



From Pariahs to Protected: The rise of LGBTQIA+ rights in South African law

AUTHORS: ZAMA NGCOBO, TAMLYNN AVIS & NALEDI SEBITLO

Every June the world celebrates Pride Month which is meant to celebrate and commemorate the rights of the lesbian, gay, bisexual, transgender, queer (or questioning), intersex, asexual, and others' rights ("LGBTQIA+"). The Stonewall Riots in June 1969, as a response to a police raid in a gay bar in New York, marked a key event in the global history of public and legal discourse on LGBTQIA+ rights. However, the various challenges the LGBTQIA+ community face are not simply restricted to the United States of America. This Pride Month, WMN Attorneys highlights the legal strides taken to protect the rights of the LGBTQIA+ community in South Africa. In the ever-changing realm of law and human rights, South Africa has witnessed a noteworthy evolution of queer rights, making a substantial impact on society and the legal field alike. During the apartheid era, between 1948 to 1994, the National Party deemed homosexuality a crime punishable by up to seven years in prison, and queer communities faced repression, harassment and exclusion broadly. However, with the advent of democracy and the Constitution of the Republic of South Africa, 1996 (the "Constitution"), South Africa emerged as a progressive nation championing the dignity and rights of people who identify as part of the LGBTQIA+ communities. This article discusses the key aspects of how South African laws now recognize and support gay rights for ordinary people.

Given the history of South Africa and its people, with the abolishment of Apartheid, it was necessary to completely overhaul the laws of our country. It is well known that the Constitution serves as the paramount legal authority of the Republic, and all enacted legislation must adhere to its values and principles. The Constitution has been a document of global renown with respect to its stance on human rights. Furthermore, the South African Constitution is also a global pioneer in its stance on anti-discrimination. In this regard, the Constitution's Section 9(3) clearly states "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

These protections have been further affirmed by the jurisprudence of the Constitutional Court and legislation enacted by Parliament. The key safeguard against discrimination is reaffirmed under The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("PEPUDA"). PEPUDA offers extensive protection against discrimination in multiple areas such as employment, housing, and public services - sexual orientation included. In addition to prohibiting unfair treatment and hate speech motivated by homophobia or based on sexual orientation as an aggravating factor in sentencing hate crimes, PEPUDA establishes equality courts designed specially to tackle any instances of discrimination by private individuals and entities.

Further, and affirming its stance as a pioneer for human rights on the African Continent (and globally), South Africa became the first nation to legalize same-sex marriage with the introduction of the Civil Union Act 17 of 2006, following the case of this ground-breaking legislation granted both same-sex and opposite-sex couples the ability to enter into civil partnerships which ensure equal legal rights and responsibilities as marriage. These benefits include pension entitlements, spousal support, immigration supports, and joint adoption and parental rights. South Africa's progressive stance on LGBTQIA+ rights is further exemplified by the provision for same-sex couples to adopt children and exercise parental rights. The amended Children's Act of 2005 explicitly permits joint adoption by same-sex partners. Moreover, in the landmark Constitutional Court decision *Du Toit v Minister of Welfare and Population Development*, 2002, same-sex couples were granted equal rights as married spouses in matters of child adoption, including joint adoptions or adopting a partner's children. The ruling also affirmed that a parent's sexual orientation bears no relevance in determining custody arrangements for a child.

In landmark decision in 2003, was the Alteration of Sex Description and Sex Status Act 49 of 2003 established a legal precedent recognizing the rights of transgender and gender non-conforming individuals to alter their gender in the population registry and have their preferred gender identity reflected in official identification documents. This legislation serves as a pivotal milestone in the ongoing struggle for LGBTQIA+ rights, ensuring that gender diversity is protected and acknowledged under South African law.

In summary, the South African legal system has substantially acknowledged and safeguarded the rights of the LGBTQ+ community. Although the legal landscape demonstrates progressiveness, it is important to recognize the varying societal perceptions and the ongoing struggle towards complete equality and acceptance for LGBTQIA+ individuals. The law has come a long way in recognizing human rights, however, this notwithstanding, there is still a long way to go and much more that can and should be done to normalise and uplift the LGBTQIA+ community's lived experience.

Lest we forget what Senzo and Jason (from the soapie *Generations*) did for the public imagination and humanisation of queer people- a potent catalyst for change

could be increases in the media's representation of LGBTQIA+ people in a constructive manner, utilizing campaigns and social media platforms to show that the LGBTQIA+ community and its people are a welcome part of both the South African Nation and the global community at large. As media platforms continue to expand, it is important to recognize the role they can play in increasing access to self-representation. By providing opportunities for individuals from all backgrounds to share their experiences, ideas, and perspectives, media can help break down barriers and ensure that a diversity of voices are heard and represented. To increase access to self-representation, media organizations can prioritize and promote diverse content creators, provide resources and support for individuals from underrepresented communities, and actively seek out and elevate marginalized stories. Through these efforts, media can work towards creating a more equitable and inclusive society.

In addition, more should be done in response to the violence that is constantly perpetuated against the LGBTQIA+ community and in educating people on the LGBTQIA+ community and why [inclusion in] the respect of human dignity is so important.

WMN Attorneys considers itself an ally to the LGBTQIA+ community. We firmly support striving for more action towards protecting the rights and freedoms of the LGBTQIA+ community and the education of others on the need for further support and inclusiveness.