

JOINT STAKEHOLDER SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE REGARDING THE REVIEW OF SOUTH AFRICA

List of Issues Prior to Reporting (LOIPR)

(142nd Session – 14 October to 8 November 2024)

[REDRESS](#) and [Access Chapter 2](#) write to bring to the UN Human Rights Committee’s attention concerns in relation to torture against LGBTIQ+ persons in South Africa in advance of the adoption of the List of Issues Prior to Reporting (LOIPR) at the 142nd Session of the Committee to be held from 14 October to 8 November 2024.

SUBMISSIONS ON TORTURE AGAINST LGBTIQ+ PERSONS IN SOUTH AFRICA

Violence based on Sex, Gender, Sexual Orientation and Gender Identity

1. In its 2016 Concluding Observations on the initial report of South Africa, the Committee stated that it was “concerned about the persistence of stigma against persons based on their real or perceived sexual or gender orientation, gender identity or bodily diversity, and that such persons are subject to harassment, acts of discrimination and sexual and physical violence (arts. 2, 3, 6, 7 and 26).”¹
2. The Committee urged the State Party to “redouble its efforts to prevent and combat sexual, gender-based and domestic violence and to eradicate discrimination and violence against persons based on their real or perceived sexual or gender orientation, gender identity or bodily diversity, including through implementation of the National Intervention Strategy.”²
3. The State Party has made significant progress to enhance the protection of LGBTIQ+ rights in South Africa. For instance, South Africa:
 - a) Introduced the Hate Speech Bill in May 2024, creating criminal penalties for offences motivated by prejudice/discrimination, and mechanisms for reporting and investigations of hate crimes, including against LGBTIQ+ persons.³
 - b) Initiated an ongoing review of its national identity system to recognise different gender identities including non-binary.⁴
 - c) Adopted a National Intervention Strategy for the LGBTIQ+ community through the Department of Justice in different provinces and established a National Task Team

¹ UN Human Rights Committee (UNHRC), [Concluding observations on the initial report of South Africa](#), UN Doc. CCPR/C/ZAF/CO/1, 27 April 2016, para. 20.

² Ibid, para. 21.

³ [Prevention and Combating of Hate Crimes and Hate Speech](#) Act No. 16 of 2023.

⁴ Ferial Haffajee, [‘South Africa wants to enshrine the right to be non-binary’](#) (Quartz Africa, 22 April 2021).

on Gender and Sexual Orientation-Based Violence Perpetrated against LGBTIQ+ Persons (NTT).⁵

- d) Adopted a National Strategic Plan in 2020 to address intersectional issues connected to gender-based violence and femicide (GBVF),⁶ of which violence against LGBTIQ+ individuals forms a constitutive part.⁷
 - e) Adopted a revised 'National Intervention Strategy Countering Discrimination, Hate Crimes, GBVF That Are Perpetrated Against People on the Basis of Their Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics',⁸ widening its scope beyond violence against LGBTIQ+ persons to encompass access to all human rights of LGBTIQ+ persons.
 - f) In collaboration with civil society organisations, conducted some sensitisation and training programmes on LGBTIQ+ rights to police officers and health workers to improve services provided to LGBTIQ+ persons.⁹
 - g) Published relevant research reports through the South African Human Rights Commission.¹⁰
 - h) Is currently in the process of reviewing budget allocations for LGBTIQ+ rights programmes (National Treasury of South Africa).¹¹
4. Notwithstanding this progress, South Africa continues to be an unsafe country for LGBTIQ+ persons, as violence against this community remains prevalent and people are regularly targeted for their sexual orientation, gender identity, and gender expression (SOGIE). Despite multi-sectoral efforts envisaged by national strategies as outlined above, the number of reported cases continues to rise. In 2021, at least 24 LGBTIQ+ individuals were reported killed, many of whom were targeted due to their sexual orientation or gender identity.¹² In January 2022, the UN Independent Expert on SOGIE (in his previous capacity of Director of LGBT Rights Programme at Human Rights Watch) signed an open letter to the South African Minister of Justice highlighting the alarming increase in such killings of LGBTIQ+ persons.¹³ Cases of 'corrective' rapes or other

⁵ [National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex \(LGBTI\) Sector](#), 2014. The National Task Team (NTT) has been heralded by UN bodies as a very successful partnership between government and civil society. See UNHRC, [Common core document forming part of the reports of States parties: South Africa](#), UN Doc. HRI/CORE/ZAF/2021, 10 May 2021, para. 144.

⁶ [National Strategic Plan on Gender-Based Violence and Femicide](#), 2020.

⁷ OHCHR, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#), UN Doc. A/HRC/29/23, 4 May 2015, para. 21.

⁸ Human Rights Watch (HRW), [South Africa - Events of 2022](#).

⁹ Access Chapter 2 has been conducting some of these trainings to police officers and health workers upon government request.

¹⁰ See, for example: The Network of African Human Rights Institution and the South African Human Rights Commission (SAHRC), ['In-country meeting on sexual orientation, gender identity and expression'](#), 2017. See also: SAHRC [publications](#).

¹¹ South Africa, Department: [National Treasury](#).

¹² Roberto Igual, ['Human Rights Watch asks SA govt what it's doing to stop LGBTIQ murders'](#) (MambaOnline.com, 27 January 2022). See also, Lawyers for Human Rights, [Joint Statement on Hate Crime Murders – LGBTIQ+ people say more must be done](#), 22 March 2021.

¹³ HRW, [Letter to South African Authorities Regarding LGBTI Murders and Assaults](#), 18 January 2022.

'conversion' practices are also common,¹⁴ particularly in rural areas where people do not have access to legal assistance.

