

**EXPLORING HOMOPHOBIC VICTIMISATION IN GAUTENG, SOUTH AFRICA: ISSUES, IMPACTS AND RESPONSES**

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**ABSTRACT**

Post-apartheid South Africa was founded on democratic values, and a constitution that enshrines the principles of human dignity, equality, and social justice. In stark contrast with constitutional guarantees of freedom and human rights for all, research indicates that homophobic victimisation is an endemic part of the South African landscape. Crimes motivated by prejudice ('hate crimes') are not recognised as a separate crime category in current legislation. Research conducted in Gauteng province illuminates the nature and prevalence of prejudice-motivated hate speech and victimisation against LGBT (lesbian, gay, bisexual and transgender) people. These research findings, based on self-reported data, indicate a disconcertingly high prevalence of homophobic discrimination. The findings confirm that higher levels of 'outness', integration into lesbian and gay communities and challenging patriarchal gender roles, are all linked to increased rates of certain forms of homophobic victimisation. The relationship between gender presentation and vulnerability to victimisation points to the highly gendered nature of homophobic discrimination. Whilst existing policy frameworks within the ambit of the National Victim Empowerment Programme go some way in addressing homophobic discrimination, service provider deprioritisation, marginalisation, exclusion and targeted victimisation, are everyday realities in many communities. This is especially true for those who are perceived to differ from, or challenge, social and gender norms. The lack of targeted strategies to address LGBT discrimination negatively impact on the extent to which the criminal justice system and other service delivery agents can adequately respond. Hate crimes in South Africa require specific approaches in terms of legislative and policy responses. This paper considers possible multi-leveled measures to address hate crime both within the criminal justice system and in shaping appropriate service delivery responses more broadly. In particular, the paper explores homophobic discrimination in South Africa; highlights pertinent issues and impacts of sexual orientation-based hate victimisation; and considers contextually and historically appropriate remedies in this regard.

**INTRODUCTION**

Internationally, South Africa is commended for its peaceful and rapid transformation to becoming an open society, founded on democratic values and a constitution that enshrines the principles of human dignity, freedom, equality, and social justice. In stark contrast with policy and legislative guarantees for fundamental human rights, endemic crime and violence continue to dominate the country's landscape. In addition, incidents of prejudice-motivated hate speech and victimisation have come to the fore, the most

recent examples, among others, being the spate of attacks against 'foreign nationals' in informal settlements in Gauteng, Western Cape and KwaZulu-Natal.

Like many South Africans, LGBT (lesbian, gay, bisexual and transgender) people are targets of general violence and crime. However, because they are stigmatised for their perceived sexual and/or gender 'deviance', LGBT people are also frequently discriminated against, through criminal acts, because of their sexual orientation and/or gender identity.

While the National Victim Empowerment Programme (VEP) and minimum standards for service delivery contained in the Services Charter for Victims of Crime and Violence (Victims Charter) provide a partial framework with which to address prejudice-motivated crimes, service provider discrimination is an everyday reality for many South Africans. This is especially the case for those victims/survivors who are perceived to differ from the norm (Nel, 2007). The treatment of sexual and gender minorities as second class citizens serves as a barrier to accessing constitutionally guaranteed rights and services (Nel, 2007). In addition, gaps in present legislative and policy responses to hate crimes against LGBT people further exacerbate such barriers. This article explores homophobic violence and crime in South Africa, highlighting related issues, impacts and responses. It is informed by the findings of research recently conducted by Out LGBT Well-being and the UNISA Centre for Applied Psychology in Gauteng, South Africa, under the auspices of the Joint Working Group (JWG) - a national network of LGBT-focused organisations in South Africa.

## **HATE CRIMES**

A hate crime is any incident that constitutes a criminal offence, perceived as being motivated, in whole or in part, by prejudice or hate (IACP, 1998). Hate crimes constitute criminal acts of prejudice that are committed against people, property, organisations or society because of the group to which they belong or identify with (APA, 1998b). Perpetrator prejudice differentiates a hate crime from another act of violence (IACP, 1998). Perpetrators seek to demean and dehumanise their victims whom they consider different from them based on their actual or perceived race, ethnicity, gender, age, sexual orientation, disability, health status, nationality, social origin, religious convictions, culture, language or other characteristic (APA, 1998b; IACP, 1998).

While all crimes have negative consequences for the victim, significant others, the community and society, a special case can be made for hate crimes because they seriously impact on both the individual victim and the larger groups to which s/he belongs (Nel, 2005). When it enacted the Hate Crimes Act of 2000, the New York State Legislature, articulated the nature and impact of hate crimes as follows:

*Hate crimes do more than threaten the safety and welfare of all citizens. They inflict on victims incalculable physical and emotional damage and tear at the very fabric of free society. Crimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic processes (Hate Crimes Act of 2000, Laws of New York, 2000).*

Race is internationally the least contested category of hate crime. Race-based crimes of hate are also consistently indicated to be the most prevalent (APA, 1998b). Worldwide the long-term use of race and racism as the basis for measures formulated by white people to subject black people to unequal treatment, explains why black people are most at risk of suffering the consequences of racist acts perpetrated mostly by white people (APA, 1998b).

