national plan for ensuring that women and transgender persons benefit in practice from existing constitutional rights to personal security, education, privacy, and freedom of expression and movement at local, provincial, and national levels.

## To South African Police Services

- In collecting data on physical and sexual violence, disaggregate the data by motive to track incidents of homophobic and transphobic violence.
- Ensure that every police station at all times has an officer trained and equipped to understand, properly document, and efficiently handle cases of sexual violence—including on the grounds of sexual orientation and gender expression—in a non-judgmental manner.

## **To the Department of Health**

- Collaborate with civil society organizations to ensure that all healthcare professionals are trained in matters relating to sexual orientation and gender expression and identity.

## **To the Department of Women, Children, and Persons with Disabilities**

- Collaborate with civil society organizations to develop training and educational materials for use in public education programs on gender equality and the rights of women and transgender persons.

## **To the South African Human Rights Commission**

- Establish an independent civil society working group to monitor and address incidents of verbal, physical, and sexual abuse on the grounds of gender expression and identity and sexual orientation.
- Develop and host a national database tracking violence on the grounds of sexual orientation and gender expression and identity.

## Boipelo's Story

Boipelo grew up with her grandmother in a township in Pietermaritzburg in KwaZulu-Natal, in eastern South Africa. In 1997, when she was 13, she realized she was a lesbian. An older male cousin also stayed in the same house. He resented Boipelo's boyish appearance and behavior and wanted her to perform chores for him. Boipelo would refuse but faced constant scrutiny and criticism from him. "Why is she being allowed to be like a boy?" he would ask.

One day, when Boipelo and her younger sisters were alone at home with the cousin, he raped her repeatedly. "I told my mum and my grandma when they returned," Boipelo said. "It was dealt with as a family matter. We were now supposed to get along." In 2003, when she was 19, Boipelo developed rashes and sores and was diagnosed as HIV positive.

Only then, I found out that my cousin was positive. My mum had known but she didn't tell me. He was still living with us at this time.

The same year, in 2003, both Boipelo's cousin and her mother died and she was forced to drop out of school because of ill health. Now she was dependent on her uncle, who had inherited her grandmother's house.

Boipelo's health slowly improved over the following year and she started playing soccer, a sport she had enjoyed before her illness. In 2004, Boipelo, now 20, used to spend time with her soccer coach, who knew that she was a lesbian. One day, when she was at the coach's house, he told her that he had paid her uncle lobola (bride price) for her and insisted that she sleep with him.

The coach said he doesn't like me as a lesbian and he wants me as his wife so that I can stop being a lesbian.... When I said "no" and tried to leave, he beat me with a straightened [clothes] hanger. Then he raped me many times, all night.

The next morning the coach took her back to her uncle, complained that she was not responding to him sexually, and took back the lobola. Boipelo became pregnant and had a child in 2005. Meanwhile Boipelo's uncle, fearing publicity, moved to another township and left her to raise the child and her two younger sisters. "If you want to be a man, you must take care of your siblings," he said. "I won't take care of you anymore."

In 2007 Boipelo was finishing her last year of school; she was again living in her uncle's house. A



local pastor with whom she became acquainted through a friend told Boipelo that he liked her and could show her “what it is like to have a man.” She told him she was a lesbian.

One day, the guy, the pastor, came to my place.... I told him to go away. He said he had come to apologize. He came in; apologized. Then he said he still likes me. He said he’s going to show me I’m not a man, I’m a woman. He raped me that day.... I went to [the local clinic] and checked for pregnancy. The sister-in-charge said she couldn’t help me get an abortion because it’s against her Church.

Boipelo registered a rape case against the pastor at the local police station. The pastor paid her uncle lobola for her, and Boipelo’s uncle told her he would throw her out of the house if she proceeded with the case. Boipelo dropped the case; she was again unable to finish school due to poor health.

Boipelo is now 26, identifies as a lesbian, and has two small children. She is in treatment and volunteers at a care center for people living with HIV and AIDS. She receives a small government grant for her children. Her volunteer work earns Boipelo some respect in the community, but she can barely make ends meet, has still not finished school, and faces harassment because of her gender expression and sexual orientation. “Still,” she says, “things are ‘not too bad.’”

**Human Rights Watch interview with Boipelo (pseudonym), Pietermaritzburg, August 4, 2010.**

## Methodology

This report is based on research conducted by Human Rights Watch in South Africa between February 2009 and August 2010, follow-up conversations through October 2011 with activists and individuals concerning specific cases, and previous research on the experiences of lesbians, bisexual women, transgender men, and other female-born gender non-conforming people experiencing same-sex attraction.<sup>2</sup>

Two researchers conducted 121 interviews with self-identified lesbians, bisexual women, and transgender men, and held three focus group discussions in different provinces: the Western Cape, Mpumalanga, and Limpopo. We spoke to people in a variety of settings, including their homes, community centers, restaurants, Human Rights Watch's office in Johannesburg, offices of other NGOs, and the homes of their friends. The interviews were organized with the help of domestic advocacy groups mentioned in the acknowledgments at the end of this report.

We also conducted interviews with police personnel at Khayelitsha police station in the Western Cape, Katlehong police station in Gauteng, and Thohoyandou police station in Limpopo. We did not receive a response to our repeated requests for a meeting with representatives of the Department of Police. We requested a meeting with the Department of Justice and Constitutional Development in July 2010 but did not receive a response that year. In May 2011, we again requested a meeting with them and received a positive response from them in September 2011, when the report was already in review. We were unable to meet officials of the department then due to conflicting schedules and were promised a written response to our questions in October 2011. We were awaiting the

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<sup>2</sup> See research commissioned by the Joint Working Group and conducted by OUT LGBT Well-being in Gauteng and KwaZulu-Natal in 2002-2003 and published in several booklets and brochures in 2004, <https://www.out.org.za/library.asp> (accessed April 1, 2011); "The Rose Has Thorns: Stories of Hate Crimes Against Black Lesbians in South African Township," a report by the Forum for the Empowerment of Women, available at <https://khanyacollege.org.za/Documents%5CKJ3.pdf> (accessed April 13, 2011); J.A. Nel and M. Judge, "Exploring Homophobic Victimisation in Gauteng, South Africa: Issues, Impacts and Responses," *Acta Criminological*, Vol. 21, No. 3 (2008): 19-37; POWA, *State Accountability for Homophobic Violence*, 2007 (a publication of the NGO People Opposing Women Abuse, Johannesburg, South Africa); Benjamin Roberts and Vasu Reddy, "Pride and Prejudice: Public Attitudes toward Homosexuality," *HSRC Review*, vol. 6, no. 4 (November 2008), [http://www.hsrc.ac.za/HSRC\\_Review\\_Article-121.phtml](http://www.hsrc.ac.za/HSRC_Review_Article-121.phtml) (accessed March 4, 2011); Nonhlanhla Mkhize, Jane Bennett, Vasu Reddy, and Relebohile Moletsane, "The Country We Want to Live In: Hate Crimes and Homophobia in the Lives of Black Lesbian South Africans," <http://www.hsrcpress.ac.za/product.php?productid=2282&cat=0&page=1&featured&freedownload=1> (accessed March 4, 2011); Angeline Stephens, "An Exploration of Hate Crime and Homophobia in Pietermaritzburg, Kwa-Zulu Natal," research commissioned by the Gay and Lesbian Network of Pietermaritzburg, <http://www.gaylesbiankzn.org/resources/Hate%20Crime%20and%20Homophobia%20Report%20%20November%202010.pdf> (accessed March 4, 2011).

response at the time of going to press. We discussed our findings with the Department of Basic Education, the National Prosecuting Authority within the Department of Justice and Constitutional Development, as well as both the Commission for Gender Equality and the South African Human Rights Commission.

This report documents the experiences of self-identified lesbians, bisexual women, and transgender men who live in townships close to large cities (Durban, Cape Town, Johannesburg) as well as those living in and around smaller towns and rural and peri-urban areas (the participants in Lusikisiki, the Eastern Cape; Thohoyandou and Tzaneen, Limpopo; and Ermelo, Mpumalanga). A small number lived in cities—Johannesburg, East London, Durban, Nelspruit (renamed Mbombela), and Cape Town—at the time they experienced violence, although even in these cases, the incidents of violence often took place in townships they were visiting.

The number of self-identifying bisexual women was small, though their insights indicate a need for greater research with this population. Experiences of violence against gay men and transgender women were deliberately not included in this research in order to maintain a focus on lesbians and transgender men, violence against whom is widely acknowledged though not adequately documented. All but two interviewees identified as “black” (while one interviewee each identified as “Indian” and “Colored”).

Field research was conducted in townships, small towns, and cities in six of South Africa’s nine provinces: Gauteng, the Western Cape, the Eastern Cape, KwaZulu-Natal, Mpumalanga, and Limpopo. Each of the provinces we visited has at least one group working to provide services to lesbians and transgender men and/or conduct advocacy on behalf of this population. We were unable to visit the North West, Free State, and the Northern Cape provinces due to our lack of contact with lesbians and transgender men in these provinces. We also conducted desk research on violence in South Africa, including gender-based violence.

The scarcity of LGBT groups organizing in rural areas restricted our access to these places significantly; therefore, most interviews were conducted in and around towns and cities. However, several interviewees spoke of their experiences in rural areas and villages, indicating the need for further research into issues of sexual orientation and gender expression in rural contexts. Interviewees primarily came from economically marginalized backgrounds, with only a small percentage having jobs and being economically self-sufficient.

Interviews were conducted in English, isiXhosa, and isiZulu, with interpretation provided by local activists and Human Rights Watch staff. All the interviews were conducted in private settings after we had explained to the interviewees the purpose and methodology of the research, gained their consent, and assured them of anonymity. Accordingly, we have not used people's real names or other identifying features in this report. We provided no incentives to interviewees beyond covering meals, transport, and other costs incurred in conducting the interviews, such as room rental. We took care to prevent re-traumatization of interviewees by working closely with local organizations capable of providing counseling and other support services, if required, and providing interviewees with the names and phone numbers of trained counselors and service organizations when appropriate.

In May 2010 we formed a reference group comprising activists from local LGBT and women's rights groups. This group was consulted at various stages of the research, and has provided guidance on research methodology, assisted with accessing interviewees and archival material, and provided input on the draft report. Members of this group continue to be involved in ongoing advocacy and in developing further materials from research findings. The list of organizations and their representatives who took part in the reference group is mentioned in the acknowledgments at the end of this report.

## Background

The 1996 South African constitution enshrines a Bill of Rights, which includes in section 9 a guarantee of equality and a prohibition on discrimination on many enumerated grounds including gender, sex, and sexual orientation.<sup>3</sup>

In addition to this constitutional protection, a range of other legislative and policy reforms in South Africa have sought to remove discriminatory laws and ensure equality to lesbian and gay individuals.

Under the Labour Relations Act of 1995 the dismissal of any employee on any of the grounds contained in the equality clause constitutes unfair dismissal; the Employment Equity Act of 1998 includes sexual orientation among categories protected from discrimination. The Medical Schemes Act of 1998 defines “dependent” to include same-sex partners; the Domestic Violence Act of 1998 expands the definition of domestic relationships to recognize cohabitation by unmarried people including same-sex couples; and the Refugees Act of 1998 recognizes gender and sexual orientation as grounds for persecution and, thus, for seeking asylum in South Africa. The Rental Housing Act of 1999 also bars discrimination on all the grounds contained in the equality clause and the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 further commits the government to promoting equality on the grounds mentioned in the equality clause.

Changes in legislation followed a series of legal challenges. For instance, in February 1998, in *Langemaat v. Minister of Safety and Security and Two Others*, the Pretoria High Court ruled that the Police Medical Aid Scheme had unfairly discriminated against the plaintiff, a member of the South African Police Service, by refusing to register her same-sex partner as her dependent.<sup>4</sup> This ruling led to a change in the definition of “dependent” in the Medical Schemes Act to include both same-sex partners and people in unregistered heterosexual relationships.

The legal challenges that brought about legislative changes often went all the way to the Constitutional Court. In October 1998, in *National Coalition for Gay and Lesbian Equality and Others v. Minister of Justice and Others*, the highest court in the country affirmed the finding of the Witwatersrand Local Division High Court when it declared unconstitutional various

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<sup>3</sup> The Bill of Rights is chapter two of the South African constitution and enshrines the socio-economic, civil, and political rights enjoyed by all people in the Republic of South Africa; it came into effect in 1996, when the constitution was enacted.

<sup>4</sup> *Langemaat v. Minister of Safety and Security and Two Others*, case no. 19077/77, February 4, 1998.

provisions outlawing “sodomy” in legislation such as the Sexual Offences Act of 1957, the Criminal Procedure Act of 1977, and the Security Officers Act of 1987. In December 1999, in *National Coalition of Gay and Lesbian Equality and Others v. Minister of Home Affairs and Others*, the Constitutional Court declared section 25(5) of the Aliens Control Act of 1991 unconstitutional because it did not extend to lesbians and gay men and their same-sex partners who were non-South African subjects the same benefits as enjoyed by non-South African spouses of South African citizens and permanent residents.<sup>5</sup> In September 2002, in *Du Toit and Another v. The Minister for Welfare and Population Development and Others*, the Constitutional Court affirmed the decision of the Pretoria High Court which deemed unconstitutional those provisions of the Child Care Act of 1983 and the Guardianship Act of 1993 that restricted joint adoption of children to married couples.<sup>6</sup>

In November 2004, responding to an application brought by a lesbian couple, the Supreme Court of Appeal ruled that same-sex couples must be included in the common law definition of marriage and, in December 2005, the Constitutional Court confirmed the unconstitutionality of the existing marriage law and further declared that an inferior or marginal status granted to people in same-sex relationships would also be unconstitutional.<sup>7</sup> It gave the government until December 1, 2006, to rectify the situation. On November 30, 2006, the office of the president signed into law the Civil Union Act, which recognizes “the voluntary union of two persons ... registered by way of either a marriage or a civil partnership.”

In the past 15 years these and other legal challenges have removed almost all legal provisions restricting the rights of lesbian and gay persons in South Africa.<sup>8</sup> Legally speaking, lesbians, gay men and, to a more limited extent, transgender people have achieved equality.<sup>9</sup>

Fifteen years since adopting one of the most progressive constitutions in the world, however, the level of violence and discrimination against lesbians, gay men, and bisexual and transgender people shows that the promise of equality remains elusive.

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<sup>5</sup> *National Coalition of Gay and Lesbian Equality and Others v. Minister of Home Affairs and Others*, case no. CCT 10/99, December 2, 1999.

<sup>6</sup> *Du Toit and Another v. The Minister for Welfare and Population Development and Others*, case no. CCT 40/01, September 10, 2002.

<sup>7</sup> *Minister of Home Affairs and Another v. Fourie and Another*, case no. CCT 10/05, December 1, 2005.

<sup>8</sup> For other legal victories, see the Human Rights Watch and International Gay and Lesbian Human Rights Commission’s 2003 report, *State Sponsored Homophobia and Its Consequences in Southern Africa*, pp. 181-85.

<sup>9</sup> Trans-specific healthcare needs of transgender individuals are currently not covered by medical aid, restricting transgender people’s capacity to access state benefits equally.

Over the past decade, activists in South Africa have recorded and analyzed dozens of incidents of sexual and physical violence against lesbians and transgender men, including rape and murder; a vast majority of these instances of abuse are directed against black lesbians and transgender men.

The issue came to a head in the mid-to-late 2000s, when several incidents of physical and sexual assault and murder based on sexual orientation and gender expression occurred in close succession. Between April and July 2007 alone, there were three separate instances of sexual assault and murder of known lesbians; at least eight separate instances of violence against lesbians were recorded in 2008, of which three were cases of sexual assault and murder. These cases, happening in rapid succession, established the targeting of lesbians as a specific problem within the LGBT community.

The spate of attacks indicated increasing levels of violence or increased reporting, or both, and heightened the pressure on local activists to address the problem. In almost all cases of violence against self-identified lesbians, the survivors' and victims' non-normative gender expression (masculine characteristics generally associated with lesbianism) or their publicly claimed lesbian identity were identified by activists as the reason for the attacks. At the time of publication only one judgment, in the Zoliswa Nkonyana case, had recognized that these crimes were motivated by prejudice, or were "hate" crimes. Zoliswa Nkonyana was beaten and killed by a gang of about twenty young men in February 2006. Nine men were charged, and a verdict of guilty was handed against four of them in October 2011.

## **Violence in South Africa, including Gender-Based Violence**

In 2010 the former chair of the South African Human Rights Commission, Jody Kollapen, traced violence directed against lesbians to two factors: one, institutionalized prejudice deriving from the historical separation of people into categories with differential values; and two, the widespread problem of violence within South African society.<sup>10</sup> Indeed, as this report shows, violence against black lesbians, transgender men, and gender non-conforming people occurs in a broader context of violence, including sexual and gender-based violence, misogynistic social attitudes, and patriarchal cultural norms.