5. Killings of LGBTIQ+ people also occur in a broader context of discrimination and violence, including torture and other ill-treatment, as has been noted by other UN treaty bodies. In the 2021 Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) on South Africa, the Committee repeatedly expressed grave concern about the "particularly high risk of gender-based violence against women and girls facing intersecting forms of discrimination such as lesbian, bisexual and transgender women and intersex persons...".¹⁵
6. The pervasiveness of these attitudes is also felt by LGBTIQ+ persons deprived of their liberty. Despite the establishment of a multiple-body National Preventive Mechanism (NPM) coordinated by the South African Human Rights Commission to monitor places of detention following ratification of the Option Protocol to the UN Convention against Torture (UNCAT) in 2019, concerns have been raised as to its independence and the extent to which it is adequately resourced.¹⁶ Addressing such concerns is particularly necessary as gender-based violence persists against persons deprived of their liberty: from 2022 to 2023, there was a 100% increase in rape in police custody, as well as 122 instances of rapes by police officers, 228 reports of torture, 221 reports of deaths in police custody, 393 reports of deaths as a result of police action, and close to 3,500 assaults in prisons.¹⁷ Although recent data on violence against LGBTIQ+ persons in detention in South Africa is lacking, in our experience, LGBTIQ+ persons continue to face a heightened risk in such environments.¹⁸ Discriminatory attitudes prevalent in society are generally often exacerbated in detention settings, leaving LGBTIQ+ persons especially vulnerable to ill-treatment and torture.¹⁹
7. This cycle of violence against LGBTIQ+ individuals in South Africa is said to be fuelled by traditional beliefs, structural discrimination, and societal stigma, and many have apportioned blame to faith-based institutions and traditional leaders.²⁰ In 2022, Access Chapter 2 published a report that found that 50% of respondents "reported that their families had forced them to convert their sexuality or gender identity, while 43 percent

¹⁴ UNHRC, [Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: Practices of so-called "conversion therapy"](#), UN Doc. A/HRC/44/53, 1 May 2020, para. 39. See, also: Access Chapter 2, [Inxebalam: 'Conversion Practices' and Implications in the South African Context](#), 2022; and Pink News, [What is happening to LGBT+ rights in South Africa?](#), 9 February 2018.

¹⁵ Committee on the Elimination of Discrimination against Women (CEDAW) [Concluding observations on the fifth periodic report of South Africa](#), UN Doc. CEDAW/C/ZAF/CO/5, 23 November 2021, para. 9(d) and para. 24(a).

¹⁶ OHCHR, [Committee against Torture examines the situation in South Africa](#), 1 May 2019. See also, Committee against Torture (CAT), [Concluding observations on the second periodic report of South Africa](#), UN Doc. CAT/C/ZAF/CO/2, 7 June 2019, para. 24.

¹⁷ Independent Police Investigative Directorate, [Annual Report 2022/2023 Financial Year](#), p. 45.

¹⁸ Access Chapter 2 has internally reported a number of cases of violence against LGBTIQ+ persons in detention, and continues to represent some survivors in this context.

¹⁹ Association for the Prevention of Torture (APT), [Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide](#), 2018, p. 21-22.

²⁰ United States Department of State, [Country Reports on Human Rights Practice: South Africa](#), 2023.

had at least one session with a religious representative or institution as an ‘intervention’ by parents, families, or community members.”²¹

8. In extreme cases, religious leaders have advocated for killings and hateful crimes to be committed against those in the queer community. In 2015, Pastor Oscar Bougardt was reported to have celebrated the news of one boy and nine men who were killed for homosexuality by members of the Islamic state.²² He was subsequently found in contempt of a court order barring him from saying any anti-gay slurs contained in agreement made in 2013,²³ and in 2018 the Equality Court sentenced him to 30 days imprisonment, along with five-year years of suspension.²⁴ Despite occurring in 2015, this case underscores the ongoing challenges in South Africa, highlighting the role of religious leaders in perpetuating or being complicit in human rights violations against LGBTIQ+ persons.
9. We stress that these forms of violence against the LGBTIQ+ community in South Africa, specifically targeted killings,²⁵ harassment, structural discrimination and serious physical and sexual violence by State and non-State actors – violence in police custody or in detention facilitates,²⁶ beatings and rapes, including so-called ‘corrective’ rapes and conversion therapy practices²⁷ – contravene a number of human rights treaties ratified by the State. This includes the ICCPR and UNCAT which categorically stipulate that every human being has the inherent right to life,²⁸ and to be free from torture and other ill-treatment.²⁹
10. Indeed, many of these instances of violence constitute torture against LGBTIQ+ persons as defined under UNCAT and the Prevention of Combating and Torture of Persons Act 2013 (PCTPA) as they are motivated by discrimination against the victim’s actual or perceived sexual orientation or gender identity.³⁰ In particular, some practices of conversion therapy have been repeatedly recognised as amounting to torture or other ill-treatment where they aim to forcibly, coercively or otherwise involuntarily modify a person’s sexual orientation or gender identity, and invariably lead to severe and life-long physical and mental pain and suffering.³¹ Despite this, many cases of serious

²¹ Access Chapter 2, [Inxebalam: ‘Conversion Practices’ and Implications in the South African Context](#), 2022, p. 7.

²² His exact online comments were, “We need ISIS to come to countries that are homosexual-friendly. ISIS, please come rid South Africa of the homosexual curse.” See John Campbell, [‘South African Court Delivers Blow to Religious Defense of Hate Speech’](#) (Council on Foreign Relations, 20 June 2018).

²³ See further, Youth Policy Committee Gender Working Group, [‘Hate Crimes against Members of the LGBTQIA+ Community in South Africa’](#) (South African Institute of International Affairs, 2 August 2021).

²⁴ John Campbell, [‘South African Court Delivers Blow to Religious Defense of Hate Speech’](#) (Council on Foreign Relations, 20 June 2018).