The history of institutionalised discrimination under apartheid and colonialism forms the backdrop for hate crimes in South Africa. South Africa's past is characterised by a regime of categorisation, discrimination and prejudice. It is therefore not surprising that the production of 'otherness' and 'abnormal' has become a virtually automatic and inherent practice of identity construction in this society (Harris, 2004). Traditional identity markers that have served so long as vital pillars of power - nation, race, gender, ethnicity, and sexual orientation - are all powerful anchoring-points both for the establishment and perpetuation of difference (UCAP & Out, 2008b). The recurrent xenophobic depictions of foreigners in South Africa as criminal and as 'contaminating' local communities provides an apt example of how deeply ingrained the country's discriminatory mindset is (Harris, 2004). Oppression is not only created by overt prejudice, but also by entrenched social, political and cultural processes which involve everyone, but of which we are most often unaware. These processes often contribute to individuals becoming vulnerable to victimisation on the basis of their gender, race, social origin, sexuality or other grounds (UCAP & Out, 2008b). Some examples of race-based hate crimes in South Africa include: Barend Strydom (Wit Wolwe) who gunned down black passers-by at Strijdom Square in Pretoria in 1988, killing eight people and wounding sixteen; De Wet Kritzinger who fired shots at a bus transporting black passengers in Pretoria during 2000, killing three and wounding four; and in 2000 the South African Broadcast Corporation (SABC) broadcasted the xenophobic and racist mauling of three black illegal immigrants from Mozambique by police dogs on the instruction of six white police officials (Nel, 2005). More recently, in January 2008, three people were randomly shot in a racist attack in the Skielik informal settlement in the North West (News24.co.za).

Even in countries where hate crime is a recognised crime category, under-reporting is a distinguishing characteristic and contributes to the invisibility thereof (Schippers, 1997). Statistics on hate crime generally lack prevalence and incidence estimates and this creates problems in the documenting of such issues (Theron & Bezuidenhout, 1995). Accurate

and comprehensive police reporting is lacking and systems and processes are not in place to ensure that those, targeted and vulnerable because of their perceived or real identity, feel safe enough to report their experiences to law enforcement officials (Nel, 2007). This is partly as a result of the fact that neither the common law nor the statutory law in South Africa have defined what constitutes a hate crime.

Hate crimes mostly occurs in contexts of sustained prejudice-motivated victimisation including ongoing taunting (or hate speech), bullying or conflicts between people known to each other within specific settings, such as a school or a community (Eliason, 1996). Communities are seen as endorsing hate crimes when they remain silent, fail to act, or do not render support to the victims (Eliason, 1996). While displays of hostility or opposition to the victim can be in the form of violence or crime, prejudice is also expressed in other more subtle forms of victimisation that fall short of being punishable under the prevailing laws of many countries (SAHRC, 2003). However, hate speech (such as harassment, slurring, name-calling and other forms of verbal abuse) creates the breeding ground for hate-based attacks. For example, homophobic speech is often shaped by so-called religious and cultural narratives: “Homosexuality is unAfrican” taken to its logical conclusion, may be used to ‘justify’ a hate crime and “homosexuality is a sin”, may also be used in the same manner (Judge, 2007). Hate crimes can therefore be understood as representing the extreme side of a continuum that starts with it being socially acceptable to name call and demeanour specific social groups. The crimes themselves send a message to the identity community of which the survivor is a part, creating a climate of fear and repression (APA, 1998b; Harris, 2004).

## **DISCRIMINATION AND HATE CRIMES AGAINST LGBT PEOPLE: BROAD TRENDS**

Sexual orientation-based hate crimes are extreme expressions of homophobia (also known as homo-prejudice – see Hattingh, 1994) through criminal acts (such as rape, assault, or damage to property) committed against people, their property, or organisations because of their actual or perceived sexual orientation (Eliason, 1996). Violence against LGBT people motivated by sexual orientation-related bias is not an individual injury alone, but can be classified as a ‘hate crime’ that is part of a larger system of domination against LGBT people (UCAP & Out, 2008b). This links hate crime to issues of identity, social power and public attitudes (UCAP & Out, 2008b). Such crimes against LGBT people are often calculated to send a message to the victim/survivor that his or her sexual orientation and/or gender non-conformity is deviant and must be changed.

Most countries in the world lack legal protections against sexual orientation- and gender-based discrimination (Samelius & Wägberg, 2005), despite the fact that LGBT persons are subject to violence. Even in countries with permissive social attitudes towards lesbian and gay people, such as the Netherlands where same-sex orientation has long been decriminalised and gender variations socially and legally accommodated, responses to sexual orientation-based hate crimes have been lacking (Schippers, 1997). There are indications that homophobic hate crime in fact increases as lesbian and gay communities become more visible (Eliason, 1996; Schippers, 1997).

International research (Eliason, 1996; Samelius & Wägberg, 2005; Schippers, 1997) purports that the vast majority of openly LGB<sup>1</sup> persons have experienced some form of victimisation, such as verbal abuse, threats, being chased or followed, or being spat on. According to Eliason (1996) 'gay-bashing' is said to affect about 20% of LGB persons residing in the United States of America (USA) in their lifetime. Similar findings are reported by Herek, Gilles and Cogan (1999) in a Sacramento area, USA, study of criminal victimisation. Interestingly, more adult men (25%) than adult women (20%) had experienced discrimination because of their sexual orientation. A study conducted in a university community in the USA found that of the gay men questioned, 76% had experienced verbal abuse, 26% had been threatened with violence, 17% had their personal property damaged, most concealed their sexual orientation, and 42% had made specific life changes to avoid discrimination and harassment (D'Augelli, 1989 in Hattingh, 1994).