### *General Violence*

South Africa has among the highest rates of violence of all kinds in the world. About 2,122,000 cases of serious crime were recorded in 2009-2010; 30 percent of these were

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<sup>10</sup> See Jeremy Schaap, "Corrective Rape," ESPN, May 11, 2010, <http://espn.go.com/video/clip?id=5181871> (accessed May 21, 2011).

crimes of assault involving grievous bodily harm.<sup>11</sup> There were nearly 200,000 cases of common assault, almost 60,000 cases of common robbery, nearly 70,000 cases of sexual assault, and about 1,500 cases of “public violence.”<sup>12</sup>

Academics and activists offer several historical explanations for the current state of affairs, including disruption of families; mass migration of male laborers to urban centers without female partners; brutal working conditions; apartheid policies that actively encouraged violent crime in townships and deliberately left these areas un-policed; institutionalized racism and segregation; and the legitimization of the use of firearms that began during colonial rule and continued during the apartheid era. In the post-apartheid period, rampant violence and continued disintegration of the social fabric point to high levels of socio-economic inequality, alarming rates of unemployment, disenfranchisement, and loss of traditional sources of power;<sup>13</sup> lack of quality education and adequate economic opportunities; the devastating effect of HIV and AIDS;<sup>14</sup> and the uneven functioning of state institutions.<sup>15</sup>

### *Gender-Based Violence*

Nearly half the respondents in a survey of 2,000 male City Council workers in Cape Town claimed they had physically beaten their domestic partner at least once. The figures would arguably be higher among unemployed men.<sup>16</sup> A 2004 policy brief by the MRC showed that

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<sup>11</sup> Department of Police, *Crime Statistics: April 2009-March 2010*, [http://www.saps.gov.za/statistics/reports/crimestats/2010/crime\\_stats.htm](http://www.saps.gov.za/statistics/reports/crimestats/2010/crime_stats.htm) (accessed May 21, 2011).

<sup>12</sup> Historians and sociologists attribute the current state of affairs to the historical and residual effects of colonialism and apartheid. See the 2009 report by the Centre for the Study of Violence and Reconciliation (CSVr) “Why Does South Africa Have Such High Rates of Violent Crime?” [http://www.csvr.org.za/docs/study/7.unique\\_about\\_SA.pdf](http://www.csvr.org.za/docs/study/7.unique_about_SA.pdf) (accessed March 4, 2011); for a historical perspective, see Gary Kynoch, “Urban Violence in Colonial Africa: A Case for South African Exceptionalism,” *Journal of Southern African Studies*, vol. 34, no. 3, September 2008, pp. 629-45.

<sup>13</sup> Approximately 57 percent of the population lived below the poverty line in 2001, a figure unchanged from 1996; in the Eastern Cape, more than 70 percent of the population lived below the poverty line in 2001. Studies show that the poor have become poorer; South Africa’s Gini coefficient rose from 0.69 in 1996 to 0.77 in 2001. See Human Sciences Research Council, “Fact Sheet: Poverty in South Africa,” July 26, 2004, <http://www.sarprn.org.za/documents/d0000990/> (accessed July 1, 2011). A 2003 Labour Force Survey places levels of unemployment in the populations aged 15-65 years at over 30 percent, while an IRIN study places the figure close to 40 percent. More than 50 percent of women in the age group 20-24 years are unemployed. See Edna Rooth, “An Investigation of the Status and Practice of Life Orientation in South African Schools in Two Provinces” [http://etd.uwc.ac.za/usfiles/modules/etd/docs/etd\\_init\\_1920\\_1177915444.pdf](http://etd.uwc.ac.za/usfiles/modules/etd/docs/etd_init_1920_1177915444.pdf) (accessed July 1, 2011), 8.

<sup>14</sup> In 2009, South Africa had 5.6 million people living with HIV and AIDS, higher than any other country in the world, and more than 300,000 people are estimated to have died of AIDS that year, Close to 20 percent of the population aged 15-49 years and almost a third of women aged 25-29 years are HIV positive. See UNAIDS, “UNAIDS Report on the Global AIDS Epidemic,” [http://www.unaids.org/globalreport/Global\\_report.htm](http://www.unaids.org/globalreport/Global_report.htm) (accessed May 21, 2011).

<sup>15</sup> See the 2009 report by the CSVr, “Why Does South Africa Have Such High Rates of Violent Crime?”. For a historical perspective, see Gary Kynoch, “Urban Violence in Colonial Africa: A Case for South African Exceptionalism,” *Journal of Southern African Studies*, vol. 34, no. 3, September 2008, pp. 629-45.

<sup>16</sup> Naeemah Abrahams, Rachel Jewkes, and Ria Laubsher, “‘I do not believe in democracy in the home’: Men’s Relationships With and Abuse of Women,” an MRC policy brief, <http://www.mrc.ac.za/gender/nodemocracy.pdf> (accessed July 8, 2011)



murders of women by their intimate male partners constituted about half of all cases of “femicide” (homicides in which the victim is female).<sup>17</sup>

Violence against lesbians, transgender men, and gender non-conforming people occurs within the context of an epidemic of gender-based violence in South Africa. The normalization of some behaviors and modes of gender expression as appropriate or “natural” for women makes all women and female-born people who go against these norms potential targets.<sup>18</sup> Furthermore, the lack of success in addressing gender-based violence creates a climate of impunity and inhibits women’s ability to access justice.

There have been significant legislative, policy, and procedural reforms over the past several years intended to ensure greater access to justice to survivors of gender-based violence. The National Crime Prevention Strategy (NCPS) formulated in 1996 sought the “establishment of a comprehensive policy framework which will enable government to address crime in a coordinated and focused manner which draws on the resources of all government agencies, as well as civil society.” In 1999 the Department of Justice and Constitutional Development (DOJ&CD) published the Gender Policy Statement, which was intended to “guide all members of the justice system by ensuring that decision making, policy making and service delivery within the department are gender sensitive.”<sup>19</sup>

In 1995 South Africa became a party to the international Convention on the Elimination of Discrimination against Women and was one of the governments that signed up to the Beijing Platform of Action at the Fourth World Conference on Women, including in it pledges to eliminate sexual violence.

In 1997 the DOJ&CD developed the National Policy Guidelines for Victims of Sexual Offences, which “aimed to improve survivors’ experience in the criminal justice system.” Changes to the Criminal Law Amendment Act of 1997 aimed to ensure minimum sentencing for certain crimes, including rape; however, under the act, judicial officers were permitted to impose

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<sup>17</sup> Shanaaz Mathews, Naeemah Abrahams, Lorna Martin, Lisa Vetten, Lize van der Merwe, and Rachel Jewkes, 2004, “Every Six Hours a Woman is Killed by Her Intimate Partner,” an MRC policy brief, <http://www.mrc.ac.za/policybriefs/woman.pdf> (accessed July 8, 2011).

<sup>18</sup> A famous example of the curtailment of women’s agency is the 2007 incident in T section in Umlazi, KwaZulu-Natal’s largest township, where some men from the community stripped a woman who was wearing trousers and made her walk naked in the streets, and then burnt down her shack. The men in the community then passed an unofficial ban on women wearing trousers in Umlazi. The Equality Court’s finding against the men has had no impact in Umlazi, where in 2009, four men stripped another woman who was wearing trousers and burned her house down as well. In 2008, taxi drivers and hawkers at Noord Street Taxi Rank in Johannesburg, one of the main taxi hubs in the city, stripped and otherwise sexually assaulted a woman wearing a mini skirt.

<sup>19</sup> South African Government Information, “National Crime Prevention Strategy: Summary,” May 22, 1996, <http://www.info.gov.za/otherdocs/1996/crime1.htm> (accessed July 8, 2011).

lesser sentences if they could find “substantial and compelling circumstances.” In 1998 South Africa replaced the Prevention of Family Violence Act of 1993 with the Domestic Violence Act, which intended to privilege the rights and safety of survivors of violence.

The DOJ&CD five-year national strategy, “Justice Vision 2000,” introduced specialized sexual offence courts in an attempt to improve case management, promote effective prosecution, and reduce secondary victimization of survivors and other witnesses in cases of sexual violence against women and children. There were over 50 such courts in the country in 2005 when the DOJ&CD called a moratorium on opening any more. At the time of writing, there were, at best, six such courts still in operation.<sup>20</sup> While there were problems in execution, the courts nevertheless were intended to provide a more gender-sensitive approach to sexual violence.<sup>21</sup>

The department also established one-stop care centers for survivors of sexual assault that allowed a survivor to receive medical help and counseling as well as report the incident to the police, all at one facility.<sup>22</sup> The government further articulated a nation-wide “victim empowerment” program and guidelines for all healthcare and criminal justice professionals on how to respond to survivors of sexual assault.

The 2007 Sexual Offences Act expanded the definition of rape, making it a gender-neutral offence and stipulating, among other changes, that the survivor of the sexual offence need not prove absence of consent. However, at the time of writing, the policy framework for the act was still being developed, and there has been concern from civil society that the DOJ&CD would not adequately include them in its development.<sup>23</sup> The Family Violence, Child Protection and Sexual Offences (FCS) units established within SAPS in 1996 for the purposes of providing specialized survivor-centered services to adult and child survivors of sexual abuse have recently been reinstated since being devolved in 2006.

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<sup>20</sup> The special director of public prosecutions for sexual offences, Thoko Majokweni, has claimed that the closure of the sexual offences courts has resulted in a decrease in successful prosecutions in cases of sexual offences. See Franny Rabin, “Prosecutor bemoans closing of sexual offences court,” *BusinessDay*, July 11, 2011, <http://www.businessday.co.za/articles/Content.aspx?id=148026> (accessed July 11, 2011).

<sup>21</sup> Shahana Roshal et. al, “Violence Against Women: A National Survey,” <http://www.iss.co.za/pubs/Books/VAW/Chap12.pdf>, p. 151-52 (accessed July 8, 2011), pp 149-55.

<sup>22</sup> In May 2010, there were 21 such centers, and there are predicted to be 35 centers by 2025. See South African Government Information, “National Prosecuting Authority of South Africa,” May 24, 2011, <http://www.info.gov.za/aboutgovt/justice/npa.htm#sexual> (accessed July 8, 2011).

<sup>23</sup> See, for example, Lisa Vetten’s presentation at “Taking Forward the South African National Action Plan to End Gender Violence,” a preliminary working meeting report, March 18, 2010, [http://www.genderlinks.org.za/attachment.php?aa\\_id=11546](http://www.genderlinks.org.za/attachment.php?aa_id=11546) (accessed July 8, 2011).

Given the range of laws and policies in place, the problem of widespread gender-based violence in South Africa is to a significant extent due to inadequate implementation and, often, the absence of political will to give substance to the rights that exist on paper.

### *Sexual Violence*

Among the countries for which statistics are available, South Africa has among the highest rates of reported sexual violence against women in a country not at war. Some estimates predict that one woman in three in South Africa can expect to be raped at least once in her lifetime, and one in four will face physical assault by her domestic partner.<sup>24</sup> According to South African Police Services (SAPS), there were approximately 68,000 reported cases of sexual assault in South Africa between April 2009 and March 2010.<sup>25</sup> Children (persons below 18 years of age) are the targets in about half of the cases of sexual violence recorded by the police.<sup>26</sup>

Research conducted by the Medical Research Council (MRC) in 2002 estimated that at the time 88 percent of rape cases were not reported to the police or other authorities, and, therefore, the actual number of sexual offenses committed in any one year is around nine times higher than the reported number.<sup>27</sup> Reasons for under-reporting include low conviction rates, intimidation by perpetrators, fear of retaliation, shame and stigma attached to sexual violence, fear of secondary victimization by state authorities, and lack of faith in police. The reasons are the same as those that lesbians and transgender men gave to Human Rights Watch for not reporting violence and abuse.

Several national and regional studies have sought to establish the scope of sexual violence in the country. A Cape Town study from 2005 found that 40 percent of the women

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<sup>24</sup> Helen Moffett, "The Political Economy of Sexual Violence in Post-Apartheid South Africa," paper presented at the Harold Wolpe Memorial Trust's Tenth Anniversary Colloquium, "Engaging Silences and unresolved Issues in the Political Economy of South Africa," September 21-23, 2006, Cape Town, South Africa, <http://www.wolpetrust.org.za/conferences/colloquium/moffett.pdf> (accessed July 1, 2011).

<sup>25</sup> Department of Police, "Total Offences in RSA for April to March 2003/2004 to 2009/2010," [http://www.saps.gov.za/statistics/reports/crimestats/2010/categories/total\\_sexual\\_offences.pdf](http://www.saps.gov.za/statistics/reports/crimestats/2010/categories/total_sexual_offences.pdf) (accessed March 4, 2011).

<sup>26</sup> Department of Police, "The Crime Situation in South Africa: 2009/2010," [http://www.saps.gov.za/statistics/reports/crimestats/2010/crime\\_situation\\_sa.pdf](http://www.saps.gov.za/statistics/reports/crimestats/2010/crime_situation_sa.pdf) (accessed July 4, 2011).

<sup>27</sup> Adding to the underreporting is the distinction that many women and men tend to make between rape and coercive situations, which constitute the vast majority of sexual assaults and do not involve "overt violence" by the perpetrator who is often a family member or established sexual partner. Rachel Jewkes and Naeemah Abrahams, "The Epidemiology of Rape and Sexual Coercion in South Africa: An Overview," *Social Science & Medicine*, vol. 55, no. 7, 2002, pp. 1231-44. The 1997 report of the UN special rapporteur on violence against women reports that police in South Africa estimated that only 2.8 percent of rapes are reported to the police. <http://daccessdds.un.org/doc/UNDOC/GEN/G97/106/87/PDF/G9710687.pdf?OpenElement>, February 24, 1997, p.3-4, para. 6 (accessed July 8, 2011).

surveyed had experienced at least one instance of sexual assault<sup>28</sup>; 45 percent of the girls and women aged 14 to 24 in another 2005 study described their first sexual experience as having involved coercion, trickery, force, or rape<sup>29</sup>; over a quarter of the men in an MRC survey conducted in 2009 admitted to having raped a woman or girl, and almost half of the rapists had raped more than once, with about quarter of them having raped two or three women, about 7 percent having raped six-to-10 women, and over 7 percent admitting to having raped more than 10 women and girls.<sup>30</sup> Gang rape, or sexual assault that involves multiple perpetrators, also appears to be a widely prevalent phenomenon; in a 1999 Johannesburg study, more than a third of the female rape survivors reported being raped by more than one perpetrator.<sup>31</sup>

## Sexual Orientation and Gender Expression in South African Society

Butch lesbians and transgender men transgress gender norms and are hence both visible and vulnerable. Their masculine gender expressions signals their sexual orientation and they seldom need to “come out” and tell people that they are lesbians or transgender. That is, for butch lesbians and transgender individuals there is a close association between gender expression (i.e. the expression of femininity or masculinity through dress, hairstyle, and mannerisms) and sexual orientation. Femme lesbians tend to blend into conventional feminine norms and are not immediately recognizable as lesbians. This offers a measure of protection, but they face other challenges.

Gender expression is an important part of lesbian culture, where “femme” and “butch” frame social and sexual relationships. Femme lesbians are often invisible to the wider community, while butch lesbians and transgender men are hypervisible and more vulnerable to attack precisely because they do not conform to social expectations of women’s appearance. Gender non-conforming women sometimes have to either “prove” heterosexuality or risk being viewed and treated as lesbians. In some cases, lesbians, bisexual women, and transgender men enter into sexual and marital relationships with men in order to conceal their sexual orientation or gender identity. Lesbians who “pass” as heterosexual women—i.e., those whose gender expression seems more consistent with

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<sup>28</sup> Seth Kalichman, Leickness Simbayi, Michelle Kaufman, Demetria Cain, Chauncey Cherry, Sean Jooste, and Vuyisile Mathiti, (2005), “Gender Attitudes, Sexual Violence, and HIV/AIDS Risks among Men and Women in Cape Town, South Africa,” *The Journal of Sex Research*, 42 (4), pp. 299 – 305.

<sup>29</sup> Kelly Hallman, “Sexual Violence and Girls’ Education in South Africa,” 2005, <http://paa2005.princeton.edu/download.aspx?submissionId=51448> (accessed July 8, 2011).

<sup>30</sup> Rachel Jewkes, Yandisa Sikweyiya, Robert Morrell, and Kristin Dunkle, “Understanding Men’s Health and Use of Violence: Interface of Rape and HIV in South Africa,” June 2009, [http://www.mrc.ac.za/gender/violence\\_hiv.pdf](http://www.mrc.ac.za/gender/violence_hiv.pdf) (accessed July 8, 2011).

<sup>31</sup> Cited in Naeemah Abrahams, “Sexual Violence against Women in South Africa,” *Sexuality in Africa Magazine*, Vol. 1, No. 3, 2004, <http://www.arsrc.org/downloads/sia/sepo4/sepo4.pdf> (accessed July 8, 2011).

mainstream views of femininity—are occasionally not considered “real” lesbians, often even by other lesbians and transgender men. Because of the close association between lesbianism and masculinity, lesbians may be misunderstood as women who want to be men (*nongayindoda*); as people who have both female and male sexual organs or as incomplete women.<sup>32</sup>

Every gender non-conforming person interviewed for this report said their families, neighbors, friends, and other community members guessed or assumed their sexual orientation, or, at least, were not surprised to learn of it. For butch lesbians, and transgender men their manners, style of dressing, interests, the company they keep, their lack of romantic and sexual interest in boys, and other such characteristics “out” them whether they like it or not. In contrast to butch lesbians, feminine lesbians and bisexual women often pass for, or are assumed to be, heterosexual, including sometimes by other lesbians and transgender men. Sometimes, lesbians and transgender individuals attempt to conceal their sexual orientation and “pass” as heterosexual by adopting gender conforming dress and mannerisms. Individuals who are butch and obviously boyish as children may not only soften their gender expression as they grow older but also go into the closet as their sexual orientation emerges. The scrutiny, disapproval, and incessant pressure to be, or appear to be, heterosexual takes a toll on butch lesbians’ and transgender men’s ability to freely express their gender, even when it does not drive them into the closet.

## The Role of the Family and Church

For most South Africans, the family and church are two of the most significant spaces in which socialization and communal life occurs, and where social attitudes and ethical responses form. These are also the social spaces in which significant discrimination occurs. In order to contextualize violence, including rape, we need to understand how and where routine discrimination occurs; in this context, this means looking at the ways in which families and religious communities often fuel and facilitate a climate of intolerance. Addressing the experiences lesbians, bisexual women, and transgender men in their private and personal spheres, as opposed only to their interaction with the state, should help to raise awareness of the scope of the problems they face, and the need for a more robust response from the authorities working together with communities to overcome abuse and exclusion in these spheres.