²⁵ See paragraphs 5-6 above.

²⁶ See paragraph 7 above.

²⁷ See paragraphs 8-9 above.

²⁸ International Covenant on Civil and Political Rights (ICCPR), art. 6.

²⁹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), art. 2.

³⁰ [Prevention of Combating and Torture of Persons](#) Act No. 545 of 2013, art. 3(b).

³¹ [The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity](#), March 2007. See Principle 10. See further, Outright International, [Converting Mindsets, Not Our Identities: Summary of the Research Findings on the Nature, Extent, and Impact of Conversion Practices in Kenya, Nigeria, and South Africa](#), July 2022, pp. 21-25.

violence are not characterised as torture or other ill-treatment against LGBTIQ+ persons, meaning that victims do not receive the protections and reparations they are entitled to, perpetrators are not held accountable, and therefore the State fails to uphold its international legal obligations.

11. The torture of LGBTIQ+ persons in South Africa happens in a broader hostile context against this community, where many people hold conservative views on SOGIE, perceiving sexual and gender diversity as unnatural or immoral. There is also a lack of comprehensive sex education which includes SOGIE education in schools.³² While the creation of provincial guidelines have been tabled, such as Draft Guidelines on Gender Identity and Sexual Orientation,³³ they have yet to be finalised or brought forward with meaningful effect.³⁴ These issues contribute to the marginalisation of LGBTIQ+ individuals and perpetuate harmful stereotypes that have already had an irreversible impact on LGBTIQ+ persons, including children.³⁵
12. A failure to properly spread awareness of LGBTIQ+ issues has also impacted LGBTIQ+ persons arriving at the South African border, who suffer discrimination, increased vulnerability to violence due to classification on official papers as being of a gender other than their lived gender, or outright denial of asylum based on misconceptions and doubts regarding their vulnerability in the country of origin. Statistics show that 86% of asylum seekers claim to have been required to “prove” their sexual orientation by officials, and if refused, their asylum application was denied,³⁶ thus raising concerns regarding South Africa’s compliance with the principle of non-refoulement.³⁷ This was highlighted by Human Rights Watch in its submission to the South African Department of Justice in 2021 in which the Department was urged to incorporate the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance³⁸ into the National Intervention Strategy to address challenges faced by African LGBTIQ+ asylum seekers, refugees, and undocumented migrants.³⁹
- 13. We urge the Human Rights Committee in its LOIPR to request the State Party to provide information regarding:**

³² Phinah Kodisang, [‘Tackling gender-based violence and femicide requires collective effort’](#) (Mail & Guardian, 8 October 2022).

³³ [Draft Guidelines on Gender Identity and Sexual Orientation in Public Schools of the Western Cape Education Department](#), 2020.

³⁴ [Open Letter to Western Cape Department of Education](#), 9 July 2021.

³⁵ In October 2023, 12-year-old Sibusiso Mbatha, a sixth grader, took his own life in October after facing homophobic remarks from a person in authority. A report investigating the circumstances surrounding his suicide revealed that a teacher at Khehlele Primary School in Gauteng Province made derogatory remarks about his sexual identity and expression, contributing to Mbatha’s distress. See further, Kamogelo Moichela, [‘Leave gayism outside school’: Deputy principal ill-treated, blasphemed, and homophobically abused Sibusiso Mbatha, who died by suicide – report’](#) (IOL, 16 November 2023). See further, Matuba Mahlatjie, [‘Inclusive Education Can Save LGBTIQ Lives: Focus on Ghana and South Africa’](#) (Outright International, 24 January 2024). See also, United States Department of State, [Country Reports on Human Rights Practice: South Africa](#), 2023.

³⁶ Luiz De Barros, [‘Abusive Home Affairs biggest challenge facing LGBTI asylum seekers’](#) (MambaOnline.com, 31 May 2019).

³⁷ Legal Resources Centre, [LGBTI+ Asylum Seekers in South Africa: A Review of Refugee Status Denials Involving Sexual Orientation & Gender Identity](#), April 2021, pp. 21-22, 34, 35-39.

³⁸ [National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance](#), March 2019.

³⁹ Human Rights Watch, [Submission to the South Africa Department of Justice](#), 6 July 2021.

- The implementation of the revised National Intervention Strategy to improve the systems for monitoring, reporting and responding to crimes of violence and discrimination against individuals based on SOGIE. This should include whether any progress indicators have been established to measure its impact.
- The strengthening of the NPM to protect and respond to incidents of violence against LGBTIQ+ individuals in police custody or in detention facilities.
- The number of cases where anti-LGBTIQ+ violence has been investigated and/or prosecuted as torture since the adoption of the PCPTA.
- The adoption of any new prevention strategies targeting discriminatory torture against LGBTIQ+ persons since the adoption of the PCTPA.
- Efforts taken to introduce legislation banning ‘conversion’ practices.
- The implementation of inclusive non-discriminatory SOGIE policies that are binding on all public and private schools that includes, protects and affirms LGBTIQ+ learners, educators, and other staff. This may include the integration of a comprehensive sexuality programme into the National Intervention Strategy for LGBTIQ+ persons.
- Investigations of hate crimes and discrimination faced by LGBTIQ+ refugees, asylum seekers and undocumented migrants in South Africa due to their SOGIE and/or migrant status.

