



OVERVIEW

In 1996, with the adoption of the new constitution, South Africa became the first country in the world to enshrine protection for LGBT citizens into its founding legal document. In contrast to many other postcolonial African states South Africa suggested that LGBT citizens, far from constituting a threat to the national body, were instead valuable members of the national community. This equality clause to the constitution (which also protected other identity based rights including language, gender, and nationality to name a few) was to be the basis in which South Africa dismantled its apartheid laws that criminalized same sex relationships. The culmination of the increasing equality of LGBT citizens under the law was represented by the Constitutional Court's decision in 2005 that legalized same-sex marriages. By December of 2006 parliament had drafted a new law that created marriage equality in South Africa and eliminated bias based on LGBT identity in South African law. However, despite these legal shifts, the reality on the ground for LGBT South Africans, particularly for LGBT South Africans who are poor, working class, and living in inner city, township, and rural areas is much less rosy. This is particularly the case for gender non-conforming LGBT South Africans. Far from signaling the beginning of increased security, the shifts in South Africa's legal code instead point to the contested nature of constitutional protections and the fluid intersection between sexuality and security in the post apartheid state. In general, insecurity for black South Africans is a fact of life in South Africa. The situation becomes more fraught for the most vulnerable populations, including women, children, and members of the LGBT community. What follows is an institutional mapping of the main actors in relationship to LGBT rights and security for black South Africans.



LGBT and insecurity

Much of the sexuality based violence in the Johannesburg area is gendered. Gender non-conformity seems to be the basis of much of the homophobic violence experienced by members of the LGBT: gender non-conforming LGBT people are more likely to experience violence.

This is especially the case for transgender individuals (both men and women) and LGB men and women who challenge gender conventions in their physical appearance. Furthermore, the gendered nature of the violence is also demonstrated in the disproportionate violence experienced by women who are perceived to be lesbians or gender non-conforming. This is not to suggest that gay men escape these forms of violence, it is only to emphasize the disproportionate impact of violence on women's lives¹.

Class and geographic location are strong determinants in experiences of violence. Individuals with less social power as well as those occupying spaces of economic insecurity are more at risk. Much of the violence against black LGBT South Africans occurs in communities that are under-resourced in which unemployment is high and economic mobility is low. LGBT South African living in those areas speak of feeling danger as they navigate the streets and social spaces in the townships and certain inner city areas (particularly taxi ranks).

While women are certainly more likely to be victims of violence there is also a surprising number of gay and bisexual men that experience both violence and the threat of violence.



LGBT NGOs

LGBT organizations can be practically split into two main types of organizations:

- those that address general issues pertaining to the LGBT community (such as FEW the Forum for the Empowerment of Women). This first group of organizations, while they may be involved in health promotion and wellness for the LGBT community often consider themselves primarily political advocacy groups that lobby the government and to a lesser extent the private sector on behalf of LGBT communities. Furthermore, they serve as community organizations that provide social and political space for LGBT communities.



- those whose main purpose is to address wellness issues in the LGBT community (such as Health4Men). This second groups (symbolized by organizations such as Health4Men) see their primary role as addressing health issues,



particularly the crisis of HIV/AIDS in LGBT communitiesⁱⁱⁱ. Their main goal is to create forms of wellness in relationship to mental and physical health to support members of the LGBT community.

In some cases there is some overlap, but it might be important to note that while many of the Health related NGOs see their role as service provision and hence engage in little overt political advocacy, in contrast the more generalized organizations (while also engaging in service provision and community based organizing), see forms of political advocacy particularly toward government and civil service entities as key to their mission.