A comparison of the findings of seven USA anti-gay violence victimisation surveys (1988 - 1991) with a South African study conducted in 1992 found that, while South Africans were less likely to experience verbal abuse and threats of violence than their American counterparts, they were more prone to be physically assaulted and substantially more often sexually assaulted (Theron & Bezuidenhout, 1995). In their research with a predominantly white male sample, Theron and Bezuidenhout (1995) report that 22% of gay hate victimisation involved rape or sexual assault, 22% physical assault, and 67% involved hate speech. Similarly, a study by Theuninck (2000) found that 75% of the sample, again consisting primarily of white gay males, had experienced hate speech, 22% had been physically assaulted, and 17% had been victims of sexual assault.

Limited research on LGBT issues in South Africa, including on homophobic hate crimes against lesbian and gay people, has been conducted and, as indicated, previous studies focused primarily on white middle-class gay men. Even less is known of the experiences of bisexual and transgender persons. The studies that do exist, as discussed later, and a growing body of anecdotal evidence (Campaign 07-07-07, 2007; Isaack, 2007), however, suggests that LGBT people are often targeted for discrimination as a result of their sexual orientation. Violence is not experienced equally across class, race and gender lines in the general population of South Africa and women from lower socio-economic levels are more susceptible to gender-based crimes, such as rape, domestic violence and child abuse (Nel & Kruger, 1999; Van der Hoven & Maree, 2005). The role of physical appearance as well as the intersection with other identities (race, class and gender) are critical to understanding LGBT hate crimes. For, a LGBT person may experience intersecting forms of discrimination on one or more of the listed grounds in section 9(3) of the Constitution (i.e. race, sex, gender, pregnancy, marital status, sexual orientation, age, disability etc.) (Campaign 07-07-07, 2007; Isaack, 2007; UCAP & Out, 2008b).

It is purported that LGBT people from poor African communities and black lesbian women in particular, are disproportionately at risk for discrimination (Smith, 2004). Studies have shown that lesbians face violence twice as often as heterosexual women

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<sup>1</sup> Throughout the paper, where T is not indicated in references to research findings, transgender people were not included in the research.

(Graham & Kiguwa, 2004). The phenomenon of ‘corrective rape’<sup>2</sup> has been documented amongst Gauteng township-dwelling black lesbian women (Mufweba, 2003; Reid & Dirisuweit, 2002; Reuters, 2004; Special Assignment, 2004). Unpublished research findings of the Forum for the Empowerment of Women (FEW)<sup>3</sup> suggest that black lesbians, particularly in townships, where they are seen to challenge patriarchal gender norms, are increasingly targeted for rape. Of the 46 black women interviewed, 41% had been raped, 9% were survivors of attempted rape, 37% had been assaulted and 17% verbally abused. Most survivors know their perpetrators, who are often a family member, friend or neighbour (Smith, 2004). Although not a separate and distinct phenomenon from the high incidence of gender-based violence in the country, it has also been reported that highly visibly gay, lesbian or transgender people are more often the targets of homophobic violence (Reuters, 2004; Smith, 2004).

### ***The invisibility of transgender and intersex experiences of hate victimisation***

There is a deficit in the global mapping of discrimination against transgender and intersex people (Samelius & Wägberg, 2005). Indicative of a possible conflict between activist and academic agendas<sup>4</sup> is that, to date, transgender, and to an even greater extent, intersex persons are seldom included in sexual orientation-related research (Nel, 2007). A study conducted in Victoria, Australia, which included transgender persons in the research sample, found that 84% of LGBT respondents reported having experienced discrimination on the basis of their sexual orientation and/or gender presentation (MACGLH, 2002). Of these, 70% reported having experienced at least one form of public abuse in the preceding five years, including physical violence (7%) and verbal abuse (63%). The transgender people in the study consistently reported higher levels of abuse in public (MACGLH, 2002). Although yet to be the focus of empirical investigations, it is likely that these international findings will be confirmed in South Africa given the heightened visibility of transgender people. The recent fatal shooting of a ‘drag queen’ in Yeoville, Johannesburg, is a case in point (Lesbian and Gay Equality Project, 2008). Such experiences have been exposed in the documentary ‘Ripping the Rainbow’, shown on Special Assignment (2004) - an SABC investigative journalism programme - that reported on the prevalence of homo- and trans-prejudice in the Western Cape. Anecdotal evidence of sexual orientation-related hate crime, such as assault, malicious damage to property, ‘corrective rape’ and murder, abound. For example, two lesbian women were brutally raped and murdered in Soweto on 7 July 2007 (Campaign 07-07-07, 2007): It is believed that the rapes and brutal murders of Salome Masooa and

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2 ‘Corrective rape’ is the prejudiced notion that a lesbian woman can be raped to ‘make her straight’: i.e., to ‘correct’ her lesbian sexuality. ‘Corrective rape’ seeks to justify the rape of those people who are perceived to not conform - or to disrupt - expected gender roles, behaviour and/or presentation. Misogyny and homophobia underpin the prejudice associated with ‘corrective rape’ (Out, 2008).