Data, Investigations and Prosecutions

14. In its 2016 Concluding Observations, the Committee recommended that the State Party should “facilitate reporting, and collecting data on, sexual and gender-based crimes and ensure that all such crimes are promptly and thoroughly investigated.”⁴⁰

Data

15. The South African Police Service (SAPS) routinely announces figures of reported crimes on an annual basis. For instance, between April 2022 and March 2023 alone, 53,498 sexual offences were reported, with rape accounting for 42,780 of these cases.⁴¹ However, such data will remain largely unhelpful until there is disaggregation with regard to crimes committed against LGBTIQ+ individuals.⁴²
16. In its 2021 Concluding Observations, CEDAW noted with concern information received on the situation of women and girls facing intersecting forms of discrimination, including LGBTIQ+ women, and the lack of disaggregated data on measures taken by the State to comply with its due diligence obligation to prevent and protect these

⁴⁰ UNHRC, [Concluding observations on the initial report of South Africa](#), UN Doc. CCPR/C/ZAF/CO/1, 27 April 2016, para. 21.

⁴¹ Commission for Gender Equality, [Towards a Gender-Based Violence Index for South Africa: An Overview and Proposed Way Forward](#), 31 March 2024, p. 1.

⁴² South African Human Rights Commission, [Thematic Discussion Paper: Discrimination and Violence on the Basis of Sexual Orientation, Gender Identity and Expression \(SOGIE\) in South Africa](#), 2017, p. 10. See also, Luiz De Barros, [‘Will SAPS finally release LGBTIQ hate crime stats?’](#) (MambaOnline.com, 17 August 2020).

women from gender-based violence.⁴³ In the absence of disaggregated data, it becomes impossible to gain a comprehensive appreciation of the nature and scope of violence against LGBTIQ+ persons in South Africa. Moreover, it becomes difficult to develop targeted and informed interventions according to the real experiences of LGBTIQ+ persons.

17. Whilst the Department of Justice and Constitutional Development mandated the establishment of an NTT as part of the National Intervention Strategy in a coordinated attempt to ensure data collection on the violations against LGBTIQ+ persons in South Africa, its processes were noted as often opaque and intangible.⁴⁴

Investigations and Prosecutions

18. The lack of effective reporting and analysis of violence against members of the LGBTIQ+ community compounds the reluctance already felt by LGBTIQ+ individuals to report crimes to the authorities, resulting in their needs and challenges being relegated to the margins of society.⁴⁵ This is despite efforts by the Minister of Police to allay concerns through the Policy on Reducing Barrers to the Reporting of Sexual Offences and Domestic Violence.⁴⁶ An influencing factor is that the abuse and discrimination LGBTIQ+ people suffer at the hands of the police often prevents the reporting of crimes. As a result, they are cut off from potential sources of support and justice.
19. In a 2016 survey conducted by OUT LGBTI Wellbeing in collaboration with other South African LGBTIQ+ organisations, it was estimated that close to 88% of LGBTIQ+ hate crimes in South Africa go unreported due to concerns that they would not be taken seriously by the police, or would otherwise suffer abuse from the police, as well as fears of reprisals from the offender themselves and other members of the community for revealing their sexual orientation.⁴⁷
20. Even when reported, cases are rarely adequately investigated despite the existence of the NTT to implement and monitor the National Intervention Strategy which envisages investigations to ensure accountability for torture against LGBTIQ+ individuals. As alluded to in paragraph 19 above, discriminatory attitudes among police forces result in reluctance to investigate and identify perpetrators.⁴⁸ Various NGOs and the Committee against Torture (CAT) have noted both the culture of impunity within the police and the perpetration of new crimes against those who try to report allegations.⁴⁹ According to a 2019 study where LGBTIQ+ persons shared their experiences of reporting to the police in Durban, one individual who reported a crime against them felt that the officers

⁴³ CEDAW, [Concluding observations on the fifth periodic report of South Africa](#), UN Doc. CEDAW/C/ZAF/CO/5, 23 November 2021, para. 59.

⁴⁴ Arcus Foundation, [Data Collection and Reporting on Violence Perpetrated against LGBTIQ Persons in Botswana, Kenya, Malawi, South Africa and Uganda](#), January 2019, p. 63.

⁴⁵ Sinqobile Makhathini, [‘The State is Failing in its Duty to Foster Inclusion and Safety of the LGBTIQ+ Community’](#) (Centre for the Study of Violence and Reconciliation, 28 June 2021).

⁴⁶ South African Police Service, [Media Statement from the Office of the Minister of Police](#), 11 August 2017.

⁴⁷ [Hate Crimes against Lesbian, Gay, Bisexual and Transgender \(LGBT\) People in South Africa](#), 2016, pp. 13-14.

⁴⁸ REDRESS and Access Chapter 2, [Unequal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa](#), 2022, p. 34.

⁴⁹ OHCHR, [Committee against Torture examines the situation in South Africa](#), 1 May 2019.

themselves were homophobic and refused to help, stating “yeah, it serves you right.”⁵⁰ Others mentioned that the police demonstrated little concern in assisting them or investigating the violations they suffered, instead asking questions that were humiliating rather than helpful,⁵¹ thereby contributing to secondary victimisation.

21. In September 2023, the Minister of Justice and Constitutional Development stated that the National Prosecuting Authority secured eight convictions between 2022-2023 for hate crimes targeting individuals for their sexual orientation.⁵² This figure is hoped to increase with the advent of the Prevention and Combating of Hate Crimes and Hate Speech Act. At the time of writing, and as far as we are aware, there have been no prosecutions of anti-LGBTIQ+ violence under the PCTPA, despite numerous instances which could properly be classified as torture or other ill-treatment under international and domestic law.⁵³
22. We also note that investigations into sexual and gender-based crimes often fall short of international standards,⁵⁴ failing to unmask the discriminatory motives behind the acts of violence, and failing to adopt a gender-sensitive approach.⁵⁵ In reported cases of sexual violence, the SAPS often fails to investigate and identify the perpetrator’s motive or the victim’s SOGIE. This impedes the understanding of possible violence trends and the appreciation of its full scale in South Africa. Additionally, it prevents accountability of perpetrators for discriminatory crimes and hinders victims from receiving appropriate reparation.
23. Inefficiency, corruption, inaction and occasionally complicity with perpetrators – as well as police themselves being one of the main perpetrators of violence – are also barriers to accountability and the advancement of effective investigations.⁵⁶ In its 2019 Concluding Observations, the CAT noted a high number of deaths in police custody and

⁵⁰ Simangele Mkhize and Ephraim Kevin Sibanyoni, ‘[Police Turn Blind Eye to Homosexual Victims of Crime in Durban of South Africa](#)’ (2019) 1(6) *Journal of Humanities and Social Sciences* 123, p. 129.