South African Governmental Organizations

Government, and governmental organizations are the main actors that LGBT activists appeal to. While they may monitor and comment on private sector actors, media portrayals, or statements by traditional and religious leaders, LGBT organizations spend much of their time trying to impact the ways in which black LGBT South Africans engage with government particularly when they have been subjected to homophobic violence or treated with discrimination. The two main actors that are subject to scrutiny by black LGBT South Africans are the court system and the police service. In the case of the former, the courts have often interpreted South Africa's constitution liberally creating the space for equality before the law. However, the court systems have not always been an adequate space for addressing homophobic crimes. In addition, South Africa's Human Rights Commission (a separate entity established in 1995) has been a space in which claims of LGBT



discrimination have been adjudicated. However, in everyday life, the South African Police Service (SAPS) is probably the state institution that most impacts the lives of black LGBT South Africans. SAPS officers have been open to critique by LGBT organizations because of harassment and criminalization of black LGBT South Africans, the failure to take seriously complaints of harassment and homophobic crime and

violence, and the failure to adequately investigate hate crimes (including murders) against LGBT South Africans. While the criminal justice system is notoriously insensitive to gender based violence (and by extension LGBT violence) in South Africa, the system cannot function if crimes have not been adequately investigated and sufficient evidence collected.

Private Security Actors

In much of South Africa private security actors are often times the first policing actors to respond to violence or the threat of violence. However, they generally patrol middle class and elite neighborhoods and spaces. These are the spaces black LGBT South Africans are least likely to occupy and also least likely to experience homophobic violence. This is not to suggest that LGBT related violence is absent in wealthier areas, rather the aim is to reiterate the additional scrutiny of township and inner city areas as spaces of heightened insecurity. Private security forces are less likely to patrol these areas. However, it is unclear if the presence of private security forces is more benign or does anything to heighten LGBT safety even when present. In some cases, the additional surveillance of black LGBT South Africans

particularly in elite and middle class spaces where they fail to signify their class status leads to additional harassment and criminalization. It is worth noting that black LGBT advocacy groups have little to say about private security officers in their advocacy roles, in contradistinction to the emphasis placed on SAPS.

Media

The role of media is highlighted, because throughout Africa, televisual and print media have been a key source for ideological debates about the place of LGBT Africans on the continent. Lurid tabloid oriented tales of shocking behavior on the part of lesbians and gays do the ideological work of positioning LGBT Africans as alien, a foreign contaminant that must be excised from the country. In the case of South Africa however, black LGBT people have generally been represented in a fair and balanced light. If anything, black LGBT South Africans have had the opportunity to present themselves as everyday people in both documentary and fictional narratives on both public and private channels. State media in particular has been involved in using its platform to popularize an idealized image of South Africa as a multicultural, multiracial, country in which LGBT people (including black LGBT people) are simply a part of the mix. There have been sympathetic portrayals of LGBT South Africans who have been victims of hate crimes and balanced coverage of LGBT politics and community events. What is unclear is that absent an explicitly homophobic media, why has media not been able to do more to shift attitudes and create acceptance for black LGBT South Africans in their communities? One potential answer lies in stereotypical portrayals of LGBT characters as wealthy, worldly, and spatially separated from everyday black communities. This stereotype of elite black LGBT people then does little to represent the lived reality of black LGBT people who are poor, working class, and embedded in black communities. It would seem that more work needs to be done to represent the diversity of black LGBT lives in South African media if it is to serve as an effective tool for change and reshaping the ideology of belonging in South Africa.





Religious Organizations

Religious organizations have a complicated role to play in the South African polity regarding LGBT rights. On the one hand there are a number of figures such as Desmond Tutu who have argued for acceptance of LGBT South Africans. A number of mainline South African churches either openly accept LGBT South Africans or at the least do not openly shun them. In addition there are a number of gay specific churches that operate openly in South Africa, including in Soweto. However, there are some prominent religious figures that have suggested the Unchristian and Ungodly nature of homosexuality as a defense for the exclusion of LGBT people from equality before the law. Significantly, many of these churches have influence in poor and working class communities.

Islamic leaders are also similarly split in their support or condemnation of LGBT South Africans. There appears to be more open condemnation of LGBT South Africans at least in the public record, while there are fewer advertized LGBT affirming mosques. That being said, Islamic authorities are not unanimous in the way they treat the issue.