3 A Gauteng-based civil society organisation (CSO), FEW premised their innovative anti-hate crime campaign ‘The Rose has Thorns’ on the research cited here (Smith, 2004).

4 Mental health professionals who subscribe to the medical model still firmly consider so-called ‘Gender Identity Disorder’ as indicative of psychopathology. Homosexuality, on the other hand, was declassified as a mental illness as far back as 1973. Use of the abbreviation LGBTI in reference to sexual minorities, not only on the basis of alternative sexual orientation, but also gender non-conformity, and biological variance (that is, the ‘I’, referring to intersex persons), is often politically informed by the need for solidarity among minorities in the face of discrimination at the hands of a vast majority. Such blurring of distinctions has very real consequences for scientific classification. In contrast with the mentioned activist position of inclusivity, specificity is, highly valued in academic endeavours and scientific practice. The abbreviation LGBT(I) minimises theoretical distinctions drawn between biological variance, gender and sexual orientation, which may not be feasible in psychosocial academic and research endeavours, nor in psychosocial intervention programmes (Nel, 2007).

Sizakele Sigasa were hate crime related (BMT, 2007; Campaign 07-07-07, 2007<sup>5</sup>; Isaack, 2007). On 22 July 2007 a black lesbian woman, Thokozane Qwabe (23), was found murdered in Ladysmith, KZN (Ibid). In March 2006, a 19 year-old black lesbian, Zoliswa Nkonyana, was murdered by a mob in Khayelitsha, Cape Town, because of her sexual orientation (Triangle Project, 2006). Vernon Gibbs and Tony Halls, the first same-sex couple to be married under the Civil Union Act, had previously made news headlines as targets of a hate crime. In 2005, the white male couple had pressed criminal charges after their guest lodge in Riversdal, Eastern Cape, was vandalised five times by local Dutch Reformed Church members who objected to their opening the lodge to gay tourists (Jacobson, 2006). During the 2005 Lesbian and Gay Pride march in Braamfontein, Johannesburg, the float of FEW was targeted by spectators throwing bottles, seriously injuring a lesbian volunteer (De Waal & Manion, 2006). In light of the general hostility to same-sex marriage, it is precisely for fear of victimisation that the two Johannesburg-based black men who were the first couple to legally marry in a religious ceremony chose to remain anonymous (Van der Westhuizen, 2006).

### **HOMOPHOBIC VICTIMISATION IN GAUTENG, SOUTH AFRICA: FINDINGS OF A QUANTITATIVE STUDY (2003)**

In further exploring the dynamics related to homophobic discrimination in South Africa, the findings of a study conducted by Out LGBT Well-Being (Out) in collaboration with the UNISA Centre for Applied Psychology (UCAP), commissioned by the JWG (Polders & Wells, 2004), is instructive. In order to address the limitations of previous research, the Out/UCAP study aimed at establishing the levels of empowerment among LGB<sup>6</sup> people living in Gauteng, and was designed to be representative of race, gender and class (Polders & Wells, 2004; Wells, 2006). This 2003 community-based study, the first of its kind in South Africa, had a broader focus than on hate victimisation alone. The methodology included the utilisation of a 14-page self-administered questionnaire, and convenience sampling in which a purposive quota sampling technique was applied. Quotas were set for race, sex, age and socio-economic status. Of the 487 LGB respondents, 86% self-identified as lesbian or gay and 14% as bisexual. Forty five percent were female and 55% male; 52% were black and 41% white; 46% were between 15 and 24 years, and 48% were between 25 and 40 years<sup>7</sup> (Polders & Wells, 2004)<sup>8</sup>. The disconcertingly high prevalence of homophobic discrimination in Gauteng indicated in previous studies (Reid & Dirsuweit, 2002; Theron & Bezuidenhout, 1995; Theuninck, 2000) was confirmed in this study – which was based on self-reported data.

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5 The 070707 Alliance to end hate has begun to capture incidents of homophobic hate crime across the country. The Alliance was established after the brutal murders of these two women on the 7<sup>th</sup> July 2007 (hence the name 070707). The Alliance brings together LGBT, women's and HIV/AIDS organisations towards a coordinated response to hate crime.

6 For reasons primarily of a methodological nature, transgender persons were excluded from the study, which was designed to focus more on sexual orientation than gender presentation and based on the assumption that the issues may indeed be different (Polders, 2007).

7 Participants over 40 years of age were excluded due to limited sample sizes.

8 It may be important to note that Polders, and later Wells, conducted the Gauteng study as part of their practical placement during 2002/3 and employment at Out 2003 – 2006, respectively, while enrolled for their Masters in Research Psychology at UNISA. The same dataset was utilised for completion of their dissertations (Polders, 2007; Wells, 2006).