⁵¹ *Ibid*, p. 130. See further, REDRESS and Access Chapter 2, [Unequal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa](#), 2022, p. 70.

⁵² United States Department of State, [Country Reports on Human Rights Practice: South Africa](#), 2023.

⁵³ See paragraphs 10-11 above. The first application of the Act only took place in 2023 in *Smith and Others v. The Minister of Justice and Correctional Services* (21639/2015) [2023], concerning torture inflicted by prison officials on five inmates of the Leeuwkop Maximum Correctional Centre in Gauteng. It was nonetheless a win for victims of torture in South Africa and a historic precedent by the South African courts to fully implement the procedural obligations of the CAT. See further, REDRESS, [South African Court Decides in Favour of Torture Victims in First Case to Apply the South African Torture Act](#), 1 September 2023.

⁵⁴ REDRESS and Access Chapter 2, [Unequal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa](#), 2022, p. 33. See also, Amnesty International, [South Africa: Urgent Measures Needed to Hold SAPS Accountable for Denying GBV Victims and Their Families Justice](#), 9 August 2023. See generally, REDRESS, [Investigating Torture Against LGBTIQ+ Persons: A Step Towards Increased Accountability](#), June 2023.

⁵⁵ REDRESS and Access Chapter 2, [Unequal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa](#), 2022, p. 67.

⁵⁶ Andrew Scheibe et al., ‘[Finding solid ground: law enforcement, key populations and their health and rights in South Africa](#)’ (2016) 19(4Suppl 3) *Journal of the International AIDS Society* 1, p. 1. See also, Benjamin Roberts, ‘[South Africans have low trusts in their police: Here’s why](#)’ (Policing Insight, 13 April 2022). See also, REDRESS and Access Chapter 2, [Unequal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa](#), 2022.

a low number of corresponding investigations into and prosecutions of such deaths.⁵⁷ More recent figures have been highlighted in paragraph 7 above. The CAT also observed that effective investigations were further impeded by a fear of reprisals, arising from a lack of adequate safeguards for victims.⁵⁸ The CAT additionally found that politicians have at times used “unambiguous and openly hostile language” with regards to acts of torture and rape by police officials, potentially deterring victims from reporting.⁵⁹

24. A further issue on investigations concerns the absence of specific guidelines and protocols for investigating torture or other violence against LGBTIQ+ persons. This is despite the existence of a published terms of reference for the Rapid Response Team as part of the National Intervention Strategy, of which the SAPS is a member,⁶⁰ to fast track pending and reported LGBTIQ+ related cases in the South African criminal justice system.⁶¹ While the SAPS has a Standard Operating Procedure concerning LGBTIQ+ persons,⁶² this does not provide guidance on how to conduct SOGIE-sensitive investigations of crimes committed against LGBTIQ+ victims, and in particular how to collect evidence to establish the discriminatory intent of violence and conduct trauma-sensitive interviews of victims and survivors. The lack of detailed, targeted protocols hinders effective and sensitive handling of cases, leading to inadequate support and justice for the victims. While national instructions for investigating hate crimes are now codified in the Prevention and Combating of Hate Crimes and Hate Speech Act,⁶³ how this is working in practice to strengthen investigations has not yet been documented.
25. **We urge the Human Rights Committee in its LOIPR to request the State to provide information regarding:**
- **Data collection by the SAPS, the National Task Team and its Rapid Response Teams, and other relevant bodies, specifically related to torture and other forms of violence against LGBTIQ+ persons. This includes whether data is collected in a disaggregated manner to fully capture the scope and nature of such violence – such as identifying the type of violence, the identity of perpetrator, the victim’s SOGIE, the number of incidents, and any other relevant information.**
 - **New initiatives undertaken by the NTT to strengthen interdepartmental and intersectoral collaboration in effectively addressing SOGIE-based violence and discrimination experienced by survivors in the justice system, and generally in all forms. This may include any changes in the framework and measured impact since the NTT was enhanced and elevated to the Deputy Minister level.**
 - **The number and outcome of investigations and prosecutions related to violence against LGBTIQ+ persons under the appropriate legislative framework (PCPTA or other) since the crime was first reported.**

⁵⁷ CAT, [Concluding observations on the second periodic report of South Africa](#), UN Doc. CAT/C/ZAF/CO/2, 7 June 2019, para. 22.

⁵⁸ Ibid, para. 24.

⁵⁹ Ibid, para. 32(d).

⁶⁰ The Rapid Response Team is also comprised of representatives of the Department of Justice and Constitutional Development, the National Prosecuting Authority, and other civil society organisations.

⁶¹ Department of Justice and Constitutional Development, [Terms of Reference for the Rapid Response Team to fast track pending and reported LGBTIQ related cases in the Criminal Justice System](#).

⁶² The Standard Operating Procedure to Respect, Protect and Promote the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons, V002/2017.

⁶³ [Prevention and Combating of Hate Crimes and Hate Speech](#) Act No. 16 of 2023, art. 7.