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<sup>32</sup> An isiZulu term used derogatorily to denote women who violate dominant sexual and gender norms through their gender expression and/or sexual practices and preferences; in instances documented in this report, the term is used to specifically name female-born persons who are thought to want or pretend to be men.

In a South African context, the nuclear family comprising a mother, father, and children born within their marriage is the exception to the rule. Firstly, traditional family structures embrace a wide range of kin including grandmothers, aunts and uncles, cousins, half-sisters and brothers. Polygamous marriage is recognized under traditional law. Secondly, several factors have placed enormous strain on families, whatever form they take: the migrant labor system that separated men from their rural homesteads for long periods of time; early and teenage pregnancies; financial constraints of parents; and in the last quarter century, the devastating impact of HIV and AIDS that resulted in nearly two million orphaned children in South Africa as of 2009.

Of course each lesbian, transgender man, and gender non-conforming woman will have their own unique family experience. Some may be out from a young age, some accepted by their families, and others not.<sup>33</sup> For those who are rejected by their families, one reason families often express is fear of losing face in the community or, in particular, with the church.<sup>34</sup>

What is clear is that family response is critical to the physical, material, and emotional well-being of lesbians and transgender men. As one respondent, Vinny, put it: “If one member of the family will accept you, the whole community will accept you.”<sup>35</sup> The fear of rejection by family is so great that lesbians and transgender men often do not disclose their sexual orientation and gender identity to family members, who may nevertheless guess because of their appearance, behavior, or the company they keep.

The church is central to the lives of many South Africans, and the majority, approximately 80 percent, identify as Christian.<sup>36</sup> In the context of largely impoverished townships, the

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<sup>33</sup> For example, Tumeleng, now 24, was 16 years old when her family found out she was a lesbian; her mother did not speak to her for two years. Human Rights Watch interview with Tumeleng (pseudonym), East London, June 30, 2010. Similarly, when Mbali’s family, 49, an only child, discovered in 1990 that she was going out with girls her mother said she must choose between her and her sexuality, and as a result she did not speak to her mother for 10 years. Human Rights Watch interview with Mbali (pseudonym), Khayelitsha, June 22, 2010.

<sup>34</sup> For example, when Chisom, a transgender man, came out to his mother when he was 25, she said: “How can you do this? You are a disgrace to me. I will lose all my friends. ...How can you do this to me? How will people look at me in the community?” When Nyarai, 33, told her father that she was a lesbian at age 12, he responded: “You have embarrassed me. What about my church? What will people say?” Nobanzi, 29, came out to her grandmother when she was 21; she said: “My grandmother was shouting at me all the time. She chased me away, saying I can’t live there if I live this life. [She said], ‘This *stabane* thing is a sin. I have to go to church. How will people look at me when you are like this?’” Human Rights Watch interviews with Chisom (pseudonym), Durban, August 6, 2010; with Nyarai (pseudonym), Pietermaritzburg, August 4, 2010; and with Nobanzi (pseudonym), Pietermaritzburg, August 4, 2010.

<sup>35</sup> Human Rights Watch interview with Vinny (pseudonym), Lusikisiki, July 2, 2010.

<sup>36</sup> Compared to black populations, slightly higher percentages of white and “colored” residents of South Africa identify Christianity as their religion. See the census figures from 2001, Statistics South Africa, “Census 2001: Primary tables South Africa Census ’96 and 2001 compared,” Report No. 03-02-04 (2001), <http://www.statssa.gov.za/census01/html/RSAPPrimary.pdf> (accessed July 8, 2011). About 80 percent of South Africans are Christians and there are dozens of local and international church denominations in the country. The most widespread are the

church becomes a central feature of community life, providing spiritual and, often, material succor to the populace. Pastors and other church leaders wield immense influence on moral and social matters, influence that can directly impact lesbian and transgender members of the congregation, often in a negative way. While churches and religious organization are protected in their rights to their beliefs, and are under no obligation to admit members to the congregation who do not adhere to their creeds, the state has a responsibility to address situations where actions of private persons risk creating violations of the rights of others. On this context, consideration should be given to measures that can be taken to engage with churches about the negative consequences their actions have on lesbian and transgender persons.

An idea that circulates in many churches is that homosexuality is “un-Christian.” Conservative church teachings tend to shape public attitudes toward non-normative gender and sexual expression in South Africa. Although there are influential churches, including mainstream churches, that reject this homophobic stance and have taken significant steps to address homophobia both in theology and practice, many individual church leaders continue to use the pulpit to demonize lesbians and transgender men.<sup>37</sup> This significantly contributes to a climate of intolerance, which in turn fuels a climate of discrimination and violence.

## The Tip of the Iceberg

Many factors make people vulnerable to violence: geographical location, economic marginalization, non-normative gender expression, rejection by family, religious influences, lack of access to information, and normalized use of sexual violence as a form of control. Questions of women’s agency, sexual rights, and economic self-sufficiency are as central to addressing violence on the grounds of sexual orientation and gender identity and expression as they are to issues of gender-based violence more broadly.

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African independent churches, amongst which the Zion Christian Church has the largest membership. Independent churches are a syncretic blend of African traditional and Christian beliefs and practices. About a quarter of all black South Africans and 20 percent of all South African Christians belong to these churches. Another influential church is the Dutch Reformed Church, to which close to half of all white South Africans belong; there are also Methodist, Pentecostal, and Catholic churches in the country, as well as countless family and regional churches.

<sup>37</sup> This is not to deny the existence of churches that cater specifically to the LGBT population, such as the Good Hope Metropolitan Community Church; gay-friendly churches, such as the Deo Gloria Family Churches; or pastors in mainstream churches who take care to welcome all congregants regardless of their sexual orientation or gender identity. Six of the nine provinces have such spaces, though four of them have only one such church each, and only Gauteng has a significant presence of such spaces. See Deo Gloria Family Church, “LGBTI Churches in South Africa,” <http://www.deogloria.co.za/content/lgbti-churches-south-africa#nwp> (accessed July 1, 2011).

It is impossible to draw a clean line between gender-based violence as a whole and violence on the grounds of presumed or known sexual orientation, gender identity, and gender expression. For instance, men rape women who do not respond to their sexual overtures, women who refuse to date or have sex with men, women who are perceived to be disrespectful towards men, and those who are seen as “uppity.”<sup>38</sup> Frances, 20, was raped by a man in 2008. He disapproved of the fact that she appeared and behaved “like a guy” and often told her that he would “show her.” In a recently concluded trial, Frances sought to establish the relevance of her sexual orientation to the attack. She testified that the perpetrator knew she was a lesbian by her dress and mannerisms and by the fact that she openly dated girls, and that after he had raped her, he had told a neighbor that he did it to teach her a lesson. However, the testimony of the neighbor (who was not present in court and, therefore, could not be questioned) declared that the perpetrator had used the term “proud person” to describe Frances, not “lesbian.” Just as “uppity” is used to describe women who reject men’s advances and, therefore, “deserve” to be raped. The term “proud person” is in this case used by the perpetrator to refer to Frances’s gender expression and sexual orientation. Frances’s boyish appearance and unashamed lesbianism made her “proud” in the perpetrator’s eyes and, he says, prompted him to attack her.<sup>39</sup>

South African police do not disaggregate records of sexual violence by motive or by survivors’ sexual orientation or gender expression and identity. As a result it is difficult to estimate how many transgender men and lesbians are raped in South Africa every year because of their sexual orientation and/or gender expression.<sup>40</sup>

Research into violence and bias crimes on the grounds of sexual orientation and/or gender identity and expression generally shows that shame, fear of being outed,<sup>41</sup> and fear of further trauma or punishment can inhibit members of the LGBT community from reporting

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<sup>38</sup> Helen Moffett’s study contains a revealing story of a taxi driver speaking openly about how he and his male friends would go cruising on the weekends, looking for women to “gang-bang.” The driver, astonished that his actions amounted to rape, claimed, “But these women, they force us to rape them!” and explained that he and his friends “picked only those women who ‘asked for it’ ... the cheeky ones—the ones that walk around like they own the place, and look you in the eye.” See Helen Moffett, “‘These Women, They Force us to Rape them’: Rape as Narrative of Social Control in Post-Apartheid South Africa” in *Journal of Southern African Studies*, vol. 32, no. 1 (2006), pp. 129-144. By this account, butch lesbians, who are perceived to be usurping male privileges and “walk around like they own the place” would be obvious targets of sexual violence.

<sup>39</sup> From the magistrate’s judgment delivered at Nelspruit regional court on July 26, 2011 (Human Rights Watch staff attended parts of the trial).

<sup>40</sup> A 2004 study by an activist with 50 self-identified black lesbians conducted over the previous ten years found that 22 of the 50 lesbians had been raped. It is not clear if they were raped specifically because of their sexual orientation and/or gender expression. See Zanele Muholi “Being Inside/Outside.” *Agenda – Empowering Women for Gender Equality*, vol. 61, pp. 116-124. [http://www.mask.org.za/ZZ1\\_muholi.pdf](http://www.mask.org.za/ZZ1_muholi.pdf) (accessed May 22, 2011).

<sup>41</sup> Being “outed” in this instance is to have one’s sexual orientation revealed inadvertently by oneself through words or actions, or to be exposed as homosexual or bisexual by another person without one’s consent.



homophobic speech and crimes.<sup>42</sup> Moreover, the stigma attached to sexual assault, and the gendered domination it represents—where the attacker seeks to feminize the subject of the assault through the use of force—means it is likely that rape and other forms of sexual violence directed against individuals in LGBT communities are grossly under-reported. While data is lacking, anecdotal evidence suggests that under-reporting of sexual assault may be especially high among butch, masculine-presenting lesbians, and transgender men, who may be particularly anxious about the perceived feminizing effect of rape.<sup>43</sup> Often, lesbians and transgender men are afraid to seek medical and legal help and counseling for fear of secondary victimization because of their sexual orientation and/or gender expression.

The DOJ&CD took a significant step in May 2011 when it announced the formation of a “national task team” to investigate and combat bias crimes against members of the LGBT community. The team comprises representatives from government departments, including SAPS and NPA, civil society, the constitutionally based South African Human Rights Commission and Commission for Gender Equality, and the South African Law Reform Commission. At the time of writing, the task team was in the process of establishing its terms of reference and designing a national intervention plan.

While this report attempts to put the spotlight on violence on the grounds of sexual orientation and/or gender expression, lesbians’ and transgender men’s experiences do not fit neatly into linear narratives of discrimination and violence based on sexual orientation or gender expression. As Farai’s story below demonstrates, it is important to understand rape within a broader context of discrimination, violence, and low socio-economic status that shape the lives of lesbians and transgender men. To recognize only the overt use of force as constituting violence would be to miss the complex and dynamic nature of Farai’s experiences and the experiences of others in this report, and reduce them from actors and survivors to victims.

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<sup>42</sup> See, for instance, Lacey Sloan and Nora Gustavsson, eds., *Violence and Social Injustice Against Lesbian, Gay and Bisexual People* (New York: Haworth Press, 1998); Mary Swingonski, Robin Mama, and Kelly Ward, eds., *From Hate Crimes to Human Rights: A Tribute to Matthew Shepard* (New York: Harrington Park Press, 2001); and Human Rights First, *2008 Hate Crime Survey*, p. 137, <http://www.humanrightsfirst.org/wp-content/uploads/pdf/FD-081103-hate-crime-survey-2008.pdf> (accessed March 10, 2011).

<sup>43</sup> Such denial can put lesbians and transgender men at heightened risk of sexually transmitted diseases as well as pregnancy as they may refuse to seek medical interventions for fear that the sexual assault will be discovered.

## Farai's Story

Farai was a tomboy growing up in Lusikisiki, a rural town in the Eastern Cape. She sensed that she was different from other children, a “useless child,” and she dated men in order to suppress her feelings of being different. Her stepfather sexually abused her when she was younger, and would require her to find him female sexual partners whenever her mother was away. Farai's relationship with her mother suffered as a result, which made her feel further isolated.

Farai entered into a heterosexual relationship to fight her sexual attraction towards women, and she had a child. However, her gender expression remained non-normative, and in 2000, Farai, then 22, was beaten and raped by five men because she was dressed in a masculine way. They wanted to teach her, they said, to “behave as a woman.” She took an HIV test and found she was negative.

Farai's stepfather did not believe her when she told him she had been raped. In 2002 Farai married a man from her church just to escape her stepfather's house, and she had a second child. Her daughter fell sick when she was three months old, and Farai discovered that she and her child were HIV positive; she learned that her husband and two of his ex-girlfriends were positive. She had been tested for HIV when she had become pregnant the second time but the clinic authorities had given the test results to her mother, who had withheld them from her. The doctors told Farai she had five years to live.

Soon afterwards, Farai started AIDS treatment and literacy, leaving her sick child with her husband's family, who put their faith in prayers rather than in medicine, and her daughter got sicker. In 2003 Farai took her child away from her husband and got her anti-retroviral therapy, left her marriage, and thought to herself, “Am I really going to die without accepting who I am?” But she had nowhere to go, no one to talk to. “It's not like I could see people who were like me,” she said.

Today Farai is an activist in the LGBT movement; she lives with her female partner and their children. Her mother finally accepted her and is now supportive of her and her family.

Human Rights Watch interview with Farai (pseudonym), Pietermaritzburg, August 4, 2010.

## **Verbal, Physical, and Sexual Abuse: A Failure of Protection**

Lesbians, bisexual women, transgender men, and other female-born gender non-conforming people face a range of violence and discrimination in their daily lives from neighbors, relatives, friends, and strangers. This section details that abuse.

First, it examines common forms of verbal abuse against lesbians and transgender men, and the similarities and differences between the abuse targeted at butch lesbians, transgender men, and feminine-presenting lesbians and bisexual women.

Next, it provides detailed accounts of physical attacks against lesbians and transgender men, drawing out differences on the basis of gender expression. It then sets forth cases of sexual violence against butch and femme lesbians and transgender men, noting patterns of sexual assault, such as when men study the movements and habits of gender non-conforming people, lesbians, or transgender men before cornering them; instances of men turning on lesbian friends with no warning; and situations where men pretend to be gay to gain the confidence of lesbians.

### **Verbal Abuse, Ridicule, Harassment, and Intimidation**

Almost all Human Rights Watch interviewees said they had been verbally abused, ridiculed, or harassed at some point in their life—or, for a significant number of people, throughout their lives—because of their gender expression and presumed or known sexual orientation.

Verbal abuse and harassment leads lesbians and transgender men to be fearful and cautious as it constantly sends a message that people in their communities dislike them. Left unchecked, such antipathy circulates and reinforces prejudices among and within communities. Verbal abuse and harassment that people face due to their gender expression and/or sexual orientation can create or enhance negative self-image, shape public opinion, instill fear and shame in people, and inhibit their ability to access public space and seek redress or justice. It also creates and reinforces the climate of impunity within which, as the report demonstrates, violence can escalate from verbal harassment and abuse to physical and sexual attacks.

Almost all the people interviewed by Human Rights Watch said that male strangers and acquaintances subjected them to frequent name-calling and other forms of non-physical abuse, against which they rarely had recourse or defense.

Nontle, 34, grew up dating boys, but since 2005, when she had a child, has dated women. At the time of our interview with her she had a feminine-presenting girlfriend, although Nontle herself is butch. She is verbally harassed and abused when she is with her girlfriend. Nontle said,

We get comments: “Demonic people, satanic [people], we’re going to kill you, stab you” .... These things happen all the time. Guys will follow us if we are going to get a taxi. They try to grab my girlfriend. They say they will stab us, [because] we are taking their girlfriends.

People passing by in taxis yell at Nontle and even strangers make comments regularly. “When I’m dressed more butch and I enter a shop, it happens all the time,” Nontle said.<sup>44</sup>

Naledi, 24, is interrogated about her appearance every day.

People say, “Why look like a boy when you are a girl. God didn’t make women and women; he made Adam and Eve.” Guys drinking on the street say these things. I keep walking; don’t say anything.<sup>45</sup>

Nonyameko, 28, has often been told she is violating tradition.

People would say, “It’s not our tradition to be like this. You should be with men. At this age, why don’t you have children? Why are you not with a man?”<sup>46</sup>

Butch lesbians and transgender men face a particular brand of abuse that reinforces the constant threat of physical and sexual violence against them. Their masculine gender expression means that they are immediately identified as “lesbian” and their mere presence in a public space can elicit ridicule and abuse.

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<sup>44</sup> Human Rights Watch interview with Nontle (pseudonym), East London, June 29, 2010.

<sup>45</sup> Human Rights Watch interview with Naledi (pseudonym), Katlehong, June 14, 2010.

<sup>46</sup> Human Rights Watch interview with Nonyameko (pseudonym), Khayelitsha, June 21, 2010.

Lee, 21, is very boyish and faces verbal abuse and threats almost daily from strangers and acquaintances alike.

*Stabane* [lit. a person with two sexual organs; derogatory for homosexual] is my nickname. Every day I get called the name.... They say, “Where’s the snake, where’s the snake?<sup>47</sup> If you take my girlfriend, I’m going to do to you what you do to them”.... When I’m out with my girlfriend, guys say to her, “Aren’t we satisfying you? Why do you just want to get fingers? Why are you going out with a *stabane*?”<sup>48</sup>

Nosizwe, 25, was raped by four men who were initially confused and then angered by Nosizwe’s masculine gender expression. Nosizwe’s appearance also means unrelenting verbal harassment.

People ask me if I’m a man or a woman. I ignore them. If I listen to them, I’ll go mad. People say to me, “You’re 25, what type of person are you? You act like a man. Why don’t you be a woman?” All my life I have heard these things.<sup>49</sup>

Nbushe has been harassed by the same group of men every day, and is aware that the malice in the abuse can take physical forms.