Table 1

*Out/UCAP Gauteng study: Rates of victimisation during 24-month period (2002 – 2003)*

|                             | TOTAL | Males | Females | Black | White | Black<br>Males | Black<br>Females | White<br>Males | White<br>Females |
|-----------------------------|-------|-------|---------|-------|-------|----------------|------------------|----------------|------------------|
| *Victimisation experienced: |       |       |         |       |       |                |                  |                |                  |
| Verbal                      | 37,1% | 36,2% | 37,1%   | 38%   | 35%   | 38,9%          | 36,2%            | 32,8%          | 40%              |
| Physical                    | 15,6% | 15,1% | 15,2%   | 16%   | 16%   | 15,4%          | 14,9%            | 14,6%          | 16%              |
| Sexual                      | 7,9%  | 7,5%  | 8,2%    | 10%   | 5%    | 9,4%           | 9,7%             | 5,2%           | 4%               |
| Domestic                    | 12,2% | 7,4%  | 14,9%   | 13%   | 7%    | 7,8%           | 17,3%            | 6,9%           | 8,2%             |
| Property                    | 15,1% | 16%   | 13,3%   | 15%   | 16%   | 15,6%          | 12,6%            | 16,5%          | 15,4%            |

\* Responses include '1-5 times'; '6-10 times'; 'More than 10 times'

Table 1 indicates the prevalence of self-reported victimisation experienced by lesbian women and gay men, over a 24-month period (Polders & Wells, 2004)<sup>9</sup>. Intersections with other identities (race, class and gender) are critical to understanding homophobic discrimination. For example, respondents attributed the discriminations they had experienced to homophobia (83%), sexism (41%) and racism (34%) (Polders & Wells, 2004). Victimisation mostly took place on main roads and in shops or malls, followed by in the home, pubs, clubs or taverns. During this two year period (from 2002 to 2003) 37,1% of all respondents had experienced verbal abuse - the most prevalent form of victimisation across both sexes and all race groups. Physical abuse/assault was experienced by 15,6% of respondents. Sexual abuse totalled 7.9% with both men and women, comparatively, reporting similar levels. However, the sexual abuse levels experienced by black women and men, comparative to their white counterparts, was notably higher. In addition, findings confirm that higher levels of 'outness' and integration into lesbian and gay communities, and the adoption of gender roles associated with the opposite-sex (i.e. increased visibility as gay or lesbian) lead to increased rates in some forms of homophobic victimisation (Wells, 2006). As such, individuals who challenge patriarchal gender role experienced higher levels of hate speech than those who conform to such roles (Wells, 2006). This link between gender presentation and vulnerability to victimisation points to the highly gendered nature of homophobic discrimination: Lesbian, gay and transgender people who are perceived to subvert or undermine patriarchal gender stereotypes, roles and behaviours, are seemingly punished – through discrimination - as a form of social control.

Sexual violence is one of the ways in which both lesbian women and gay men are discriminated against for what is perceived to be their non-conforming to patriarchal and hetero-normative constructs. Fears of sexual abuse and rape was widespread among

<sup>9</sup> Note that these statistics only pertain to experiences of victimisation that took place in the two years preceding the study. The figures are therefore substantially lower than would be expected if the experiences of victimisation had applied across the respondents' lifetimes.



respondents in the Out/UCAP Gauteng study, with 37,3% of respondents reporting to be “afraid” or “very afraid” (Polders & Wells, 2004). The fear of discrimination was shown to negatively impact on markers of well-being and, by example, it increases the risk of suicide ideation (Wells, 2006). Fears such as these can have a chilling effect on the ways LGBT people present themselves in public, often encouraging them to play down or ‘closet’ their sexual orientation or gender non-conformity. Not only do these strategies of self-presentation force LGBT people to choose between their safety and their identity, but they also reduce the visibility of the LGBT community as a fully functioning part of South Africa’s diverse society (Reid & Dirsuweit, 2002).

Approximately 62% of the respondents in the Out/UCAP study had experienced negative jokes regarding their sexual orientation during their schooling. Furthermore, in the context of school, 41% had experienced hate speech and 13% had been physically assaulted (Polders & Wells, 2004). In addition:

- 76% believe the criminal justice system (CJS) does not uphold LGBT rights
- 61% believe their constitutional rights are not met
- 44% experienced heterosexism in accessing healthcare (Polders & Wells, 2004).

It is significant that 62% of the survivors of hate victimisation did not report their experience to the police (Polders & Wells, 2004). Institutionalised heterosexism and homophobia, combined with negative social attitudes towards lesbian and gay people, create the conditions for hate crime and the reluctance to report it to the authorities. An important reason for this is the tendency towards the sensational, dramatic and exceptional, by the media. This selective bias in media coverage contributes to a tendency not to notice or report ordinary everyday experiences of hate victimisation (Harris, 2004). Verbal abuse is the most commonly experienced and least often reported form of victimisation (Polders & Wells, 2004). Yet, in an exploration of factors affecting vulnerability to depression among the gay men and lesbian women included in this Out/UCAP Gauteng study, lowered self-esteem and more frequent experiences of hate speech were significant predictors of vulnerability to depression (Polders, 2007). In conclusion, the following is important to note: Whilst slight variances in levels of victimisation are present, the analysis of the data indicates that neither race nor sex is a significant determinant for victimisation in the present case (Wells, 2006). However, the earlier mentioned anecdotal evidence (BTM, 2007; Campaign 07-07-07, 2007; Isaack, 2007) and other research (Graham & Kiguwa, 2004; Reid & Dirsuweit, 2002) suggest that gender, class and race do impact on the nature and experience of homophobic discrimination. As such, further research is needed to more pointedly explore the manner in which victimisation (noting a mix of contextual vulnerabilities) interacts with other identity variables in South Africa.