- **The implementation of the recently adopted framework, particularly regarding efforts to develop a binding national protocol on investigations into violence against LGBTIQ+ persons, including torture, which adopts a gender-sensitive approach and requires investigative authorities to take all reasonable measures to collect and secure evidence; explore all practical means of discovering the truth concerning the incident; take all reasonable steps to investigate possible discriminatory motives and establish whether feelings of hatred or prejudice played a role in the events; and deliver fully reasoned, impartial, and objective decisions, without omitting suspicious facts that be may indicative of violence motivated by gender-based discrimination.**
- **Efforts to develop and implement SAPS National Instructions on Hate Crimes detailing positive procedural duties and include disciplinary provisions for non-compliance.**

Reparation and Protection

26. In its 2016 Concluding Observations, the Committee recommended that the State Party should "...[ensure] that victims have access to full reparation and means of protection, including access to shelters or centres run by the State and non-governmental organizations throughout the State party's territory."⁶⁴

Access to Reparations

27. South Africa noted the need to improve access to justice, redress, and rehabilitation for all victims of torture following its 2017 UPR examination, and accepted recommendations to strengthen its efforts to provide redress particularly for victims of gender-based discrimination and violence, including on the grounds of SOGIE.⁶⁵ The South African Constitution provides for 'appropriate relief' for individuals subjected to torture.⁶⁶ However, this is undermined by what bears out in reality for victims of torture giving the structural discrimination they endure⁶⁷ and the lack of effective investigations conducted,⁶⁸ thereby impeding access to justice and accountability for anti-LGBTIQ+ violence.
28. Based on Access Chapter 2's experience representing LGBTIQ+ victims of torture and violence in South Africa, survivors face several challenges that prevent them from receiving reparation in practice, including lack of access to legal assistance, medical and psychological support, and other basic services, especially in rural areas. In practice, their cases are often not adequately recorded upon reporting, or investigated by the authorities, and survivors do not receive appropriate protection from potential reprisals.

⁶⁴ UNHRC, [Concluding observations on the initial report of South Africa](#), UN Doc. CCPR/C/ZAF/CO/1, 27 April 2016, para. 21.

⁶⁵ UNHRC, [Report of the Working Group on the Universal Periodic Review of South Africa](#), UN Doc. A/HRC/36/16, 18 July 2017, Recommendations 139.16, 139.195 and 139.215. See also, UNHRC, [Report of the Working Group on the Universal Periodic Review of South Africa: Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review](#), UN Doc. A/HRC/36/16/Add.1, 19 September 2017, paras. 6 and 13.

⁶⁶ [Constitution of the Republic of South Africa](#) No. 108 of 1996, art. 38.

⁶⁷ See paragraph 8 above.

⁶⁸ See paragraphs 19-25 above.

29. Correspondingly, even with enactment of the PCTPA to address the offence of torture, South Africa has not included any provisions on the right to redress for victims of torture. This is despite recommendations by the CAT that the PCTPA be amended to include provisions relating to the right of redress and remedy for victims of torture.⁶⁹
30. Although this does not affect the rights of victims under the Act to seek compensation through civil⁷⁰ and criminal proceedings,⁷¹ or the constitutional right to seek redress for a breach of fundamental rights, this does not reflect a victim-led approach to addressing torture. This is because such claims involve a costly, long and highly sophisticated court process, often leading to victims' re-traumatisation;⁷² torture is not recognised as a tort, resulting in claims being brought as assault or other less serious offences, in turn limiting the availability of adequate compensation,⁷³ and there have been reports of evasive tactics used by police forces to discourage victims from continuing with claims.⁷⁴
31. Notwithstanding, we welcome the introduction of the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Act 2020 which removed the 20-year limitation period within which prosecutions for torture had to be instigated.⁷⁵ This legal reform is an important development for torture victims in South Africa, as statutes of limitation are a specific obstacle impeding the enjoyment of the right to redress.⁷⁶

Access to Protection and Shelter

32. Despite policy commitments by the National Department of Social Development to introduce an Intersectoral Shelter Policy for Victims of Crime and Violence to address issues related to funding,⁷⁷ we are concerned by South Africa's failure to ensure that LGBTIQ+ persons facing violence have access to resourced shelters or centres run by the State and non-governmental organisations throughout its territory. As noted by the Commission for Gender Equality in 2019, the unequal and under resourcing of shelters limits the protection that women and LGBTIQ+ individuals can access.⁷⁸

⁶⁹ CAT, [Concluding observations on the second periodic report of South Africa](#), UN Doc. CAT/C/ZAF/CO/2, 7 June 2019, para. 7(c).

⁷⁰ [Prevention of Combating and Torture of Persons](#) Act No. 545 of 2013, s. 7. This provides for civil liability of persons convicted of torture.

⁷¹ [Criminal Procedure Act 51 of 1977](#). The Act provides that awards of compensation may be granted to victims of a crime.

⁷² Oxford Bonavero Institute of Human Rights, [South Africa: Civil Liability for Human Rights Violations](#), October 2022, p. 14. See generally, The Centre for the Study of Violence and Reconciliation, [Submission to the United Nations Committee Against Torture for the 66th Session](#), June 2018.

⁷³ UNHRC, [Concluding observations on the initial report of South Africa](#), UN Doc. CCPR/C/ZAF/CO/1, 27 April 2016, para. 22.

⁷⁴ REDRESS, [Anti-Torture Standards in Common Law Africa: Good Practices and Way Forward](#), 2022, p. 83.

⁷⁵ [Prescription in Civil and Criminal Matters \(Sexual Offences\) Amendment](#) Act No. 15 of 2020, s. 3. This repealed and replaced the previous limitation period of 20-years provided by the Criminal Procedure Act 1977, s. 18(1).

⁷⁶ CAT, [General Comment No. 3](#), UN Doc. CAT/C/GC/3, 13 December 2012, para. 38.

⁷⁷ Commission for Gender Equality, [Final Report: Investigation into the State of Shelters 2022/2023](#), p. 44. See also, Parliamentary Monitoring Group, [State of Shelters: Implementation of CGE Recommendations](#), 27 February 2024.