To be called *stabane*, it’s an everyday thing. I don’t even think about it. Or people say to me when I’m walking with my girlfriend, “Who’s the boy?” or “Who’s the man?” The same guys make the comments day after day. I don’t feel safe. I don’t want to meet them at night.

For most butch lesbians and transgender men, such experience of verbal harassment is so normalized they sometimes claim to not see it as abuse. Mosa, 23, said:

I have never been verbally abused.... When I go to the mall, I get called names—*stabane*—or guys call us “men.” When I am walking with my girlfriend, guys hit on us, even on us butches, guys who hang around the corners.<sup>50</sup>

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<sup>47</sup> A number of interviewees referred to this common myth that lesbians “have snakes.”

<sup>48</sup> Human Rights Watch interview with Lee (pseudonym), Lusikisiki, July 2, 2010.

<sup>49</sup> Human Rights Watch interview with Nosizwe (pseudonym), Tzaneen, June 15, 2010.

<sup>50</sup> Human Rights Watch interview with Mosa (pseudonym), Katlehong, July 13, 2010.

But not everyone is unaffected by the abuse. Nthanda, 19, speaks of the constant threat and abuse.

Taxi drivers, guys on the road, think I'm trying to take their girlfriend. Taxi drivers and conductors will shout at me. They try to beat me up.... By my actions and by word of mouth, people know I'm a lesbian. Guys come up to me and ask if I'm a lesbian. [People say that] I need a man to teach me; if I had a man, I would learn to respect culture. Women say I'm a shame to women as a whole.<sup>51</sup>

Two of Kefilwe's friends were beaten and raped by a gang of men because they were butch lesbians. The survivors saw the men who had raped them around in the neighborhood frequently after the assault. The rapists told Kefilwe's friend,

Those lesbians are too *tsatsaragh*—forward; proud of themselves. They don't greet the guys. Whatever we did, we are going to do again. We will fix them.<sup>52</sup>

Men who rape lesbians are known not only to boast of the criminal acts in public, but some assert their intent to rape again because, as they say, lesbians do not treat “the guys” with due respect. Raping a lesbian can make men “heroes” in their communities and fuel a climate in which more sexual assault may occur. Zebo's close friend, also a lesbian, was brutally gang raped in late 2008 and left for dead by some men in her neighborhood. Zebo said, “The guys around treat those guys [the rapists] like heroes. They applaud them ... [they] are free and threaten to repeat what they did to [my friend] and do the same to every lesbian.”<sup>53</sup>

Incessant verbal abuse and threats create a climate of intense surveillance and fear. Masego, 26, said:

What if one day someone decides to show me how they think a woman should be treated? It isn't only guys who say things. Sometimes, straight women say, “Woman, you don't know what you're missing.” It may be a stranger or someone I know. It's hard to tell if they're joking or being serious. They talk sometimes as if you are not a human being. I feel insulted and afraid.<sup>54</sup>

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<sup>51</sup> Human Rights Watch interview with Nthanda (pseudonym), Pietermaritzburg, July 13, 2010.

<sup>52</sup> Human Rights Watch interview with Kefilwe (pseudonym), Katlehong, July 13, 2010.

<sup>53</sup> Human Rights Watch interview with Zebo (pseudonym), Kwa-Thema, March 13, 2009.

<sup>54</sup> Human Rights Watch interview with Masego (pseudonym), Nelspruit, July 11, 2010.

Zebo is immediately and easily read as a lesbian in her community. A butch lesbian friend of hers was brutally raped and beaten by some men in the neighborhood and left for dead, her body hung on a barbed wire fence. Zebo lives alone, in a house where the toilet is in the compound, outside the house.

Some guys in the neighborhood said [to me] they would lie on top of my roof and catch me as I go to the toilet and rape me inside my house. They say it often.... I go to a tavern with a friend. Guys comment on our dress style, harass us, [and] we leave.... I know the guys who threaten me. After what happened to [my friend], I got threats that I was next. ... They say, "It is not finished, it's the beginning."<sup>55</sup>

Sometimes, the verbal abuse is so threatening it prompts people to leave home. Nthanda said:

In 2006, guys from the neighborhood [in Durban, where Nthanda used to live] were hanging around. One guy would always say that if I had a man I would be a real woman. He said he would teach me, show me, teach me morality and respect. This happened for six months, every day.... My mum told me to let it go. I left for Johannesburg.<sup>56</sup>

### Katlego's Story

Growing up, Katlego, 21, was sometimes femme, sometimes boyish. Today everyone knows she is a lesbian because of the way she dresses and speaks. Neighbors tell her, "You were a good girl, then what happened? What went wrong?" Men say, "All you need is a good dick and you'll be okay. How can your mum allow this?"

Every time, I went out they would say this. I used to just stay at home. To my girlfriend, they say, "What do you see in this one? What do you want from this one because she doesn't have a dick?"

Some of the men who issue the threats are Katlego's peers, people she grew up with, others are older. One man warned her, "If I bump into you at night, I'll rape you so you can be straight again." Katlego said:

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<sup>55</sup> Human Rights Watch interview with Zebo (pseudonym), Kwa-Thema, March 13, 2009.

<sup>56</sup> Human Rights Watch interview with Nthanda (pseudonym), Pietermaritzburg, August 4, 2010.

I just don't say anything. Sometimes, when I'm walking, he will grab my hand and not let me pass. Whenever I meet him in the street he says this to me. I've never told anyone.... Sometimes, I feel like I can cry or scream.... He would grab me and say, "Today you'll go with me." He would hold me tight and even try to kiss me. He's strong. I would say, "I'll tell my dad," and he'll say he doesn't care.

Katlego has reason to be fearful; her butch lesbian friend was raped by young men she once considered to be friends. Katlego knows the rapists and sees them around.

They raped her in her room. They pretended to be her friends and that's how they got her.... They say to her, "Don't pretend you're a boy, because we did sleep with you."

When Katlego tried to help her friend, a long-time male friend said to her, "If I had a crew of guys, I would take you out of your house and take you to [a busy part of the township] and rape you and kill you." Katlego stays at home to avoid "these things."

The men who raped Katlego's friend did not hide or deny what they did; instead, they flaunted their crimes, arguably serving as role models for other men.

**Human Rights Watch interview with Katlego (pseudonym), Katlehong, July 13, 2010.**

Femme lesbians, who are often read as heterosexual by strangers, are subject to the same kinds and levels of sexual harassment as directed at women in general; however, they often experience an added dimension. Nkosazana said:

Being a woman you get harassed all the time, especially if they know you're a lesbian. They say, "We can show you what a real man can do, instead of fingers and tongue. I'll show you what a real man is."<sup>57</sup>

The gender-conforming appearance of feminine-presenting lesbians may mean that they are only "outed" when they are in the company of, or appear to be romantically involved with, a butch lesbian or transgender man. Once a femme lesbian has been outed, the abuse she gets may well be the same as experienced by butch lesbians. According to Denise, 21:

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<sup>57</sup> Human Rights Watch interview with Nkosazana (pseudonym), Pietermaritzburg, August 4, 2010.



They say I have a snake. I don't go out of home late now because [the men in the neighborhood] keep promising to rape me.... I don't know them but I know they are serious.... The guys who make the comments, they warn other women not to associate with me.<sup>58</sup>

Vicki gets “constant verbal abuse” at taxi ranks.

They say, “How are you getting satisfied with finger and tongue? You need a penis.” One time a guy took out his private parts and said, “This is what you need.”<sup>59</sup>

Dorothy is threatened almost every time she goes out.

Usually... guys try to propose to you if you're walking. [They say,] “Come here. You are a girl, you can't fuck.” They see you're a lesbian ... [but they say,] “You won't be a guy. You're scared of penis.... You're running away but this is something you have to do.”

## Physical Assault

Several interviewees—mostly but not exclusively butch lesbians and transgender men—had been physical assaulted due to their gender expression and sexual orientation. They sometimes fought back when attacked to defend themselves, their friends, and their partners.

Most people who are called names or abused do not respond because they know it could result in a fight. Tau, 16, was attacked near a carwash as she walked with three friends. A man called them moffies [derogatory for gay men] and stabane. When Tau challenged him, he pushed and beat her. Later that day, Tau went to the man's house with her brother to confront him. The man said, “I beat her because she is trying to be a boy; she is not a boy.”<sup>60</sup>

Vinny was beaten up by her girlfriend's family. In November 2008 some of her friends had appeared on television and openly said they were lesbians. As a result, Vinny was outed in the community because she was often seen spending time with them.

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<sup>58</sup> Human Rights Watch interview with Denise (pseudonym), Lusikisiki, July 2, 2010.

<sup>59</sup> Human Rights Watch interview with Vicki (pseudonym), Pietermaritzburg, August 4, 2010.

<sup>60</sup> Human Rights Watch interview with Tau (pseudonym), Khayelitsha, June 22, 2010.

Around 7:00 p.m. that night, [my girlfriend's] mother, brother, other people from her community came to my house with sticks and stones. My girlfriend was covered in blood. They came inside. Her mother told the boys to hold me, and they beat me a lot. They broke my left arm. Other community members came when they heard the sound, and I escaped.... I had a cast for a month.<sup>61</sup>

Montsho tries to pick her fights based on whether she can avoid extensive injury.

When [my girlfriend and I] are walking together, guys who know me, try to propose to her.... Last time, I lost a tooth. Sometimes there are two guys, sometimes just one. I fight with them then.<sup>62</sup>

People have even been attacked in their homes. One night in May 2008 five armed men broke into Kaya's house where she lived with her mother. The 26-year-old said:

They took my mum to one room and tied her up. Three of them took me into another room. [They were saying,] "So you're a man? You think you're a man?" ... They were beating me up, hitting me on the head and shoulders with a gun. They almost raped me... then something happened and they decided to leave. I'm not sure what happened.... I felt like it was my fault somehow. You know, you'll be a target by dressing like this.<sup>63</sup>

Femme lesbians sometimes face direct attacks from men they have left, rejected, or whose advances they spurn. Gloria was attacked by a man she turned down. "Everyone knows I'm a lesbian from the way I dress. One guy proposed; he did it to provoke me. I told him 'no' and he tried to beat me."<sup>64</sup>

Abigail, 37, and her butch girlfriend often found themselves involved in fights.

One time my girlfriend and I were in a bar. A guy wanted to talk to me.... I was ignoring him. He came [over] and said, "Can't you see I'm calling you?" He wanted to talk to me in private. [My girlfriend] intervened. He started

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<sup>61</sup> Human Rights Watch interview with Vinny (pseudonym), Lusikisiki, July 2, 2010.

<sup>62</sup> Human Rights Watch interview with Montsho (pseudonym), Katlehong, July 2, 2010.

<sup>63</sup> Human Rights Watch interview with Kaya (pseudonym), Pietermaritzburg, August 4, 2010.

<sup>64</sup> Human Rights Watch interview with Gloria (pseudonym), Nelspruit, July 11, 2010.

yelling at her and telling her to mind her own business. She said I was her business. He started slapping us. Other people tried to intervene and we got away.<sup>65</sup>

Physical assaults are sometimes accompanied by sexual violence. Oyama was walking with her girlfriend one evening in March 2009.

It was quiet; we were walking on the road. Four guys came to us and asked how I can love a girl when I'm a girl myself. The guys beat me up. One of the guys took my girlfriend away and raped her. They were kicking me in the chest with their feet. Three guys were beating me. It felt like a long time. My ribs were paining, they felt broken, I couldn't breathe. When they were finished I could stand up and walk, but it was painful. I didn't know the guys. The one who took my girlfriend away, I had seen him near my girlfriend's house.... I couldn't identify [the others]. I broke up with my girlfriend two weeks ago.<sup>66</sup>

## Sexual Violence

Research suggests that women in heterosexual relationships who are sexually assaulted are often attacked by their partners, ex-partners, or by family members and other acquaintances in their homes or in neighbors' homes; about a third are attacked by strangers.<sup>67</sup> In contrast, our research indicates that lesbians and transgender men are most often attacked by strangers, recent acquaintances, and sometimes by friends; most often, the attacks occur in isolated public places or in private spaces to which they are taken against their will.

At 15, in 2000, Nosizwe, who presents as masculine, was "wearing clothes like a boy. I played harder than the boys." One Saturday night, when returning alone from a school sports trip, Nosizwe was accosted by a group of four strange men.

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<sup>65</sup> Human Rights Watch interview with Abigail (pseudonym), East London, June 29, 2010.

<sup>66</sup> Human Rights Watch interview with Oyama (pseudonym), Katlehong, July 7, 2010.

<sup>67</sup> See CSVr, "Tracking Rape Case Attrition in Gauteng: The Police Investigation Stage," [http://www.csvr.org.za/index.php?option=com\\_content&view=article&id=1498%3Atracking-rape-case-attrition-in-gauteng-the-police-investigation-stage&Itemid=2](http://www.csvr.org.za/index.php?option=com_content&view=article&id=1498%3Atracking-rape-case-attrition-in-gauteng-the-police-investigation-stage&Itemid=2), (accessed on April 1, 2011), p. 18, for numbers suggesting that at least 50 percent of rapes against women in heterosexual relationships happen inside the home, which makes traditional policing measures inadequate in such cases,. Also see CSVr, "A State of Sexual Tyranny: The Prevalence, Nature and Causes of Sexual Violence in South Africa," [http://www.csvr.org.za/index.php?option=com\\_content&view=article&id=2453%3Aa-state-of-sexual-tyranny-the-prevalence-nature-and-causes-of-sexual-violence-in-south-africa&Itemid=2](http://www.csvr.org.za/index.php?option=com_content&view=article&id=2453%3Aa-state-of-sexual-tyranny-the-prevalence-nature-and-causes-of-sexual-violence-in-south-africa&Itemid=2), (accessed on April 1, 2011), for similar figures and for a comprehensive analysis of the problem of sexual violence in South Africa,.

When I passed them, they asked if I was a girl. I said, “no.” “Are you a boy?” I said, “yes.” I passed them, then, one of them said, “This is a girl. Let me show you it’s a girl.” They came after me, grabbed me; started hitting me.... They raped me—three or two or all of them, I don’t remember. I woke up in the morning. My clothes were torn. There was blood. I was in pieces.

I felt like I’m not a human being. I didn’t leave home for days. I thought ... it will happen again.<sup>68</sup>

The rape changed Nosizwe’s life. Nosizwe got pregnant and her mother is raising the child.

Farai, 32, from Lusikisiki, a semi-urban area in the Eastern Cape, was also attacked because of her gender expression—specifically, she says, because of how she dressed. In 2000, when she was 22, Farai was gang raped while out jogging.

One guy came to talk to me. I didn’t want to talk to him and he started acting very funny and we [started] fighting. He slapped me. Another guy came, I knew [him]; he was [known in Lusikisiki as] a rapist and a thief. I was fighting hard by this time. I don’t know where the third and fourth guys came from. They were saying they will teach me how to behave as a woman. They said I should not be tough. They were saying, “Who do you think you are?” I was fighting all of them and still I was winning. But the fifth guy ... that’s when they get me. He came from behind and hit me on the back. That’s when I fell down, and I think I passed out.

A guy who was passing found me like that hours later and took me home. I had a severe headache for four days ... I thought I was bleeding. I got home and bathed and the feeling didn’t leave me. I bathed again. Then I discovered I wasn’t bleeding. They had poured petrol on me. ... I didn’t tell anyone because I thought no one would believe me. And I thought I would forget.<sup>69</sup>

Other interviewees also described being sexually assaulted, sometimes multiple times, by strangers and acquaintances. Onalenna, who lives in Tzaneen in Limpopo province, was first raped in 1994, aged 15, by her soccer coach; the second time was in 1996, when three men, calling her monnamusadi (“man-woman”) dragged her and her girlfriend into bushes

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<sup>68</sup> Human Rights Watch interview with Nosizwe (pseudonym), Tzaneen, June 15, 2010.

<sup>69</sup> Human Rights Watch interview with Farai (pseudonym), Pietermaritzburg, August 4, 2010.

as they walked one evening in Polokwane, a nearby town. She was raped a third time in April 1999, also in Polokwane, by men who had watched her movements and planned the attack in order to “teach” her a lesson and transform her into a “real woman.”<sup>70</sup>

The risk of attack in bars and public spaces often compels lesbians and transgender men to adapt their lifestyle and the ways in which they socialize; often, they choose to drink and socialize in the relative safety of their homes. But even private homes are not always safe. In the early hours of the morning on February 23, 2008, Frances was asleep in her house in Kabokweni, a town close to Nelspruit in Mpumalanga province, when two men—one of whom she recognized by his voice as someone who had repeatedly asked her why she lived “like a guy”—broke into the house. The man whom she recognized forced her out of the house at knifepoint, taking her about 300 meters away to a nearby river, where he stabbed her in the head and raped her for an hour and a half. A neighbor later told Frances that the attacker had told him he would teach her “not to be a man.”<sup>71</sup>

### Dumisani’s Story

Dumisani has been raped more than once, both by strangers and by a casual acquaintance who had studied her movements.

On 12 September, 2005 at 6:00 p.m., Dumisani—then 17—was walking near her house in Mdantsane, Eastern Cape, one of South Africa’s largest townships, when a man began talking to her.

...the guy asked if I was in love with him. I didn’t know what he was saying. I just said “no” and tried to leave but he blocked me. It was dark now. I was crying and asking him to leave me alone. He started beating me. He pulled out a knife. I ran but I fell down and he got me.

He knew things about me. He knew where I lived and when I came home, and who came to my house, what friends I had. He had seen my lesbian friends coming home and he talked about how we all dress like men.

He dragged her to the bushes, beat, and raped her until late at night; he then said he would walk her home. Dumisani was afraid to go to police because the rapist lived nearby, had

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<sup>70</sup> Human Rights Watch interview with Onalenna (pseudonym), Tzaneen, June 15, 2010.