## **SECONDARY VICTIMISATION OF LGBT SURVIVORS**

Prejudice renders LGBT people frequent targets of further victimisation when they turn to service providers for assistance after the assault, a phenomenon known as secondary victimisation (DSD, 2005). Negative attitudes and prejudice on the part of criminal justice officials and healthcare services play a role in secondary victimisation, which in turn can be referred to as institutionalised homophobia (Eliason, 1996). Sexual and other incidences of interpersonal violence may increase the urgency of an individual's need for support (APA, 1998a). In instances such as the reporting of 'corrective rape' or gay/lesbian-bashing the sexual orientation or gender presentation of the victim may be fore-grounded during the consultation process with the service provider (Eliason, 1996). This may elicit negative reactions from service providers. These negative attitudes often result in LGBT people being afraid to compromise their well-being by disclosing their sexual identity (Eliason, 1996). Fear of discrimination can therefore lead to the avoidance or delaying of accessing healthcare services and/or criminal justice services.

The Out/UCAP research found that approximately 33% of the respondents experienced the police as "not interested" in assisting them when they had reported discrimination (Polders & Wells, 2004). This bias can extend beyond the police to bias against LGBT people in the court system and in incarceration facilities (Nel, 2004). The research indicates that only 41,2% of incidents of rape and sexual abuse against lesbian and gay people in Gauteng are reported to the police (Polders & Wells, 2004). Seventy three percent of respondents in the Gauteng study, indicated that they have not reported victimisation in the past because they expected their report not to be taken seriously. In this study, 43% of respondents fear abuse by the police, and 33% do not want the police to know about their sexual orientation. A significant proportion of these respondents also confirmed that the victimisation had embarrassed them, and they feared that reporting it would make their sexual orientation public knowledge (Wells, 2006). Practitioners may also contribute to under-reporting as a result of asking heterosexist questions, thus making the person feel uncomfortable and unable to be treated for their problem (APA, 1998b; Eliason, 1996).

As previously stated, under-reporting is a distinguishing characteristic of hate crime and contributes to its invisibility. Lack of reporting only exacerbates the problem of homophobic violence, for perpetrators might hold the belief that they can usually get away with crimes committed against an LGBT person. Improvement in the CJS's handling of cases involving LGBT people is not only important to ensure that needed services and access to justice is realised, but also to prevent homophobic crimes in the medium term.

## **VICTIM EMPOWERMENT AND SUPPORT SERVICES**

Central to ensuring the right to equality, dignity and freedom for all South Africans is the assurance of equal and non-discriminatory access to services. The South African legislative framework asserts that no one may refuse an LGBT person a service or treatment, or provide them with inferior services/treatment due to their sexual orientation

(RSA, 1996). Non-discrimination on the basis of both gender and sexual orientation is similarly guaranteed in the constitution (RSA, 1996). Respect for the dignity and privacy of individuals, a cornerstone of service delivery policy in South Africa, can facilitate more sensitive and humane care for LGBT people (DSD, 2005). On the other hand, stigmatisation, exclusion, marginalisation, deprioritisation and discrimination may thwart services for victims of crime and violence. As the Out/UCAP research indicates, the vast majority of service settings do not provide appropriate services to meet the needs of LGBT people. Current practice in South Africa is, more often than not, to render healthcare services with an assumption of sameness, rather than with respect for difference or diversity. It goes without saying that everyone has the right to be treated as equal and to healthcare services that adhere to the minimum standards. However, because of the diverse nature of the South African society, it is erroneous and inappropriate to think that 'one size fits all'. By way of example, shelters are not equipped to offer places of safety to lesbian, gay and transgender people; and lay counsellors at victim support centres are not always affirming in their counselling approaches to LGBT victims (Out, 2007).<sup>10</sup> In addition, there is most often an assumption of heterosexuality<sup>11</sup> in public service facilities, such as clinics, which may negatively impact the quality of support rendered to LGBT people and serve as a barrier to access (Polders & Wells, 2004).

It is important to understand LGBT services within the framework of the Integrated Victim Empowerment (VE) policy, from which the Victims Charter also emanates. The Integrated VE policy was developed by the VEP National Management Team<sup>12</sup> in accordance with the State's duty to protect the dignity, equality, privacy and security of its citizens in general and of victims of crime specifically (DSD, 2005; RSA, 1996). The Integrated VE policy, among other things, specifies the needs and rights of victims. The roles and responsibilities of service providers are detailed, inclusive of the principles that ought to inform service delivery, such as the Batho Pele principles (DSD, 2005). Central to the policy, which is currently being finalised, is integrated intersectoral service provision for victims of crime in response to the specific needs and rights of each individual victim (DSD, 2005). The VE policy framework draws particular attention to the imperative of non-discriminatory interventions; the notion of vulnerable groups; as well as the importance of gender as a priority area for action (DSD, 2005). As such, homophobic crime should be positioned within these policy paradigms as the phenomenon speaks to dynamics of gender as a component of crime and violence, and to the vulnerabilities of particular sexual and gender groups in the context of non-discrimination imperatives. It should be noted that LGBT people are not defined as a vulnerable group within present VE services policy<sup>13</sup>. Proposed revisions currently under

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<sup>10</sup> Out has developed a resource for service providers entitled "Understanding the Challenges facing Gay and Lesbian South Africans: Some guidelines for service providers". In addition, on the request of the Gauteng Department of Social Development, Out has developed draft guidelines "LGBT Youth in Care Guidelines", an addendum to the existing manual for Places of Safety and Secure Care Centres (Out, 2006a; Out, 2006b).