⁷⁸ Commission for Gender Equality, '[CGE Response to GBV Crisis](#)', October 2019, para. 3.4.2. This was also recognised by the Commission in its 2020 report. See generally, Commission for Gender Equality, [Report on Consultative Hearings into the State of Shelters in South Africa](#), 2020.

33. This is underscored by the fact that there is no standardised approach to accommodate and assist LGBTIQ+ survivors, staff do not receive specific sensitisations and skills training to prevent discrimination,⁷⁹ and that only two shelters that specifically support members of the LGBTIQ+ community exist in the entirety of South Africa – in Cape Town and in Ekurhuleni, Gauteng.⁸⁰ Indeed, Human Rights Watch reported that shelters differed in whom they accepted as clients, with LGBTIQ+ persons finding themselves often excluded, despite being accepted in theory, as they did not feel welcome.⁸¹ Transgender and intersex persons were refused entry into general population shelters because they did not fit the male or female categories, and transgender activists complained of discrimination and humiliation by officials and nurses at public hospitals and government offices.⁸²
34. This institutional neglect is exacerbated in situations of health emergencies (such as the COVID-19 pandemic) where, despite promises included in the National Strategic Plan to address GBVF, South Africa has still failed to adequately provide the necessary funding for shelters and other services for those at risk of victimisation and violence based on their sexual and gender orientation.⁸³
35. **We urge the Human Rights Committee in its LOIPR to request the State to provide information regarding:**
- **Action taken to ensure that LGBTIQ+ victims of torture receive adequate reparation under the existing legal and policy framework.**
 - **The number and outcomes of cases where survivors of anti-LGBTIQ+ violence sought reparation – through judicial or non-judicial avenues –, as well as the process available for victims to seek and obtain reparation.**
 - **The measured impact, if any, of the specialised courts addressing gender-based violence and the recently adopted framework on LGBTIQ+ victims’ access to justice and reparation.**
 - **Additional efforts to ensure victims’ access to justice and protection in relation to victims/witnesses protection throughout processes, including the extent to which cases are conducted based on a victim-centred approach by (a) supporting victims throughout the case with social assistance, and expert psychosocial support where**

⁷⁹ In 2021, Human Rights Watch spoke to various shelters, including the Creighton Shelter in KwaZulu-Natal, who expressed that staff were reluctant to accept transwomen in the facility, particularly where there are no private rooms and bathrooms, or training for staff. See Human Rights Watch, [South Africa: Broken Promises to Aid Gender-Based Violence Survivors – Improve Shelter Funding; Increases Access for Sex Workers, LGBT, Undocumented Survivors](#), 24 November 2021.

⁸⁰ Roberto Igual, [‘Group offers helping hand to LGBTIQ+ homeless shelter residents’](#) (MambaOnline.com, 12 August 2022).

⁸¹ HRW, [South Africa: Broken Promises to Aid Gender-Based Violence Survivors – Improve Shelter Funding; Increases Access for Sex Workers, LGBT, Undocumented Survivors](#), 24 November 2021. See further, Matthew Hirsch, [‘Help free up government buildings for women’s shelters, MPs urged’](#) (MambaOnline.com, 9 November 2023).

⁸² United States Department of State, [Country Reports on Human Rights Practice: South Africa](#), 2023.

⁸³ [‘National Shelter Movement pens open letter to Ramaphosa on poor service delivery, women abuse’](#) (IOL, 22 August 2020). See further, HRW, [South Africa: Broken Promises to Aid Gender-Based Violence Survivors – Improve Shelter Funding; Increases Access for Sex Workers, LGBT, Undocumented Survivors](#), 24 November 2021.

necessary; and (b) ensuring that victims are informed, able to participate in proceedings, and have access to legal assistance.

- Efforts being made to both improve and prioritise access to shelters and other services for LGBTIQ+ people, particularly as it relates to the finalisation and implementation of the draft Intersectoral Shelter Policy for Victims of Crime and Violence.
- The scope of allocation of funding for specific shelters for LGBTIQ+ that are in crisis in each province.
- Action taken to monitor the processes for, and decision made in relation to, the admission of LGBTIQ+ persons to shelters.
- Efforts taken to schedule sensitisation training for staff on the rights of LGBTIQ+ individuals.
- Efforts being made to fund, resource, and restore the functionality of failing entities such as the National and Provincial Task Teams and the Rapid Response Team that were set up to address violence against and provide services to LGBTIQ+ individuals in South Africa.

Adequate Training for Relevant Agencies and Personnel

36. In its 2016 Concluding Observations, the Committee urged the State Party to also "...[e]nsure adequate training for law enforcement and health service personnel regarding domestic and gender-based violence, and violence based on sexual orientation and gender identity."⁸⁴
37. The failures to investigate and prosecute violence against LGBTIQ+ individuals (noted above at paragraphs 20-21) are also attributable to the culture of disbelief that exists within law enforcement agencies. Indeed, LGBTIQ+ persons often suffer from verbal abuse, harassment and further discrimination when reporting a crime, and are often not believed or even blamed for the crimes they report.⁸⁵ For instance, evidence was heard in *Qwelane v. SAHRC* that after a black lesbian woman was raped, SAPS officials responded to her attempt to lay a charge by saying that lesbians are 'boys', and "boys cannot be raped."⁸⁶ This in turn leads to secondary victimisation as discussed in paragraph 21 above.
38. This type of secondary victimisation and the underreporting that results from it are connected to a limited understanding of LGBTIQ+ rights within law enforcement agencies, particularly the SAPS. This is despite accelerated efforts to assist victims through the adoption of the Policy on Reducing Barriers to the Reporting of Gender Based and Domestic Violence as highlighted at paragraph 19 above.⁸⁷ Law enforcement

⁸⁴ UNHRC, [Concluding observations on the initial report of South Africa](#), UN Doc. CCPR/C/ZAF/CO/1, 27 April 2016, para. 21.