<sup>71</sup> Human Rights Watch interview with Frances (pseudonym), Nelspruit, July 11, 2010.

clearly watched her closely, and was known locally to be dangerous. A schoolteacher who noticed there was something wrong took Dumisani to the police, for an HIV test, and to see if she was pregnant. She was thankful to learn that she was not pregnant but the police did not arrest the man even though she identified him to them, and she later saw him in the area.

I really hated myself then.... Even to this day, I can't move on. I can't forget. When guys come to talk to me, it reminds me of what happened. Something clicks and I get angry. I've got this anger in me. I get so stressed that I fall sick.... I don't want to be around people, I just want to drink to forget everything.

But more was to come. One Friday evening in October 2009 Dumisani was returning from college in East London, and walked past a club. Two men followed her and dragged her to nearby bushes:

[They] took turns on me. I was begging them to leave me. I recognized the voice of one of them. They were beating me. I struggled and struggled. Everything came to a pause.... Everything stopped for me.

I didn't know what to do. There are lots of those guys around, they are connected. I know [that] those guys know me. They wanted to do this to a butch lesbian. When they were raping me, one guy said, "You think you're so tough, you think you're guys, you lesbian shit." If I brought a case, sure, they might get arrested but they [would] have guys outside and they would get me. I know they'll get me.

Dumisani had an abortion at the end of 2009 and takes regular HIV tests.

Human Rights Watch interview with Dumisani (pseudonym), East London, June 28, 2010.

All too often, like Dumisani, rape survivors face the trauma of seeing their attackers at large after the attack; this also serves to intimidate the survivors and erode their already fragile confidence in the police and the criminal justice system. This problem is a common one, not limited to the rape of lesbians.

Mosa was raped by a neighbor in 2003 when living in Klerksdorp, also known as Matlosana, some 125 miles southwest of Johannesburg in Gauteng province. After the rape, the man said: "Remember, even if you talk, I will go to jail, that's fine, but I will get people

to kill you, and the case will just disappear.” Terrified, Mosa told her mother what had happened three days later, and the two went to the Kanana police station to file a rape charge. The rapist was arrested but freed on bail while Mosa was hospitalized for an operation related to injuries she sustained during the rape. He started intimidating her when she returned home. Mosa got a protection order from the police.

The case stagnated and feeling unsafe living so close to the rapist, Mosa and her mother moved to Lusikisiki in the Eastern Cape. The police informed her that she would have to testify in Gauteng. In mid-2004 she learned she was HIV positive. Sometime in 2005, while she was still in the Eastern Cape, the investigating officer called her and told her she needed to testify in court in Gauteng the next day. Strapped for money, Mosa was unable to travel the 400 miles (about 700 kilometers) at a day’s notice; she does not know what, if anything, happened to the case because the police did not contact her again and she gave up.<sup>72</sup>

As in Mosa’s case, the psychological and physical effects of such attacks can endure. Saden, 19, who was 16 when friends raped her in 2007 in a village in Limpopo province, also found out that the assault had left her HIV positive. The police refused to register a case of rape when Saden approached them because of her gender expression; they would not believe that Saden was not a man and instead harassed and ridiculed her about her physical appearance. She is currently on anti-retroviral therapy.<sup>73</sup>

Lee, who was out as lesbian and raped by eight men at a party in 2006, stopped trusting people after the attack and began drinking heavily. She became pregnant due to the rape.

I wanted an abortion. I went to a private hospital. The counselor said they wanted to ask me two questions. “One, can you live with yourself knowing you killed a baby? Two, what will you think every time you see a baby?” I wanted to just kill the baby.... It was in December 2006 [that] I went for counseling. By the time I went to the hospital it was four months later. There was no point in thinking about [an abortion]. My mother takes care of the baby.<sup>74</sup>

Carol, 35, was betrayed by a female cousin when she was 19. Carol has always been very butch and her cousin did not approve of Carol’s sexual orientation. “She would say to me,

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<sup>72</sup> Human Rights Watch interview with Mosa (pseudonym), Lusikisiki, July 2, 2010.

<sup>73</sup> Human Rights Watch interview with Saden (pseudonym), Tzaneen, June 15, 2010.

<sup>74</sup> Human Rights Watch interview with Lee (pseudonym), Lusikisiki, July 2, 2010.

‘Why are you making yourself a boy,’” Carol said. Carol’s cousin invited her to a party and insisted that she drink. Carol found out later that her cousin spiked her beer that night and that her cousin’s boyfriend raped Carol while she was unconscious.

I woke up the next morning in another room, naked, there was blood all over me. There was money under the pillow. I was crying. My big sis came home and I told her something had happened. I was 19.... Then I found out I was pregnant. I wanted to kill myself right away.<sup>75</sup>

Carol’s child is now 15 years old and has been raised by her mother.

In January 2009 Nkosazana went out with her cousin and her cousin’s boyfriend, who brought along a male friend. The male friend propositioned Nkosazana repeatedly over the course of the evening; she refused him over and over. Angry, the man took her to a township far from her home in Imbali, in KwaZulu-Natal province, in the middle of the night and threw her out of his car. The street where Nkosazana was abandoned and deserted; two men walked by, took her at knifepoint to a nearby shack, and raped her. She still has not come to terms with what happened. She said, “The rape comes back to be me in flashes and I break down. I broke down so badly I was hysterical; I was vomiting; I wasn’t eating; I couldn’t sleep.”<sup>76</sup>

Ashanti, 39, lives in Kwa-Thema, a township close to Johannesburg. Over the years, she has faced verbal abuse, threats, physical attacks, as well as domestic violence in a same-sex relationship; however, the assault that affected her most was that which took place on her twin 13-year-old daughters one evening in 2001 as they were returning from a local beauty contest.

[My daughters] never got home. I looked for them all night. At 3:00 a.m., I broke. I told my mum something’s wrong ... they are not fine. The next day, Sunday, at 11:00 a.m., my daughters came home; their long skirts were black. When the men were raping my daughters, they said to them, “We are doing this so you grow up knowing you must sleep with men.”

One of my daughters committed suicide after six months. She wanted me to kill her. She couldn’t deal; people would say things to her. That’s how I lost

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<sup>75</sup> Human Rights Watch interview with Carol (pseudonym), Ermelo, July 10, 2010.

<sup>76</sup> Human Rights Watch interview with Nkosazana (pseudonym), Pietermaritzburg, August 4, 2010.



my baby. I feel guilt. It was because of me. If I [had] never exposed them to [my lesbianism], they would still be alive.

Since then Ashanti has tried to kill herself five times, most recently in 2007. Her other daughter has also attempted suicide.

It comes over you, you can't resist.... The talkative one, who used to be proud of her mum, she died. I don't want to talk about it. There's no closure.<sup>77</sup>

Although femme lesbians are often read as being heterosexual and face the same risks as other women, if their sexual orientation becomes known this may increase their risk of sexual violence.

In November 2007, Puleng, a femme lesbian who has dated men and has a child with an ex-boyfriend, was living in eMbalenhle, Mpumalanga province. She was returning from a club one night with her female cousin, who disapproved of Puleng's lesbianism, when four men accosted and raped her in nearby bushes. Her cousin walked away. Puleng said:

They said to me "We'll show you you're a woman".... I thought maybe by telling my cousin, by saying openly I was a lesbian, I provoked them.... They believe women should be with men....<sup>78</sup>

Abigail, 37, lives in a small town in the Eastern Cape where people know she is a lesbian. In March and April 2010 she was in Durban, in KwaZulu-Natal, for training, where she met a man through a friend who expressed interest in her. Abigail's friend told the man that Abigail was a lesbian.

We went out.... He tried to talk to me, he proposed. I said, "No." He asked, "Are you not interested in me or just not interested at all?" I told him, "You're a nice guy, but I don't go for men."

While giving Abigail a ride back from the outing, the man tricked her into going to his house. Once there, he raped Abigail and then fell asleep. Abigail escaped. "I was just walking, not knowing what direction, there were dogs barking," she said. "I was just

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<sup>77</sup> Human Rights Watch interview with Ashanti (pseudonym), Kwa-Thema, March 18, 2009.

<sup>78</sup> Human Rights Watch interview with Puleng (pseudonym), Ermelo, July 10, 2010.

wearing my top, naked on the bottom except for underwear. I kept walking, praying I would see someone....”<sup>79</sup>

Although Abigail registered a case of rape and was given a case number (140), she was later told by the investigating officer that her case was in fact registered as number 139, which she discovered did not treat her complaint as one of rape. Abigail was not able to transfer the case to the Eastern Cape, where she lives, though she eventually managed to have her case re-registered as a rape case. The defendant argued during trial that the sex had been consensual, and, in July 2011, the regional court in Durban found the defendant not guilty of rape on the grounds of insufficient evidence. Abigail told Human Rights Watch that the judge commented that Abigail’s testimony as to whether she had consented to sex or not was not reliable because she had decided she was a lesbian after she had already borne three children.

In January 2006 Nontle was raped by her ex-boyfriend when she left him for a woman.

My ex-boyfriend guessed I was a lesbian. I was wearing baggy jeans, t-shirt, takkies [sneakers], baseball hat, dreads. He grabbed me and started beating me. ... I knew there was no point in going to the police. He came back the next week waving his gun saying he could kill me then if he liked.<sup>80</sup>

Vicki was regularly raped by her husband, who knew she was a lesbian. “He called me stabane, beat me up, raped me, to show me how I should be receiving pleasure,” she said. She was also raped in 1995, when she was 20 and lived in Pietermaritzburg, KwaZulu-Natal. The rapist was her male best friend who attacked her at a party after seeing her kiss another woman.

He said, “Let’s take a walk, smoke a joint” ... We went away from the house and then he raped me. During the rape he said, “This is what you should be feeling. Hopefully now you’ll be with a man.” I had a bust lip. He hit me over the head. I had known him for years.

Vicki became pregnant after the rape and had a child who now lives with her mother. The parents of the former friend, who raped Vicki, live next door to her parents.<sup>81</sup> Vicki did not make a criminal report to the police about the rapes by her husband or her former friend.

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<sup>79</sup> Human Rights Watch interview with Abigail (pseudonym), East London, June 29, 2010.

<sup>80</sup> Human Rights Watch interview with Nontle (pseudonym), East London, June 29, 2010.

<sup>81</sup> Human Rights Watch interview with Vicki (pseudonym), Pietermaritzburg, August 4, 2010.

Rutendo grew up in Pietermaritzburg. Aware from the age of 14 that she was a lesbian, she was afraid to come out and instead joined a local abstinence group as a foil for not having sex with men. She was raped by a close family friend and, as with Mosa, Tendai, and Saden, the perpetrator infected her with HIV. The man who raped her was a family friend who lived close to her parents' house.

I got pregnant and my mother found out. She tried to get me married to the guy. I refused. My mother was happy when I was pregnant. The guy apologized; he wanted to marry me. I refused.

I thought about getting an abortion. I tried to take some pills to kill myself and the child but I ended up in hospital. I hated each and every moment. I didn't want to breastfeed the child. She always reminded me of what happened. She looks like him. My mum wanted him to pay maintenance, but he said he wanted the child.

I wanted to give her up for adoption, to a lesbian couple. But she started getting sick at two weeks, so, I got tested [and found out that she was HIV positive].... I'm on ARVs [anti-retroviral therapy] now. My daughter is [HIV positive]. She also has kidney and heart failure problems.<sup>82</sup>

In 2002 Lefu worked in a gay bar in Johannesburg. A patron of the bar named Patrick told her he was gay and they became friends. One night late in 2002, Lefu and a gay male friend went out with Patrick and a male friend of his. Patrick took them to a flat in a deserted building and there became aggressive and started hitting Lefu and her friend. Lefu, shocked, demanded that she and her friend be allowed to leave. Patrick pulled out a gun:

He said to us: "When you take a good look at me, do you think I'm gay? I've got a wife. I've got kids. What makes you think you're a man?... 'This thing' [homosexuality] doesn't make sense.... This is a sin, God doesn't like this."

Patrick and his companion repeatedly raped Lefu and her gay male friend and made them take showers in the morning before leaving. As they returned home, Lefu's friend told her, "If you tell anyone, don't include me." Lefu speaks of the debilitating effect the assault had on her physical and mental well-being:

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<sup>82</sup> Human Rights Watch interview with Rutendo (pseudonym), Pietermaritzburg, August 4, 2010.

Some situations don't just go away.... They keep on coming back. It destroyed my studies; they were going to cancel my learnership [scholarship]. I lost self-esteem. [I felt as if] people [could] do whatever they want with me; I [couldn't] do anything [to stop them]. It affected my relationships. [If] someone approached me, I couldn't say "no." I was messed up big time. I felt dirty. I felt as if people were looking down at me, as if they knew what had happened to me.<sup>83</sup>

Some interviewees reported that their girlfriends had been raped for being lesbians. Terry's ex-girlfriend was attacked in Gugulethu township outside Cape Town in 2004 on her way home from work. According to Terry:

She was attacked by five guys.... They knew her. They said they wanted to teach her about men and they wanted her to leave girls alone. She played soccer. Everyone knew [assumed] that she was a lesbian.... She didn't want to talk about [the rape]. She went to the clinic but didn't lay a case because she wasn't fully out and [her sexual orientation] would have come out.... Her family still doesn't know.<sup>84</sup>

Tumeleng's ex-girlfriend was also raped in March 2008 by men who knew Tumeleng by name and told her girlfriend "she shouldn't go out with girls."

She didn't tell anyone. She needs counseling. She hates her life. She blames everyone. She started drinking more. She tried committing suicide twice, [the] last time in January 2010.... I went to a counselor...[who] was interested in my sexuality only; it was no use. She kept asking why I date women, how we have sex, etc.<sup>85</sup>

Masego's ex-girlfriend narrowly escaped being raped by some men who cornered her as she was leaving Masego's house after a visit. Masego said:

They had seen us together and they said to her, "You look straight." They tried to stab her but a nearby guy saved her. She broke up with me to be safe. She said she was going to go back to dating guys.<sup>86</sup>

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<sup>83</sup> Human Rights Watch interview with Lefu (pseudonym), Johannesburg, March 17, 2009.

<sup>84</sup> Human Rights Watch interview with Terry (pseudonym), Khayelitsha, June 22, 2010.

<sup>85</sup> Human Rights Watch interview with Tumeleng (pseudonym), East London, June 29, 2010.

<sup>86</sup> Human Rights Watch interview with Masego (pseudonym), Nelspruit, July 11, 2010.

## Fear, Vulnerability, and Staying Safe

Lesbians and transgender men live in constant fear of harassment as well as physical and sexual violence. This fear is so pervasive that even those who experience it first-hand take it for granted and often do not talk about it as a specific hardship unless asked directly. For instance, Nkosazana, 25, who was raped in 2009 and is now out as a lesbian in the community, refers to the harassment she endures as “normal.”<sup>87</sup> With a few exceptions, all interviewees cited being sexually assaulted as their primary fear.

Several lesbians, transgender men, and gender non-conforming interviewees said that it was all but inevitable that they would eventually be raped. Nombeko, who is 18 years old and dating a butch lesbian, said:

I’ll get raped because I’m a lesbian. My girlfriend stays alone. Everyone knows this. For sure, they are planning something. It’s just that the day hasn’t come yet. I don’t want guys in my community to know when I’m [at my girlfriend’s house]. They will come when I’m there. They will rape both of us.<sup>88</sup>

Sibonakaliso, 25, too, seems to have accepted the possibility that she will be raped because of her sexual orientation, though she tries to lower the odds by hiding her relationship with her girlfriend.

One day [rape] can happen to me. I know this. I have a girlfriend [but] I tell people she’s just a friend. I hear stories of lesbians being attacked, raped, murdered.... One day that might happen to me.<sup>89</sup>

Sibiniso, 41, only feels safe in the company of lesbians.

I don’t stay late [in public places]. I don’t trust straight men, also straight women—they have boyfriends or other male friends. They can rape me, they will rape me.<sup>90</sup>

Faced with constant threat and with little reason to believe that police or anyone else will intervene or protect them, lesbians and transgender men develop individual and collective

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<sup>87</sup> Human Rights Watch interview with Nkosazana (pseudonym), Pietermaritzburg, August 4, 2010.

<sup>88</sup> Human Rights Watch interview with Nombeko (pseudonym), Khayelitsha, June 21, 2010.

<sup>89</sup> Human Rights Watch interview with Sibonakaliso (pseudonym), Thohoyandou, June 14, 2010.

<sup>90</sup> Human Rights Watch interview with Sibiniso (pseudonym), Kwa-Thema, March 18, 2009.

strategies to try to stay safe. Some of the common strategies—which greatly curtail their personal freedom—include never being alone in public, especially after dark; not acting in ways that attract men’s attention; never going anywhere without reliable transportation; carefully choosing the spaces where they socialize; and not dating people from the same neighborhood in order to reduce the chances of being widely known as lesbian.<sup>91</sup>

Kefilwe, whose friends were raped, does not venture out late or far from home.

The guys [who raped my friends]... know how to dodge the police. No one knows exactly where they are staying. Since this happened, I decided [that] if I go out, I’ll go nearby and be back home by 10 [p.m.].... I didn’t even want to go to the shop. If I saw those guys ... I know I will be next.<sup>92</sup>

While some people find ways to be relatively safe by restricting their movements, others find that the only solution is to stay at home (which may not be completely safe spaces either, as previous testimonies have shown). Mosa said:

I’m always indoors, do things at home or in the neighborhood. I never go out late, as it’s dangerous out here.<sup>93</sup>

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<sup>91</sup> Human Rights Watch interview with Tendai (pseudonym), East London, June 29, 2010.

<sup>92</sup> Human Rights Watch interview with Kefilwe (pseudonym), Katlehong, July 13, 2010.

<sup>93</sup> Human Rights Watch interview with Mosa (pseudonym), Katlehong, July 13, 2010.