<sup>11</sup> Known as heterosexism.

<sup>12</sup> This body primarily consists of representatives of the key government departments and the VEP Provincial Co-ordinators of the Department of Social Development, but also includes representatives of the other government departments in the Programme, as well as several national CSOs, academics and researchers, including the first author.

<sup>13</sup> Although sexual minorities are not acknowledged as a marginalised group in current frameworks, there is sufficient national and international research and benchmarks to indicate that they ought to be (see Nel, 2007).

consideration by the National VEP Management Team is to include victims of human trafficking and hate crime as priority crimes (Nel, 2007).

Key to the availability of victim support services and programmes is the need to ensure that facilities are equipped with the relevant and appropriate information and approach for the needs of all people. This should include the expansion and promotion of victim empowerment services to at risk communities. To ensure that victim support services are accessible to LGBT people, without discrimination, requires concerted and programmatic efforts in which the public sector becomes the leading agent. The information developed and utilised in the services sector is usually not applicable for all sexual orientations, and is most often based on presumptive and prescriptive notions of human sexuality and gendered behaviour. There is a need to engender services that are safe, non-judgmental and affirming for LGBT people. Safe facilities include a guaranteed right to privacy and confidentiality. Such approaches demand the enhancement of an ethos amongst service providers that is underpinned by principles of human dignity and agency, and that is mindful of sexual and gender diversity.

### **MULTI-LEVEL RESPONSES TO HOMOPHOBIC DISCRIMINATION**

In order to comprehensively address the fractures of discrimination that still mark the South African social fabric, multi-pronged interventions are required. More specifically, the reduction and prevention of prejudice-motivated crimes and their impact call for targeted interventions, concerted leadership and dedicated activism at multiple (macro, meso and micro) levels. To prevent the victimisation of marginalised individuals and groups it is also crucial to examine privilege and how it operates in society and within the *status quo*, and to challenge heteronormativity (Peacock, 2003).

At the level of service delivery it is crucial that both the Victims Charter and minimum standards are implemented and enforced to maximise service delivery and to lower the risk of secondary victimisation for survivors of crime and violence. This requires that relevant services are afforded to all victims equally. Service providers need to distinguish between their right to hold personal values, beliefs and prejudices, and their professional obligation to render services free of prejudice and/or discrimination. Raising the awareness of all citizens about their right to receive accessible and non-discriminatory services, and to empower (through skills development and otherwise) citizens/victims to seek redress when their rights are denied them by service providers, is also a key strategy (Nel, 2007).

The development of guidelines would facilitate the management of the practical conduct of service providers, including setting indicators on gender attitudes and responsiveness. All policies on intimidation of victims and witnesses, harassment, tampering, bribery, corruption and abuse by service providers should explicitly mention such acts committed against LGBT people.

Valuing diversity means being responsive to a wide range of people unlike oneself and letting go of assumptions about the universal rightness of one's own values and

institutionalised ways of doing things (Van der Westhuizen, 2000). For an example, all training on the implementation of the Victims Charter should include consciousness building on laws and policies that recognise gender equality and sexual diversity, such as the expanded definition of rape in the Sexual Offences Act; and recognition of same-sex relationships in the context of the Domestic Violence Act, the National Family Policy and the Civil Union Act, amongst others.

Education and training programmes for service providers should include information related to LGBT concerns and these should be mainstreamed into all aspects of professional development. There is a need to develop unit standards and qualifications at the appropriate level specifying the required competencies (knowledge, skills, and attitudes) that recognise and affirm diversity.<sup>14</sup> Gender-sensitisation (as part of diversity awareness) programmes should be integrated into the training of all state services providers – with an emphasis on SAPS, criminal justice officials, magistrates and prosecutors.

### ***A legal and policy response to hate crime<sup>15</sup>***

All sectors of society should be engaged in dealing with hate crime. This requires legislative and policy responses, as well as public education and cross-sectoral interventions to address the social dimensions that underpin hate crime.