What is clear is that religious organizations are both a source of security and insecurity for black LGBT South Africans providing spaces of safety and comfort as well as contributing ideologically to their exclusion from black communities.

Customary Leaders and Organizations

Customary leaders and organizations have been among the most vocal critics of LGBT equality and inclusion in the post-apartheid State. Because their

authority occurs in the realm of “tradition” and “African culture” their stance on LGBT issues is of particular significance. In government, traditional leaders are represented by the National House of Traditional Leaders (NHTL) whilst CONTRALESA is the NGO arm of traditional authority. Both organizations have publicly criticized government efforts at creating LGBT equality in South Africa calling LGBT South Africans un-African and the practice of same-sex relations western. While customary courts are

ultimately secondary to the western case law in matters of conflict between the two, in reality customary law and traditional authorities carry great weight in rural areas. Hence, their role moves beyond the symbolic. Through their role as administrators of customary law in the rural areas, traditional leaders are powerful agents, serving as the primary source of authority in matters such as access to land and dispute resolution.

As of now, customary law appears to make no provisions for the legal adult personhood of black LGBT South Africans as a class, particularly with respect to marriage and access to community land. Importantly, no black LGBT people have sought redress through the customary courts. The strategy of black LGBT activists has been to criticize the posture of traditional leaders while also re-emphasizing the primacy of the Constitution as the final authority on rights in South Africa. The strategy among black LGBT South Africans themselves however, has been

to creatively reimagine these traditions.

For example, black LGBT South Africans have incorporated forms of reworked tradition into same sex weddings. While these reimagined traditions do not have approval from customary authorities, they do play an important role in destabilizing the false dichotomy between “tradition” and black LGBT South Africans





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LGBT Artists



FAKA Portrait



Portrait by Zanele Muholi

The examination of key actors concludes by focusing on LGBT artists who are engaged in shifting understandings of black LGBT people in South Africa. While there are several working in various media, this brief discussion will focus on Zanele Muholi, a documentary photographer, and FAKA a performance art duo. Zanele Muholi sees her photography as forming a visual archive that offers an alternative to the erasure of black lesbian and gender non-conforming women. Her art challenges preconceived notions of black lesbians, reimagining them away from victimhood and toward agency. FAKA, a performance art duo based in Johannesburg, use their gallery and street performances to showcase unabashed black masculine femininity. Both artists force us to confront our discomfort with gender non-conformity and its assumed relationship to categories of sexuality. In the process, they work to create a larger terrain of black LGBT representation than that which is found in mainstream media. These artists do important work to claim forms of visibility and space resisting the forms of exclusion that threaten Black LGBT bodies

Concluding Remarks

Mapping the various different actors has provided a glimpse of the complicated intersection of civil society, government, and citizens in post apartheid South Africa. Ultimately, the focus is on thinking about security in ways that center the actions of those most vulnerable to insecurity. Media and religious authorities play an important ideological role in creating justification for partial inclusion and violent exclusion of black LGBT people. The role of class is critically important to examining which black LGBT South Africans have access to forms of protection and those that remain vulnerable. Black LGBT organizations and artists are a crucial site for the creation of security for this population. More research needs to be done on what specific roles (if any) are played by the very visible private security apparatus in South Africa.

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Notes

ⁱ South Africa faces an epidemic of gender based violence and women of all genders and sexualities are disproportionately targeted. LBT women are even more vulnerable. Much of what is described as homophobic violence cannot be delinked from the larger problem of gender based violence. It could be argued that homophobic violence is a special type of gendered based violence given the disproportionate violence experienced by women and feminine gender performing men. Women are punished in their communities for defying assumptions that their bodies and sexualities are available for men's pleasure and control. Men who are feminine gender performing (or otherwise non-gender conforming) are punished for relinquishing forms of masculine authority. What this suggests is that behaving outside the norms of gender creates a form of anxiety for men in the community.

ⁱⁱ Many of these organizations can trace their beginnings to older movements related to HIV/AIDS advocacy within LGBT communities and the larger movement present in South Africa to address the high rate of HIV/AIDS.

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