## I. The Role of Police

*The police said, “Why are you running away from men? They were only giving you what you wanted.”*

—Lesedi, 20, describing the reaction of police at Lamontville police station, KwaZulu-Natal, when she went with a friend to report a rape, Durban, August 6, 2010

*People [in the community] said, “You’re wasting your time opening a case against cops. You must drop the case and forget about it.” The cops who beat us are still at the police station.*

—Renang, 31, Johannesburg, August 2, 2010

*When you get no help from the police, where do you go? ... If ever anything happens to me, I won’t go to the police station. I know I won’t get help from them.*

—Munashe, 20, Katlehong, July 14, 2010

The impunity with which lesbians and transgender people are attacked indicates a failure of the South African Police Services to prevent violence against the population at large and against women and transgender people in particular. A small minority of interviewees mentioned that police play a role in ensuring their safety.

This section presents the experiences of those individuals interviewed by Human Rights Watch who did go to the police. It must be noted that most people Human Rights Watch spoke to did not see the police as playing a role in keeping them safe or providing access to redress when they were attacked or threatened.

The experiences that lesbians and transgender men have when dealing with police fall into three broad categories. The first and largest set of interactions is characterized by police verbally abusing and demeaning lesbians and transgender men, and subjecting survivors of crimes and their friends and family to secondary victimization. The second category includes instances of police inefficiency, corruption, inaction, and occasionally even complicity with perpetrators, creating a climate of impunity for criminals. In the third category, police themselves are the primary perpetrators of violence. The overall result of these police shortcomings is a pervasive lack of faith in the police, which is examined at the end of the section.

## Secondary Victimization by Police

Of those interviewees who approached the police, most spoke of police verbally abusing and demeaning them and their friends and family. Several people said that police seemed more preoccupied with how lesbians have sex than with securing justice. Their testimonies—spanning more than a decade—suggest that there has been little improvement over time.

Back in April 1999 Onalenna was raped for the third time. She approached the police station in Polokwane, Limpopo province, to open a case. She told Human Rights Watch: “The policemen laughed. They said, ‘Which men can rape other men? Those people are lesbians.’” Onalenna needed to open a case so that she could get medical treatment, but the policemen instead focused on “how lesbians have sex with women.” She insisted and finally got a rape case registered so she was able to access treatment. However, she went back to the police station in July to follow up on the case and learned that “the docket has disappeared. The case is lost.”<sup>94</sup>

Zebo is very butch and gets rape and murder threats from men in her neighborhood on a regular basis. In April 2006 she went to Vosloorus police station in Vosloorus township close to Johannesburg to register complaints against a man who was threatening to rape her and her girlfriend. A policeman said: “They are raping you because you act as a man.”

They said to me, “Okay, we hear your story but why are you dressing like a man?” They were laughing at me as they said this. They threatened to kick my ass in the police station. I felt stupid. They didn’t write anything down.<sup>95</sup>

Oyama and her girlfriend were assaulted by four men in March 2009. Three of the men beat Oyama severely while the fourth raped her girlfriend. Oyama recognized the rapist; she had seen him around her girlfriend’s house and knew his name. When Oyama and her girlfriend approached Katlehong police station to register the crimes, “the police wanted to know how [Oyama and her girlfriend] have sex.”<sup>96</sup> The police eventually registered a case but failed to make any arrests in the case despite Oyama’s identification of the rapist.

Munashe also had a poor experience at Katlehong police station. In September 2009 Munashe had gone out with some friends, other butch lesbians, to a tavern in Katlehong

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<sup>94</sup> Human Rights Watch interview with Onalenna (pseudonym), Tzaneen, June 15, 2010.

<sup>95</sup> Human Rights Watch interview with Zebo (pseudonym), Kwa-Thema, March 13, 2009.

<sup>96</sup> Human Rights Watch interview with Oyama (pseudonym), Katlehong, July 7, 2010.



township where she lived. Munashe had felt uncomfortable and left early. The next morning, Munashe found out that the friends who had stayed behind were raped and beaten by some men who had also been in the tavern. Munashe went with them to the local police station in the early hours of the morning.

One policeman said, “You have to fight because you said you’re a guy.” We said to the police that we had been attacked [for being lesbians] and beaten up. The police told us, “You are crazy. Just go sleep. There’s nothing like that. There’s no woman who will sleep with another woman.”

The next day they went to Ramokonopi police station, close to Katlehong.

One policeman said he didn’t know how to take the statement because he didn’t know where the penis entered. They were all laughing and asking, “How do you have sex?” To my friend’s girlfriend [who was raped], they said, “How do you feel after sleeping with guys to sleep with lesbians again?”

Vicki helped a gay male friend who was stabbed open a case at Plessislaer police station, her local station. She and her partner were listed as witnesses in the case. The police came to their house late one night in November 2009.

They came to [my house] to take a statement at 9:40 p.m., from Plessislaer Police Station. They asked me and my partner, “Who’s the man? Who does whom?” They also asked our gay friend, “Who eats whom?” They stood talking among themselves about what “these people” do; they were pointing to us and saying, “This one eats, this one lays there.”<sup>97</sup>

## Police Inefficiency and Complicity

Police response to lesbians and transgender men is also sometimes marked by inefficiency, corruption, inaction, and even complicity with perpetrators.

For example, in 2004, Nomuula opened a case with the police in Kagiso after being raped. Nomuula identified the rapist; he had pretended to be Nomuula’s friend for weeks before the rape. Nomuula also knew where he lived; he had raped Nomuula in his house. A few months after registering the case, Nomuula ran into the rapist and realized that he was still

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<sup>97</sup> Human Rights Watch interview with Vicki (pseudonym), Pietermaritzburg, August 4, 2010.

free. He threatened to kill Nomuula. Nomuula went back to the police and they promised to follow up. They gave Nomuula a case number but when Nomuula called a few days later to follow up, she was told that the case did not exist in police records. Nomuula was able to get a new case number only with the help of a local organization.<sup>98</sup> Nomuula has not been informed of any development in her case since then.

Renang, 31, who lives in Vosloorus, near Johannesburg, has been attacked repeatedly by the same person for being a lesbian; the police claim they cannot arrest someone for “common assault.”<sup>99</sup> Similarly, little action was taken against four boys who viciously attacked Rufaro, 33, one evening in 2000 in Nelspruit.

They beat me up.... I was very badly hurt. I had scars all over my head. I was admitted to hospital. I was unable to sleep for weeks and couldn't speak properly. It took four months to heal. They had axes and tomahawks.<sup>100</sup>

Rufaro opened a case at the local police station. However, because of their youth, the boys were fined, not jailed, and Rufaro saw them again in the same neighborhood.

When Frances, 20, was raped in 2008, aged 17 years, she opened a case despite being harassed by police personnel at Kabokweni police station when she went to report the crime. She returned to the station with an activist from the Treatment Action Campaign a few days later to get a case number. Again, police harassed and ridiculed her. She had previously provided the police with the J88 form, the medical report needed for court proceedings in sexual assault cases.

Finally we got to speak to the investigating officer who said that my J88 form had gone missing and I needed to get another from the doctor. The docket was also incomplete. The case was postponed and postponed.<sup>101</sup>

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<sup>98</sup> Human Rights Watch interview with Nomuula (pseudonym), Johannesburg, March 19, 2009. This experience in crimes of sexual assault is not unusual, and not limited to those perpetrated against lesbians or transgender men. A 1998 study found that only six out of one hundred reported rapes became “cases”; of these six, one docket was “lost,” five were referred to the court, and a conviction resulted in one of these five. In addition, studies have revealed other systemic failures, including that the police are not trained in taking survivors’ statements; there may be no investigating officers present at the police station to take a survivor’s statement; the police may not have access to a vehicle; there may be no crime kits available at the station; the officer taking a statement may mediate in the matter, labeling the sexual violence a “family matter”; officers not recording a rape as a rape, but rather as a lesser charge; dockets getting “lost”; perpetrators bribing police officers to have charges against them dropped; witnesses failing to show up; and perpetrators escaping from police custody. See CSVR, “Tracking Rape Case Attrition in Gauteng: The Police Investigation Stage,” p. 18.

<sup>99</sup> Human Rights Watch interview with Renang (pseudonym), Johannesburg, August 4, 2010.

<sup>100</sup> Human Rights Watch interview with Rufaro (pseudonym), Nelspruit, July 11, 2010.

The DNA test was eventually performed on the perpetrator but he raped another woman while he was still out on bail and was serving a 12-year sentence at the time of the trial. In July 2011 the DNA results returned positive and he changed his plea to “guilty,” and on July 26 the magistrate at Nelspruit regional court sentences him to 4 years in prison for breaking and entering and 15 years for rape, to run concurrently. Several interviewees said that police incompetence and failure to act meant they were left dangerously exposed to their attackers, who moved about freely and terrorized them. The first time Dumisani was raped, in 2005, she was not sure she should go to the police because the rapist lived close by, had obviously watched her closely, and was known in the neighborhood as “dangerous.” When she eventually made a statement to the police and opened a case, they did not arrest the rapist.

I saw the guy after that, too. A week later I heard he had raped another girl. He was [then] arrested but he came out three days later and beat her up so badly she was in hospital for three weeks. I was so scared.

In May 2009, Doris, 30, was raped by someone she had known since childhood and whom she considered a brother. He knew she was a lesbian. Doris said to the investigating officer while making her statement:

If he is set free, he’s going to come for me; obviously he’d want to hurt me. I know the guy. He’s my late brother’s friend. He had even offered me “protection” in the past because he knew I’m a lesbian.

The accused was arrested but released on 1,000 Rand [US\$142] bail on condition he not make contact with Doris. However, the condition was not monitored or enforced by the police. Doris said:

The day he was released I was walking home. I saw him hiding behind a container with two friends. He was waiting for me. It was exactly on my way home. I turned away and started to walk in the other direction. One of them

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<sup>101</sup> Human Rights Watch interview with Frances (pseudonym), Nelspruit, July 11, 2010. The DNA test was eventually performed on the perpetrator but he raped another woman while he was still out on bail and was serving a 12-year sentence at the time of the trial. In July 2011, the DNA results returned positive and he changed his plea to “guilty,” and on July 26, the magistrate at Nelspruit regional court sentenced him to 4 years in prison for breaking and entering and 15 years for rape, to run concurrently. Because the perpetrator was tried separately for the two rape cases, he will serve the two sentences, of 12 and 15 years, simultaneously.

chased me. But I went into a shopping center. I called the investigating officer. He said he didn't have transport to get to me.<sup>102</sup>

Vicki lives in a neighborhood in Pietermaritzburg in KwaZulu-Natal that is notorious for violence and crime. She said:

Five to seven dead bodies are found in [my neighborhood] every month. I know of three lesbian deaths that have been covered up [by the police]. We call the police and they don't come. I myself know of such instances.<sup>103</sup>

The climate of impunity is heightened when police know a crime was committed and by whom but do not pursue the perpetrator.

Mosa was raped in 2003 by a neighbor, Judas, who lived close to her house in Matlosana (Klerksdorp) in Gauteng and she brought a case against him at Kanana police station. The police arrested the rapist. Mosa told the police that she needed protection because the rapist had threatened to kill her if she reported the rape. Despite police assurances that the rapist would not be released, he was freed on bail while Mosa was still in the hospital recovering from the wounds she had sustained in the attack.

Mosa saw her attacker in the neighborhood after she returned home and he continued to intimidate her. A few months later, Mosa and her mother returned to the police station where a policewoman, whom Mosa only knew as Monique, said to her mother:

What's happened has happened. Judas is sorry. Here's 10,000 Rand [US\$1,420]. You should take it because you also don't want your daughter dead.<sup>104</sup>

Mosa and her mother moved to another province and gave up on the case.

Perpetrators who have friends in the police force at times act with the confidence that they are beyond the reach of the law.<sup>105</sup> Nontle's ex-boyfriend raped her because she left him for

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<sup>102</sup> Human Rights Watch interview with Doris (pseudonym), Khayelitsha, June 23, 2010.

<sup>103</sup> Human Rights Watch interview with Vicki (pseudonym), Pietermaritzburg, August 4, 2010.

<sup>104</sup> Human Rights Watch interview with Mosa (pseudonym), Lusikisiki, July 2, 2010.

<sup>105</sup> Corruption is rife within the South Africa Police Service (SAPS). The figures generated by the SAPS Anti-Corruption Unit (ACU) for 2000 bear testimony to the extent of the corruption. In that year alone, the ACU initiated nearly 6,500 investigations into corruption cases within the police force; of these, police personnel were arrested in about 1,000 cases, and convicted in less than 200. Rampant corruption with SAPS means that even when perpetrators do not have personal friends among the

a woman. As he was hitting her and raping her, he said to her. “You can go to the police and there’s nothing they can do.” Nontle knew that what he said was true because the local policemen were her ex-boyfriend’s friends; they knew, for instance, that he openly carried a gun without a license.

I knew there was no point in going to the police. He came back the next week waving his gun saying he could kill me then if he liked.<sup>106</sup>

Even in the absence of a pre-existing friendship, in some cases perpetrators can rely on a sympathetic response from police personnel when they are abusing someone on the grounds of their sexual orientation or gender expression. Vicki went to Mountain Rise Police Station in Pietermaritzburg in June 2009 to bring a charge of assault against her ex-husband.

My husband got there. He was beating me in front of the cops. They didn’t do anything to stop them when he told them I was a lesbian.<sup>107</sup>

## Police as Perpetrators

In addition to harassing lesbians and transgender men and being unhelpful and inefficient, some interviewees identified police officers as perpetrators of abuse.

In September 2009 Sesi, Renang, and Saran were among a group of lesbians returning from the Ekurhuleni Pride march in Kwa-Thema township, close to Johannesburg, that had been held to honor Eudy Simelane, a famous lesbian soccer player murdered in neighboring Kwa-Thema the previous year. The group—comprised of six butches and two femmes—split up for a few minutes when Sesi was still in a restaurant: the other seven waited outside. A police van pulled up outside the restaurant and some policemen started beating and abusing the lesbians standing outside. The police took several of them to Vosloorus Police Station, where they taunted, attempted to extort, and beat them. Sesi described the events of that night.

They searched me, a male policeman [did]. He said, “You’re a boy, aren’t you?” They were beating my friends.... They said we were drinking in

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police, they can often expect to bribe their way out of an arrest or investigation. See the 2002 CSVr publication by Gareth Newham, “Tackling Police Corruption in South Africa,” <http://www.csvr.org.za/wits/papers/papoli14.htm> (accessed November 22, 2011).

<sup>106</sup> Human Rights Watch interview with Nontle (pseudonym), East London, June 29, 2010.

<sup>107</sup> Human Rights Watch interview with Vicki (pseudonym), Pietermaritzburg, August 4, 2010.

public. We had not been drinking.... There were three policewomen, four or five policemen, plus a driver. They were in uniform but with no nametags. They didn't beat the femmes. They were having fun beating us. I refused to get in the police van. They were abusing me: "You think you are a man, you *stabane*."

The charge sheet said we were drunk in public, for my friends; for me, they said I was drinking in public. They took us to a small room and took our names. One of my friends was trying to record my beating on her cell phone. One of the policewomen made her delete it. Back of the court [in the station], there are cells. They put us there. To the femmes they said, "How can you date a girl when you're a girl? We are the real men. We'll show you. Are you afraid of being raped, afraid of AIDS?"

We were held overnight, released at 4:00 a.m.... We were just told to walk home. It was far from where we lived. It was dark. It isn't safe. All five butches were beaten up. We opened a case against them the following day. The police at Vosloorus police station didn't want to open a case. We went to the Daily Sun [newspaper], we went on radio. If you try to open a case against the police, [the police] won't open it. It was difficult to get a case number. On April 12, [2010], we learned the case was withdrawn. [The case was transferred to another district.] Last week we went to Vosloorus station to see what happened. We found out the case has [again] been withdrawn on 7 June [2010].<sup>108</sup>

There has been no progress in the case the activists brought against the police, although the police dropped the charges they had initially filed against Sesi and her lesbian friends.

In 2009 Sethunya lived across from a police station close to Broad Street in Durban.

The policemen who would hang around there would say, "Who are you? Are you a woman or a man?" One time, a policeman showed me his dick. He said, "I'll show you what you're missing".... I tried to register a case but the police inside sent us to another station and then they sent us back. They just made us run around.<sup>109</sup>

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<sup>108</sup> Human Rights Watch interview with Sesi (pseudonym), Johannesburg, August 2, 2010.

<sup>109</sup> Human Rights Watch interview with Sethunya (pseudonym), Pietermaritzburg, August 4, 2010.

Vicki said:

One time a cop punched a friend of mine in the face in front of other cops saying, “If you want to act like a man, we will treat you like one.”<sup>110</sup>

## Lack of Faith in Police

The negative experiences that lesbians and transgender men have with police creates an overwhelming lack of faith in law enforcement and in the criminal justice system as a whole, even among people who approach police and attempt to seek redress through courts.

We examine the latter issue only briefly since only about 10 percent of people report crimes against them, and only a fraction of these see their cases progress to the courts.<sup>111</sup>

Many people who face threats, violence, and abuse view the police with such suspicion that they do not approach them for help.

Audrey, 26, from Khayelitsha township close to Cape Town, has been raped twice. Asked if Audrey considered reporting the rape to the police, she said:

You don’t want to go to the police if something happens to you—especially when you’re a lesbian, especially if you use the name lesbian. They look at your chest. You see in their face, there’s something on their face that says “freak.” They call us “girl-man,” “woman-man.” They don’t know what a lesbian is.<sup>112</sup>

Voicing a wariness and lack of faith in police echoed by many interviewees, Vicki said:

It’s a waste of time going to the police. We have gone to them with letters, asking them to allow us to do a heterosexism workshop with them. If anything happened to me again, I wouldn’t go to the police.<sup>113</sup>

Lesedi also does not believe that the police will help lesbians; in fact, she does not have faith in the entire criminal justice system.