Finding a legal and policy response to the perpetration of hate crimes is particularly challenging both on a jurisprudential and practical level. The international tendency is to address the perpetration of hate crimes through legislation, and it seems that South Africa is lagging behind foreign jurisdictions. Lesbian and gay activists and organisations have advocated for the recognition of hate crime as a separate category in the law and the criminalisation of hate speech and other hate-motivated acts of oppression (Judge & Nel, 2008; Smith, 2004; UCAP & Out, 2008b).<sup>16</sup> At the sixty-ninth session of the Committee of the Elimination of Racial Discrimination, in 2006, the Committee, in its report on South Africa (CERD, 2006), stated the following:

*While acknowledging the provisions of section 16 (2) of the Constitution, sections 7 of the Promotion of Equality Act, 8 of the Regulation of Gatherings Act, and 29 of the Films and Publication Act, as well as the ongoing discussions started in 2000 on a bill on the prohibition of hate speech, the Committee is concerned about the*

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14 To date, the South African Qualifications Authority (SAQA) VE Standards Generating Body (SGB) has developed three qualifications at National Qualifications Framework levels 2 – 4. A number of these unit standards deal with the support of marginalised, ‘at risk’ and vulnerable individuals and groups, as well as the identification of appropriate referral services for survivors of hate crime including sexual orientation-based victimisation (SAQA, 2004). The relevant unit standards are entitled “Support marginalised, ‘at risk’ and vulnerable individuals and groups and identify appropriate referral services” and “Support victims of Human Rights abuses, hate crimes, disasters and motor vehicle accidents and are available at <http://regqs.saqa.org.za/viewUnitStandard.php?id=119721> and <http://regqs.saqa.org.za/viewUnitStandard.php?id=117882>, respectively.

15 This section of the paper includes edited extracts from a submission made by UNISA Centre for Applied Psychology and Out LGBT Well-being to the National Prosecuting Authority, drafted by Juan Nel and Melanie Judge with inputs by Kerry Williams and Kate Hofmeyr (UCAP & Out, 2008b).

16 Out LGBT Well-being and UNISA Centre for Applied Psychology have made several formal submissions, on invitation, to key decision makers on the issue of hate crime. This includes the South African Human Rights Commission (Out & UCAP, 2007), the National Prosecuting Authority (UCAP & Out, 2008b) and the Department of Social Development’s Victim Empowerment Programme (UCAP & Out, 2008a).

*frequency of hate crimes and hate speech in [South Africa] and the inefficiency of the measures to prevent such acts (article 4).*

*In the light of its General Recommendation 15 (1993) on organized violence based on ethnic origin, the Committee recommends that [South Africa] ensure the full and adequate implementation of article 4 of the Convention, and that it adopt legislation and other effective measures in order to prevent, combat and punish hate crimes and speech.*” (own emphasis)

This recommendation points to a clear international call for South Africa to craft an appropriate legislative response to hate crimes. Presently, neither common law nor statutory law define what constitutes a hate crime, nor do they create a separate hate crime offence. Prosecutors may however draw on common law and section 28(1) of Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)<sup>17</sup> to argue that unfair discrimination played a part in the commission of the offence and that this should be viewed as an aggravating factor in the determination of an appropriate sentence (UCAP & Out, 2008b).

In South Africa we need a clearer picture of the nature, form and incidence of hate crimes and this requires the formulation of legislation and policy that enables the effective collection of data on these offences. Reporting systems need to be carefully constructed and implemented to ensure that those targeted and vulnerable because of their perceived or real identity, feel safe enough to report their experiences. This will also assist in understanding the contexts and the vulnerabilities that are at play when hate crimes occur. During this process, special attention should be paid to the manner in which social, economic and individual factors may coalesce to produce particular forms of vulnerability. Such legislation would also set the standard in terms of effective responses by the SAPS and other law enforcements agencies, and would increase public awareness of hate crime (UCAP & Out, 2008b).

Legislative strategies should ensure: the enactment of hate crime legislation such that hate crime victims have agency and are sufficiently empowered to report, and follow through on their cases by also testifying in court; the CJS illustrates the seriousness of these crimes through the severity of sentences passed; and there is a concerted effort to combat these hate-motivated crimes by all law enforcement officials and policy-makers (Nel, 2007).

## **CONCLUSION**

Despite the post-apartheid shift from the prior criminalisation of homosexuality to jurisprudential and legislative support for the equality of lesbian and gay people, LGBT people in South Africa remain vulnerable to hate crimes. In many communities a disproportionate number of LGBT persons continue to face sexual orientation- and gender presentation-related oppression, marginalisation, discrimination and victimisation.

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<sup>17</sup> Section 28(1) of PEPUDA provides that “[i]f it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence” (RSA, 2000).

The findings of the Out/UCAP Gauteng study suggest that constitutional guarantees for rights and services cannot be assumed to have addressed systemic homophobic prejudice in its varying manifestations. All interventions crafted to address homophobic victimisation require a strengthened partnership between public sector programmes and LGBT service providers. This should include integrating the respective competencies of governmental bodies and CSOs, into a comprehensive framework that will increase the accessibility and relevance of appropriate victim support services for LGBT people.

Ongoing identity-based discrimination (on the basis of race, gender, sexual orientation, HIV status and other characteristics), represents a fundamental challenge to our fledgling democracy. To realise lasting social transformation, we need to boldly confront South Africa's enduring legacy of inequality and prejudice. To realise the constitution's promise of gender transformation and social justice, collaboration is required to develop an informed and unified strategy towards ensuring that in the spirit of our social contract, all South Africans are able to enjoy human rights and access to services. We need to build a collective morality that affirms human dignity and non discrimination in a manner that is felt in the lived reality of all those in our country.

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