⁸⁵ Simangele Mkhize and Ephraim Kevin Sibanyoni, '[Police Turn Blind Eye to Homosexual Victims of Crime in Durban of South Africa](#)' (2019) 1(6) *Journal of Humanities and Social Sciences* 123, p. 129-130. See also, REDRESS and Access Chapter 2, [Unequal Justice: Accountability for Torture Against LGBTIQ+ Persons in Africa](#), 2022, p. 70.

⁸⁶ *Qwelane v. SAHRC & others* (686/2018) [2019] ZASCA 167 (29 November 2019) para. 16.

⁸⁷ South African Police Service, [Media Statement from the Office of the Minister of Police](#), 11 August 2017.

agencies and health service personnel have a crucial responsibility to not only be familiar with the legal and policy framework in respect of SOGIE-based violence and discrimination, but also to ensure that victims are provided with accurate and comprehensible information.⁸⁸ Invariably, this has not been the case in South Africa, particularly for LGBTIQ+ victims.

39. Regional experts and NGOs have described this secondary victimisation as an institution-wide concern resulting from a mix of malintent, homophobia and miseducation, creating fear and mistrust among LGBTIQ+ individuals.⁸⁹ This lack of awareness is unlikely to be addressed adequately only with one-off training sessions from NGOs and requires the inclusion of such issues in an appropriate manner in the official curriculum of law enforcement agencies.⁹⁰
40. Training that has been conducted to date to improve SAPS, Department of Justice and Correctional Services and other relevant government officials' knowledge of the justice system, including the criminal justice system, and their response to victims, also bears closer scrutiny. A Department of Justice report from 2015 emphasised the breakdown of the number of officials trained, and the number of training sessions conducted, but very little information is available on the content, quality and impact of such training on officials themselves, and on the experiences of victims as they move through the criminal justice system.⁹¹ Later reports produced by the Department of Justice similarly tracked the number of outputs and activities aimed at improving awareness, but omitted information on the substantive engagement with said activities, outcomes, impact and progress indicators.⁹²
41. The most recent reports produced by government bodies highlight the continued failures of the South African criminal justice system to protect victims of gender-based and anti-LGBTIQ+ violence. On 4 June 2024, the Office of the Public Protector published a report following an investigation requested by the Deputy Minister for Justice and Constitutional Development in 2020. The report, based on inspections of 38 courts, highlights poor infrastructure, inadequate equipment, and inefficient case management systems. The report further found that the SAPS also failed to respond effectively to incidents due to insufficient training, lack of resources, and reluctance to arrest perpetrators.⁹³
42. **We urge the Human Rights Committee in its LOIPR to request the State to provide information regarding:**
 - **The training provided to investigators, prosecutors, magistrates, and other law enforcement officers on the existing framework as it pertains to anti-LGBTIQ+**

⁸⁸ Lawyers for Human Rights, [Thematic Report on Violence against Women and LGBTI Persons in South Africa: A Submission to the UN Human Rights Committee in response to the Initial Report by South Africa under the ICCPR at the 116th session of the Human Rights Committee](#), March 2016, p. 6.

⁸⁹ Contribution of local organisations during a roundtable discussion held in January 2022 by REDRESS and the Centre for Human Rights at University of Pretoria. See also, Arcus Foundation and Iranti, [Data Collection and Reporting on Violence Perpetrated against LGBTIQ Persons in Botswana, Kenya, Malawi, South Africa and Uganda](#), January 2019, pp. 65-66.

⁹⁰ Ibid.

⁹¹ Department of Justice, [Annual Report 2014/2015 Financial Year](#), 2015.

⁹² Department of Justice, [Annual Report 2022/2023 Financial Year](#), 31 July 2023, p. 70.

⁹³ Public Protector of South Africa, [Systemic Investigation into Administrative Deficiencies Relating to Gender-Based Violence within the South Africa Justice System](#), Report No. 01 of 2024/2025, para 6.1.98.

violence and non-discrimination. This includes training on the application of the PCTPA, the Prevention and Combating of Hate Crimes and Hate Speech Act, and the revised National Intervention Strategy. Additionally, it should specify whether such training programmes are ongoing and which institutions or personnel are targeted.

- Measures taken to ensure that civil society organisations are actively involved in the delivery of training to personnel across government departments on the nature of sexual violence on the grounds of SOGIE.
- Actions taken to develop materials targeted at specific government departments, including the departments of justice, education, police, health, women and children, and the National Prosecuting Authority focusing on the nature of verbal, physical, and sexual violence on the grounds of SOGIE and ways to address such violence.
- The implementation and any measured impact of the revised National Intervention Strategy, particularly concerning prevention programmes addressing violence and SOGIE-based discrimination. This includes details on collaboration with faith-based organisations, traditional leaders, and human rights organisations to enhance the capacity of service providers in preventing secondary victimisation.

WHO WE ARE

REDRESS is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators and advocates for legal and policy reforms to combat torture and provide effective reparations. As part of our Discrimination programme, we work to increase accountability for discriminatory torture perpetrated against LGBTIQ+ (Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer) people in African jurisdictions.

Access Chapter 2 (AC2) is a non-governmental organisation established in 2014 that protects and promotes human rights of LGBTI+ people (Lesbian, Gay, Bisexual, Transgender, and Intersex), women, and young girls in South Africa. The organisation seeks to uphold South Africa's bill of rights, found in Chapter 2 of the country's Constitution. We work to improve the lives of LGBTI+ people and women locally and globally through the values of ubuntu, informing public policy, fostering change, and promoting human rights and inclusion through provision of direct services, legal support and advocacy, education, research, and community engagement.