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<sup>110</sup> Ibid.

<sup>111</sup> In addition to only one in nine women reporting sexual assault to the police or other authorities, studies have also shown that one in a hundred cases results in a conviction. See CSV, “Tracking Rape Case Attrition in Gauteng: The Police Investigation Stage,” p. 18.

<sup>112</sup> Human Rights Watch interview with Audrey (pseudonym), Cape Town, March 27, 2009.

<sup>113</sup> Human Rights Watch interview with Vicki (pseudonym), Pietermaritzburg, August 4, 2010.

The police are useless. Even if your house has been robbed, you don't call the police. They do nothing. Even if the police arrest someone they pay and just get out.<sup>114</sup>

The first time Audrey was raped, in 1996, police found her after two weeks, during which she was held captive by the rapists. She was able to identify one of them, and brought a charge at the Khayelitsha Site B station, a community policing forum in Khayelitsha township (close to Cape Town) set up by the police station and the provincial government in collaboration with various community stakeholders. She never heard from police about the case. She said:

The police didn't do anything.... I'm raped and I'm pregnant. Why didn't they arrest the guys? I told myself to stop wasting my time. I tore up the paperwork and threw it in the dustbin.<sup>115</sup>

In the face of police inefficiency, prejudice, and complicity, people seek alternative means of redress and justice. Hope said:

If I was raped, rather than tell the police, I would tell my cousins for revenge. It's useless to go to the police. I know of other incidents against lesbians and the police don't do anything.<sup>116</sup>

System failures and the prejudice of officials within the criminal justice system can also make justice inaccessible. The relatively few cases that do make it to court can deter, rather than encourage, lesbian and transgender survivors of crime from pursuing a similar path.

Abigail, 37, who brought a rape case against a casual acquaintance, is pessimistic about her case. She attended the trial in the case of the rape of another lesbian in Durban.

They ask questions like, "Are you a boy or a girl? Are you a lesbian? What do you do?"... They were trying to make it seem that [the raped lesbian] was going out with one or two of the same guys [who had raped her].

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<sup>114</sup> Human Rights Watch interview with Lesedi (pseudonym), Durban, August 6, 2010.

<sup>115</sup> Human Rights Watch interview with Audrey (pseudonym), Cape Town, March 27, 2009.

<sup>116</sup> Human Rights Watch interview with Hope (pseudonym), Nelspruit, July 11, 2010.



It was the same investigating officer in that case [as in mine]. I have a piece of paper from him that contains false information. The investigating officer took [Abigail's friend and colleague, who had helped her go to the police station and the hospital] out, got him drunk. [My friend then changed his testimony.] What's happening with the case, I don't know. Nothing will happen there.<sup>117</sup>

Mosa, who did not feel safe living so close to her rapist, moved from Matlosana (Klerksdorp) in Gauteng province with her mother to Lusikisiki in the Eastern Cape. Mosa went to the police station there and was told they would restart the case, but that she had to testify in Gauteng, about 700 kilometers (nearly 400 miles) from the Eastern Cape. In 2005, Mosa got a call from the investigating officer on her case telling her that she needed to appear in court in Gauteng the next day for the hearing.

I had no money. I told him I couldn't get there the next day, that I was in the Eastern Cape. I haven't heard anything since then, and I haven't followed up. They never contacted me again. I didn't contact them again because I felt that it wasn't possible. It cost a lot of money. It needs someone with money [to follow a case]. Even after going to the police I knew there were not good prospects.... I wanted to move on with my life.<sup>118</sup>

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<sup>117</sup> Human Rights Watch interview with Abigail (pseudonym), East London, June 29, 2010.

<sup>118</sup> Human Rights Watch interview with Mosa (pseudonym), Lusikisiki, July 2, 2010.

## II. Discrimination in Public Spaces

### Work and School

Many South African laws, including the Employment Equity Act, prohibit discrimination in the workplace on protected grounds, including sexual orientation. However despite the legal protection on the books, several people interviewed by Human Rights Watch described experiences of clear discrimination in the workplace. They also felt that in practice if they were known or perceived to be a lesbian or a transgender man that their chances, for example, of finding or keeping employment were directly diminished. In some cases, interviewees left jobs in the face of harassment; in others, they persevered. What is striking in both types of case, however, was how almost all interviewees felt too vulnerable to seek legal action although what they experienced would have been unlawful discrimination.

For example, Terry is a transgender man who used to work in retail. However at his last place of employment, he says that his manager took a dislike to him because of his gender expression, and treated him badly—shouting at him and threatening him—in ways that he did not treat other employees. Even when Terry approached the human resources department at the store and requested a transfer, his manager stalled his transfer. As a result he quit his job. At the time we spoke with him he was barely able to make ends meet and did not know when or if he would find another job.<sup>119</sup>

Montsho, 22, a butch lesbian, said that at her last job colleagues harassed her. “Don’t you want to sleep with men?” the men would ask, while women would taunt: “You [butch lesbians] just make yourself like this. You’re afraid to be women.” She also finally left, but did not pursue any claim.

People just don’t understand. They would call me *stabane* [lit. person with two sexual organs; derogatory for homosexual], ask me many things, personal stuff. “What does your mother see in you—boy or girl?” ...

Colleagues, guys, would ask these things. Three or four guys might gang up to question me and call me names and the girls would watch and laugh—each and every day. I would fight with them, sometimes physically. When I’d walk by they would say “*sisibhut*” [sister-brother/woman-man],<sup>120</sup>

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<sup>119</sup> Human Rights Watch interview with Terry (pseudonym), Khayelitsha, July 22, 2010.

<sup>120</sup> Literally, “woman-man” or “girl-boy” in isiXhosa. A combination of “sisi” (sister) and “bhuti” (brother) used derogatorily to refer to lesbians – particularly gender nonconforming lesbians – and transgender men.

“*stabane*,” “him-she.” I never complained about this. The manager was homophobic, and I was afraid I would get fired.

Others have stuck it out at their workplaces despite harassment. For example, Mosa, 23, has a job in HIV treatment literacy. Her co-workers ask her why she dresses in a butch manner and whether lesbians have “two private parts”; they warn her against teaching children “funny things.”<sup>121</sup> Mudiwa, 40, teaches in a school where colleagues call her “*butisis*” (brother-sister/man-woman); some refuse to be alone in a room with her.<sup>122</sup> Kefilwe’s manager in the orphanage where she works told her: “I wish I could see you and your girlfriend doing it.”<sup>123</sup>

Munashe, 20, is very butch and works at a coffee shop; her colleagues call her names and harass her constantly.

If I’m passing through in the shop and touch someone by mistake, they start screaming. Last week one of them said to me, “You think you’re a man. As long as you’re buying pads, you’re a lady.”<sup>124</sup>

Some interviewees told Human Rights Watch that when they applied for a job, their gender expression was commented upon, and that they believe this was the reason they were not hired. Naledi, 24, was called for an interview for a job at Helen Joseph Hospital in Vosloorus, in 2009. The sister-in-charge asked her if she was “a boy or a girl” and Naledi said, “I’m a lesbian.” The sister-in-charge told Naledi, “At this hospital we don’t need nomose [derogatory for homosexual] people.” In March 2009 Naledi and another butch lesbian went for an interview at a retail store where other applicants simply passed them by. “People just went in and came out and, we just stood there for four or five hours; they never called us,” she said. Naledi did not pursue any legal complaint for what she experienced, but she has altered her appearance when trying to get a job. Other butch lesbians also said that they try to appear more feminine in order to find employment. Mosa says, “It’s hard getting employment. You have to dress like a girl, act like a girl.”<sup>125</sup>

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<sup>121</sup> Human Rights Watch interview with Mosa (pseudonym), Lusikisiki, July 2, 2010.

<sup>122</sup> Human Rights Watch interview with Mudiwa (pseudonym), Lusikisiki, July 2, 2010.

<sup>123</sup> Human Rights Watch interview with Kefilwe (pseudonym), Katlehong, July 13, 2010.

<sup>124</sup> Human Rights Watch interview with Munashe (pseudonym), Katlehong, July 14, 2010.

<sup>125</sup> Human Rights Watch interview with Mosa (pseudonym), Katlehong, July 13, 2010.

Lesbians who have passed for straight at work risk harassment as soon as they come out. Hope invited her butch partner to the 2009 year-end function at the school where she works, which instantly outed her to colleagues.

All hell broke loose. My director started acting discriminately. He would give me nasty assignments. He sent me on an assignment to Swaziland alone with a guy, though they never send a woman alone with a guy. It's pushing me to the edge, I feel like quitting. I work in a school. He is the owner of the school and he runs the board, so, I can't make a complaint against him. I'm going to quit at the end of the month.<sup>126</sup>

Interviewees identified some of the barriers that prevented them from seeking legal redress for prohibited discrimination. These included lack of information about both the nature of the prohibition and redress mechanisms, lack of assistance or support in making complaints, fear of retaliation or further stigmatization, and lack of confidence in redress mechanisms. This is of particular concern, as at least in one case, an interviewee described how knowing her rights, and being confident enough to assert them, made a real difference.

Lungile, 30, was also outed because of her butch partner. She said:

Next day during lunch they were talking about me. Saying *stabane*, etc. People asked me who that was who had come to get me. They said, "You don't look like a lesbian. How do women do it at night? You make love, have sex—how?"

The (white) manager of the bank told Lungile that her lesbianism was "un-African and wrong." He said, "I know your culture. You're supposed to have children, be with men." Lungile was in the rare position of being able to stand her ground because she not only knew her rights but also had the social confidence to assert them. She warned her colleagues and manager that she would lodge a complaint against them if they continued the harassment. After this, things improved.<sup>127</sup>

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<sup>126</sup> Human Rights Watch interview with Hope (pseudonym), Nelspruit, July 11, 2010.

<sup>127</sup> Human Rights Watch interview with Lungile (pseudonym), Durban, August 6, 2010.

## School

Before they even seek employment, lesbian and transgender youth can experience ridicule and abuse in school, from both teachers and fellow students.

The South African Schools Act of 1996 pledged to create a new system of education that would combat “racism and sexism and all other forms of unfair discrimination and intolerance”; the 2008 implementation guidelines for the Department of Education’s intervention program, “Safe, Caring and Child-Friendly Schools” (SCCFS), mention the “six pillars” of the SCCFS framework, including “a rights-based and inclusive school,” “a safe, protective and supportive school,” and “a gender sensitive school that promotes equity and equality,” which are aimed at all levels, from school management authorities to the curriculum.<sup>128</sup> The first pillar, a rights-based and inclusive school, is defined as one that “Will not discriminate against any child or educator based on gender, race, colour, creed, physical/mental ability, economic status, HIV and AIDS status, health status, sexual orientation, nationality or ethnicity, or culture.”<sup>129</sup> However, schools can perpetuate and reinforce social prejudices due to poor implementation of policies by school governance bodies as well as by irregular enforcement of non-discrimination policies by teachers, principals, and other school authorities.

The following overview of lesbian and transgender student experience is not a comprehensive analysis but draws attention to an area of concern that warrants further investigation.

School was a place of harassment and abuse for several interviewees. Suma, now 24, who grew up in the Eastern Cape, recalled.

The teachers used to shout at me for wearing trousers. Once they made me wear a dress. I didn’t go out the whole day. They called me names [such as] nongayindoda [a woman who wishes to be a man]. I had to move to another school in grade 11 [at the age of 16]. The teacher there shouted at me for being a tomboy, behaving like a man. She slapped me. I was suspended.<sup>130</sup>

Tony, 20, is a butch lesbian in her last year of school in Thohoyandou, Limpopo.

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<sup>128</sup> See South African School’s Act, No. 84 of 1996, Preamble.

<sup>129</sup> See page 7, [http://www.unicef.org/southafrica/resources\\_8150.html](http://www.unicef.org/southafrica/resources_8150.html).

<sup>130</sup> Human Rights Watch interview with Suma (pseudonym), Khayelitsha, June 21, 2010

At school, a teacher asked me why I'm like this. She said, "Why don't you like babies? Why are you a lesbian? Why don't you want to get pregnant?" She said she'll pray for me.<sup>131</sup>

Tanesha is 13 years old, very boyish, and identifies as a lesbian. She is out to her mother, who is supportive. Tanesha reported that one teacher at her school said to her [that] "if she [the teacher] gave birth to a *stabane* [lit. person with two sexual organs; derogatory for homosexual], she would kill it." Tanesha said:

She tried to chase me from the class because she didn't want to teach a *stabane*. I try to ignore all this because I have to finish school and support my family.... There's no one at school I can talk to.<sup>132</sup>

Tanesha's mother came to school to complain but was careful to not mention Tanesha's sexual orientation for fear that things would get worse for her child.

Nomusa, 19, was dating a girl in her school.

The deputy principal of my school said that [lesbianism] was a taboo in our culture. She called me and my girlfriend to her office to separate us. She said to us we must marry men, have children.<sup>133</sup>

School dress codes and pressure from school authorities to dress in a feminine manner can contribute to a hostile school environment that can lead lesbians and transgender men to disrupt their education. Referring to her battle to wear trousers, Suma said: "I gave up. I didn't finish matric. If I can get a job this year, next year I can go back to finish school."<sup>134</sup> Chipso, 22, a butch lesbian from Kwa-Thema township close to Johannesburg, was also often sent home from school for wearing trousers and faced constant harassment from teachers and students alike. High school was so hard that Chipso dropped out in grade 10, at the age of 16.<sup>135</sup>

Sethunya, 27, got away with wearing track pants in primary school instead of skirts but was forced to wear a skirt in high school.

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<sup>131</sup> Human Rights Watch interview with Tony (pseudonym), Thohoyandou, June 14, 2010.

<sup>132</sup> Human Rights Watch interview with Tanesha (pseudonym), Pietermaritzburg, August 4, 2010.

<sup>133</sup> Human Rights Watch interview with Nomusa (pseudonym), Thohoyandou, June 14, 2010.

<sup>134</sup> Human Rights Watch interview with Suma (pseudonym), Khayelitsha, June 21, 2010.

<sup>135</sup> Human Rights Watch interview with Chipso (pseudonym), Kwa-Thema, March 7, 2009.

I hated it. I went from school to school because I would refuse to wear skirts and they would bar me from attending. I wasn't allowed to enter the girls' toilet in school sometimes. So we had to move. I was so confused.<sup>136</sup>

Fellow students were often a source of abuse too. Audrey, 26, who grew up in Khayelitsha, a township close to Cape Town, faced harassment and abuse from students.

The students—the guys—they [had] a problem. They [would call me] some silly names. In Xhosa culture, you go through initiation ceremonies to become a man. They [would] taunt me to go do the same. Because of how I look and dress and walk, they know I'm a lesbian even when I don't open my mouth.<sup>137</sup>

Likewise, Tumelo, 25, said that male students in her school in Soweto township in Johannesburg threaten her, saying, "You're turning women into lesbians. We will take you and rape you."<sup>138</sup>

Tumelo and others like her with similar experience felt that despite a hostile environment and the SCCFS framework, the individual schools and the school system made no particular effort or demonstrated no leadership in addressing issues of bullying and hostile acts.

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<sup>136</sup> Human Rights Watch interview with Sethunya (pseudonym), Pietermaritzburg, August 4, 2010.

<sup>137</sup> Human Rights Watch interview with Audrey (pseudonym), Cape Town, March 27, 2009.

<sup>138</sup> Human Rights Watch interview with Tumelo (pseudonym), Thohoyandou, June 14, 2010.

### III. South Africa's Legal Obligations

South Africa has obligations to ensure that all of those living within its jurisdiction are able to enjoy their full range of rights as guaranteed under South African and international law, without fear of their sexual orientation and gender expression being a factor in denying such enjoyment. Unfortunately this has not been the case for those with whom Human Rights Watch spoke for this report.

In addition to a strong rights-based Constitution, with its explicit Bill of Rights, South Africa is a party to several key international and regional treaties that underpin its international legal obligations to respect, protect, and fulfill the human rights of all persons regardless of their sexual orientation or gender identity. This includes the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).<sup>139</sup>

In addition, implementation of South African legal obligations should be informed by the Yogyakarta Principles, principles adopted by independent experts that codify the status of international human rights law as it applies to sexual orientation and gender identity.<sup>140</sup>

#### South African Constitution and Bill of Rights

The South African constitution of 1996 provides that the state is obliged to “respect, protect, promote and fulfill” the rights enshrined in the Bill of Rights.<sup>141</sup> Central to the Bill of Rights is the Equality Clause in section 9, prohibiting discrimination on many grounds including gender, sex, and sexual orientation; and the guarantee in section 10 that everyone has inherent dignity and the right to have their dignity respected and protected.

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<sup>139</sup> ICCPR, 999 U.N.T.S. 171, entered into force March 23, 1976 and acceded to by South Africa on March 10, 1999; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 and acceded to by South Africa on July 9, 1996; CEDAW, G.A. Res. 34/180, U.N. Doc. A/34/46, entered into force September 3, 1981 and acceded to by South Africa on January 9, 1999; Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa (the Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/Leg/66.6, entered into force November 25, 2005, art. 16. The Maputo Protocol was ratified by South Africa December 17, 2004.

<sup>140</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007, <http://www.yogyakartaprinciples.org> (accessed November 22, 2011).

<sup>141</sup> The Bill of Rights is chapter two of the South African constitution and enshrines the socio-economic, civil, and political rights enjoyed by all people in the Republic of South Africa; it came into effect in 1996, when the constitution was enacted.



The rights enumerated in the Bill of Rights include the right to life (Section 11), rights to freedom of expression and association (sections 16 and 18), and freedom of movement (section 21). Section 12 guarantees security of the person, including the right “to be free from all forms of violence from either public or private sources,” the right “to security in and control over their body,” and the right “not to be treated or punished in a cruel, inhuman or degrading way.” Section 29 guarantees the right to basic education for all. Section 34 of the South African Bill of Rights guarantees access to courts and section 38 speaks of enforcement of rights, which guarantees “appropriate relief” from the courts in instances of the violation of any of the rights contained in the Bill of Rights.

## The International Covenant on Civil and Political Rights (ICCPR)

In Article 2, the International Covenant on Civil and Political Rights (ICCPR) provides that each state has an obligation to “ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” It also has an obligation to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity....”

The rights guaranteed under the ICCPR include everyone’s “inherent right to life” (Article 6) the right to liberty and security of person (Article 9), freedom of expression and the right to “seek, receive and impart information and ideas of all kinds” (Article 19), and the right to freedom of assembly and association (Articles 21 and 22).

Further to the non-discrimination provisions in Article 2, Article 3 of the ICCPR stipulates “the equal right of men and women to the enjoyment of all civil and political rights.” Article 26 declares: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In 1994 the UN Human Rights Committee in determining a case before it, confirmed that “the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”<sup>142</sup>

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<sup>142</sup> *Nicholas Toonen v. Australia*, Human Rights Committee, 50th Sess., Case no. 488/1992, U.N. Doc. CCPR/c/50/D/488/1992, para. 8.7.

## The African Charter on Human and Peoples' Rights

The African Charter imposes obligations to protect and ensure respect for a broad range of civil, political, economic, social, and cultural rights central to the experiences of lesbians and transgender men. These include:

- the right to life and the integrity of the person (Article 4);
- the right to security (Article 6);
- the right to freedom of association and freedom of movement (Articles 10 and 12 respectively);
- the right to access to justice (Article 7);
- the right to enjoy the best attainable state of physical and mental health (Article 16); and
- the right to education (Article 17).

Article 4 of the Charter declares that “human beings are inviolable” and Article 5 guarantees to all “the right to the respect of the dignity inherent in a human being.” Article 25 imposes a duty on state parties to “promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.”

## Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

The Maputo Protocol requires states “combat all forms of discrimination against women through appropriate legislative, institutional and other measures.” It further requires states to “take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist.” Article 3 of the Maputo Protocol declares: “Every woman shall have the right to respect as a person and to the free development of her personality.”

### Convention on the Elimination of All Forms of Discrimination against Women

Article 5(a) of the convention requires states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Article 13

requires that the state eliminate discrimination in “areas of economic and social life” and article 14(2)(h) seeks to ensure for all women “adequate living conditions, particularly in relation to housing.”

The Committee on the Elimination of All Forms of Discrimination against Women recently considered South Africa’s periodic report submitted as part of the government’s obligations as a state party. The committee concluded:

While noting that based on a multi-sectoral approach at the operational level a number of policy, legislative, administrative, victims empowerment and other measures have been put in place to combat violence against women in the country, the committee expresses its serious concern at the inordinately high prevalence of sexual violence against women and girls and widespread domestic violence. The committee is also concerned that such violence appears to be socially normalized, legitimized and accompanied by a culture of silence and impunity. It is further concerned at the low levels of prosecutions and convictions.... The Committee regrets the lack of information on the impact of the measures and programmes in place to reduce incidences of all forms of violence against women and girls.”

Speaking specifically of sexual orientation, the committee expressed “grave concern about reported sexual offences and murder committed against women on account of their sexual orientation” and called on the South African government to “abide by its Constitutional provisions and to provide effective protection from violence and discrimination against women based on their sexual orientation.”

## Yogyakarta Principles

The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (the Yogyakarta Principles), were launched on March 26, 2007, in Geneva, having been adopted by representatives from 25 countries from all geographic regions.<sup>143</sup> There are 29 principles. The rapporteur for the development of the Yogyakarta Principles has described the principles as breaking down as follows:<sup>144</sup>

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<sup>143</sup> They included one former UN High Commissioner for Human Rights (Mary Robinson, also a former head of state), 13 current or former UN human rights special mechanism office holders or treaty body members, two serving judges of domestic courts, including Edwin Cameron, Justice, Supreme Court of Appeal, Bloemfontein, South Africa; and a number of academics and

- Principles 1 to 3 set out the principles of the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law.
- Principles 4 to 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention.
- Principles 12 to 18 set out the importance of non-discrimination in the enjoyment of economic, social and cultural rights, including employment, accommodation, social security, education, and health.
- Principles 19 to 21 emphasize the importance of the freedom to express oneself, one's identity, and one's sexuality without State interference based on sexual orientation or gender identity, including the rights to participate peaceably in public assemblies and events and otherwise associate in community with others.
- Principles 22 and 23 highlight the rights of persons to seek asylum from persecution based on sexual orientation or gender identity.
- Principles 24 to 26 address the rights of persons to participate in family life, public affairs, and the cultural life of their community, without discrimination based on sexual orientation or gender identity.
- Principle 27 recognizes the right to defend and promote human rights without discrimination based on sexual orientation and gender identity, and the obligation of States to ensure the protection of human rights defenders working in these areas.
- Principles 28 and 29 affirm the importance of holding rights violators accountable, and ensuring appropriate redress for those who face rights violations.<sup>145</sup>

Councilor Nkele Ntingane, speaker of the Johannesburg Municipal Council, at a Gender and Sexuality Conference in 2007, called on conference participants to ensure that “both the Constitution and the Yogyakarta Principles become accepted by all members of our increasingly diverse communities.”<sup>146</sup>

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activists. Seventeen of the experts were women. See O’Flaherty, Michael and Fisher, John “Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles,” *Human Rights Law Review* 8:2, p. 233.

<sup>144</sup> Ibid, p. 234.

<sup>145</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007.

<sup>146</sup> The Conference was the Opening Ceremony for International Dialogue on Gender, Sexuality and HIV/AIDS, Johannesburg, December 6, 2007, p. 244, fn. 174.

## **IV. Recommendations**

The South African government should take immediate steps to address gender-based violence, including verbal, physical, and sexual violence on the grounds of sexual orientation and gender expression, by private individuals as well as state actors.

### **To the President of South Africa**

- Publicly condemn gender-based violence, including homophobic and transphobic violence, and affirm the constitutional principles of equality and non-discrimination for all residents of South Africa.

### **To the National Prosecuting Authority**

- Ensure that all cases of sexual and physical violence against women and transgender persons come to trial in a timely manner and that prosecutors prioritize cases involving sexual offences.
- Engage civil society in training personnel across government departments on the nature of sexual violence on the grounds of gender expression and sexual orientation.
- Implement measures that ensure that survivors' testimonies about the motives for the violence and their perception of danger are taken into account when determining trial conditions and procedures, including in setting bail for the accused, providing in-camera proceedings, and shielding survivors and their supporters and friends from the accused and their family and friends.
- Take measures to ensure that survivors of sexual violence, their friends and family members, and other prosecution witnesses are not intimidated or threatened by the alleged perpetrators or their friends and family members before, during, and after the trial.
- Ensure through the participation of civil society that all prosecutors are educated on an ongoing basis on matters relating to sexual orientation and gender expression, and the nature of homophobic and transphobic violence, as well as sexual violence in general.

## **To the South African Government**

- Publicly and consistently condemn homophobic and transphobic violence, as well as gender-based violence broadly.
- Publicly commit in regional and international forums to uphold South African constitutional principles of non-discrimination and equality.
- Take measures to increase awareness of the Equality Clause and constitutional principles of non-discrimination in all sectors of society through public education initiatives, including the public media, and allocate sufficient resources in the annual budget for such programs.
- Establish systems of monitoring and evaluation in key departments, including the departments of education, health, police, women and children, and the National Prosecuting Authority, to ensure implementation of existing anti-discrimination laws and standards.

## **To the Department of Justice and Constitutional Development**

- Ensure that all cases of sexual and physical violence in the courts, including on the grounds of sexual orientation and gender expression, are resolved in a timely manner.
- Establish in collaboration with civil society an interdepartmental working group to address violence on the grounds of gender expression and sexual orientation that reports periodically to the South African Human Rights Commission. Ensure that the working group has adequate resources to carry out its mandate at grassroots and national levels.

## **To the Justice College**

- Ensure through the participation of civil society that all members of the judiciary are educated on matters relating to sexual orientation and gender expression, and the nature of homophobic and transphobic violence, as well as sexual violence in general.

## **To the Gender Directorate, Department of Justice & Constitutional Development**

- In collaboration with civil society organizations, develop materials targeted at specific government departments, including the departments of justice, education, police, health, women and children, and the National Prosecuting Authority. These materials

should focus on the nature of verbal, physical, and sexual violence on the grounds of sexual orientation and gender expression and ways to address such violence.

- Develop in collaboration with civil society a national plan for the implementation of existing constitutional rights to personal security, sustainable livelihood, education, privacy, and freedom of expression and movement for women and transgender persons at local, provincial, and national levels, as part of implementing the National Plan of Action to End Gender Violence.

## **To South African Police Services**

- Enforce monitoring and disciplinary measures to ensure that timely steps are taken against police personnel who harass, intimidate, or abuse complainants, with specific focus on women and members of the LGBT community.
- Disaggregate data on physical and sexual violence by motive and the sexual and gender characteristics of survivors and victims to track the number of incidents of homophobic and transphobic violence.
- Engage civil society organizations in ongoing training of police personnel on issues related to gender and sexuality, including sexual orientation and gender expression.
- Ensure that every police station has at all times an officer equipped to understand, properly document, and efficiently handle cases of sexual violence—including on the grounds of sexual orientation and gender expression—in a non-judgmental manner.
- Establish systems for monitoring individual police stations on their capacity to handle matters relating to sexual violence in a non-judgmental and efficient manner.
- Establish monitoring systems to evaluate on an ongoing basis the work of investigating officers in cases involving sexual violence.

## **To the Independent Complaints Directorate**

- Investigate instances of negligence, assault, extortion, abuse, and non-deliverance of services by police in cases of discrimination and sexual and physical violence, including on the grounds of sexual orientation and gender expression.
- Ensure effective functioning of systems for people to register anonymous complaints of abuse, harassment, discrimination, and extortion against police personnel quickly and easily to the Independent Complaints Directorate, and publicize these methods.

## To the Department of Health

- Ensure that all hospitals and clinics have on duty at all times at least one person who is equipped to understand and treat cases of sexual violence, including on the grounds of gender expression and sexual orientation, in a non-judgmental manner.
- Ensure that survivors of sexual violence have privacy in all hospitals and clinics.

## To the Department of Women, Children, and Persons with Disabilities

- Publicly condemn violence against lesbians, transgender men, and gender non-conforming people.
- Explicitly include lesbians and transgender men in the ministry's efforts to combat gender-based violence.
- Collaborate with civil society organizations working on issues of sexual orientation and gender expression to develop training and educational materials for use in public education programs on gender equality and the rights of women and transgender persons, and allocate sufficient resources for ongoing education programs.
- In collaboration with civil society, develop curricula for sex and gender education programs in schools, including material on gender expression and sexual orientation.

## To the Department of Education

- Develop in collaboration with civil society organizations educational material on gender expression and sexual orientation for use in "life orientation classes" in all schools.
- Include material on sexual orientation and gender expression and identity in teacher training material.
- Ensure that all school counselors receive training on issues of gender-based violence, including information about sexual orientation and gender expression.
- Establish monitoring systems to ensure effective implementation of non-discrimination policies, such as a toll free helpline for reporting verbal, physical, and sexual abuse of learners by teachers and other school authorities.



## **To the South African Human Rights Commission**

- Establish a civil-society working group, including members of civil society organizations in all provinces, to monitor and address incidents of verbal, physical, and sexual abuse and threats on the grounds of gender expression and sexual orientation.
- In collaboration with the working group, develop and host a national database of violence on the grounds of sexual orientation and gender expression and identity.
- Produce annual reports on the functioning and progress of the working group and invite members of government ministries and civil society to an annual meeting to discuss the reports.
- Collaborate with civil society organizations to expose homophobic and transphobic violence and pressure the administration to take appropriate action.

## **To the Commission for Gender Equality**

- Collaborate with civil society organizations to expose homophobic and transphobic violence and pressure the administration to take appropriate action.
- Monitor all cases before the courts of violence and discrimination on the grounds of sexual orientation and/or gender expression and identity.
- Collaborate with civil society organizations to serve as observers in cases of sexual violence against women and transgender people in the courts.

## **To National and Provincial Non-LGBT Civil Society Organizations**

- Include material on sexual orientation and gender expression in work for all audiences, in all areas.
- Sensitize staff and other personnel to issues of sexual orientation and gender expression through ongoing training conducted in collaboration with civil society organizations working on LGBT and women's rights issues.

## **To International LGBT and Sexual Rights Funders and NGOs**

- Support the work of domestic LGBT organizations by providing resources, including monetary and technical support, when required.

- Raise the issue of violence and discrimination on the grounds of sexual orientation and gender expression in international forums in collaboration with domestic organizations.

## **To the United Nations and the African Union**

- Support the South African government's efforts to combat gender-based violence, including violence and discrimination on the grounds of sexual orientation and gender expression, by providing both technical assistance and material support, when appropriate.
- Hold South Africa accountable to its international commitments regarding non-discrimination and equality.

## Acknowledgments

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## Appendix

In addition to the cases documented in this report, the following is a list of some of the known cases for which there is reason to believe that the individuals were attacked because of their sexual orientation and/or gender expression and identity. Some of these cases are currently undergoing investigation and, in some, criminal charges had been brought and the cases were at the trial stage when the report was being finalized.

### **Zoliswa Nkonyana, 2006**

A gang of about twenty men raped and killed 19-year-old Zoliswa in Khayelitsha, a township close to Cape Town, on February 4, 2006. Nine men, ranging in age from 19 to 25 years, were accused and the case, heard at Khayelitsha court, was postponed more than 30 times. In October 2011 four men were found guilty and were awaiting sentencing at the time of going to press. The judge acknowledged in her ruling that the victim had been targeted because of her sexual orientation.

### **Thokozane Qwabe, 2007**

Thokozane's body was found on July 22, 2007, in Ezakheni, in Ladysmith, a city northwest of Durban in KwaZulu-Natal. She had been stabbed several times on her face and head. Two suspects were arrested late in 2009, but the case has been postponed several times since.

### **Sizakile Sigasa and Salome Masooa, 2007**

34-year-old Sizakile, an outreach worker at Positive Women's Network in Johannesburg, and her friend, 23-year-old Salome, were murdered in Meadowlands, Soweto, on July 7, 2007. Sizakile, an out lesbian activist, had been shot six times, three times to the head, and her underwear and shoelaces were used to tie up her hands and feet. Salome was shot once in the head. In 2009 the investigating officer on the case from Meadowlands Police Station informed the activists involved in the case that the main suspect committed suicide the day he was arrested. There have been no further arrests or updates on the case.

### **Khanyiswa (Lhoyie) Hani, 2008**

25-year-old Khanyiswa was found murdered in Port Elizabeth, a city on the east coast of South Africa, on May 26, 2008. There were stab wounds on her body, her throat had been slit, and her teeth knocked out. The matter remains unresolved.

**Sibongile Mphelo, 2008**

21-year-old Sibongile was killed in Strand, a town close to Cape Town, on June 20, 2008. She had been raped, shot, and genitally mutilated. There is no further information available on this case and it has not yet gone to trial.

**Eudy Simelane, 2008**

An out lesbian soccer player and well-known figure, 31-year-old Eudy was raped and murdered on April 28, 2008, in Kwa-Thema, a township close to Johannesburg. She had been stabbed more than 20 times all over her body. Four men were brought to trial at Delmas High Court in February 2009; two were convicted the same year and received sentences exceeding 30 years, while two were acquitted. An attempt to establish the relevance of sexual orientation to the killers' motives was unsuccessful.

**MG, 2010**

MG was raped and beaten by an acquaintance in Gugulethu, a township close to Cape Town, on April 2, 2010. The trial is currently underway at Wynberg Court in the Western Cape.

**Noxolo Nogwaza, 2011**

24-year-old Noxolo's body was found in an alley in Kwa-Thema, a township close to Johannesburg, on the morning of April 24, 2011. A case was registered at Tsakane Police Station but the police have made no arrests and do not yet have any suspects in the case either.

**Nokuthula Radebe, 2011**

Nokuthula's body was discovered in a field on March 28, 2011, in Thokoza, a township close to Johannesburg, and a case was opened at Thokoza Police Station. However, Nokuthula's friends found her shoe and other pieces of evidence after the police had investigated the crime scene and collected her body. The friends called the police to inform them of their discovery and were asked to bring the evidence to the police station, as the police station was short of vehicles. The postmortem results are still pending.

## “We’ll Show You You’re a Woman”

### Violence and Discrimination against Black Lesbians and Transgender Men in South Africa

Social prejudice against lesbians, gay men, and transgender people is prevalent in South Africa even as the country has progressive laws prohibiting discrimination on the grounds of sexual orientation. Lesbians, bisexual women, transgender men, and other gender non-conforming people in South Africa are subject to widespread discrimination, harassment, and violence. They are regularly thrown out of home; ridiculed and abused at school; harassed and insulted on the streets, in church, and at work; and threatened by neighbors and strangers. The abuse may be verbal, physical, or sexual—and may even result in murder.

“*We’ll Show You You’re a Woman*” documents the violence and abuse faced by working-class South African black lesbians, transgender men, and gender non-conforming people, detailing the everyday climate of fear and impunity within which they must attempt to negotiate their safety. It identifies specific factors that enhance their vulnerability but also places the violence against them in broader context, including the country’s alarming rates of gender-based violence.

South Africa already has in place many laws and policies to address sexual violence and discrimination; what is sorely lacking is effective implementation of those provisions. The report concludes with recommendations to specific ministries and departments of the South African government aimed at better safeguarding the rights and safety of lesbians and transgender men.

*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.*

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