



South Africa - Researched and compiled by the Refugee Documentation Centre of Ireland on 10 September 2010

Discrimination against homosexuals in South Africa.

Under the heading 'Political Rights and Civil Liberties', the May 2010 *Freedom House* Freedom in the World report for South Africa states:

"South Africa has one of the world's most liberal legal environments for homosexuals. The 2006 Civil Unions Act legalized same-sex marriage, and a 2002 Constitutional Court ruling held that homosexual couples should be allowed to adopt children. Nevertheless, homosexuals are subject to attacks." (Freedom House (31 May 2010) *Freedom in the World – South Africa (2010)*)

An April 2010 *IRIN News* report notes:

"CAPE TOWN, 8 April 2010 (IRIN) - Gay communities across Africa often run into the sharp end of prejudice against their sexual orientation, yet a transvestite fraternity in the South African coastal city of Cape Town has gained a level of acceptance that allows them to publicly practice their lifestyle with minimal fear of retribution.

The rights of gays are enshrined in the country's constitution, but the murder of homosexuals and the "corrective rape" of lesbians often feature in the headlines; now, the city's "moffie culture" - a term for the mainly coloured, or mixed race, transvestites - is managing to transcend these barriers to a degree.

Marlow Valentine, deputy director of the Cape Town-based Triangle Project, a support group for lesbian, gay, bisexual and transgender (LGBT) people, told IRIN that transvestites had been living openly in the city since the early 1960s.

"The moffie subculture emerged in District Six in Cape Town during the 1940s and '50s, an inner-city area that truly reflected the idea of a 'rainbow nation', as it was home to people of different ethnic backgrounds and religious beliefs during the earlier days of apartheid," he said.

District Six was demolished by the apartheid government, which saw the mixed community of blacks, coloureds and whites living cheek-by-jowl as flouting the official policy of racial separation.

"Even though homosexuality was a criminal offence at the time [during apartheid], men who cross-dressed and participated in drag shows were accepted. It seems gay men who retained a level of masculinity were not accepted, but effeminate men were, as their sexual orientation was not seen as threatening," Valentine said." (IRIN News (8 April 2010) *South Africa: A gay lifestyle is okay, but being gay is not*)

Section 6 of the March 2010 *United States Department of State Country Report on Human Rights Practices for South Africa*, under the heading 'Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity', notes:

"The post-apartheid constitution outlaws discrimination based on sexual orientation, and in 2006 the country legalized same-sex marriage. There were no reports of official mistreatment or discrimination. However, in its annual Social Attitudes Survey released in November 2008, the Human Sciences Research Council found widespread public intolerance of homosexuality activity, which was commonly labeled "un-African," with 80 percent of respondents believing sex between two same-gender persons was "wrong."

Rights groups reported that the LGBT community was subject to societal abuses including hate crimes, gender violence targeting lesbians, and killings. The NGO People Opposed to Women Abuse reported that attacks increased during the year and estimated that a lesbian was killed every three months in the country's townships. On September 22, Themba Mvubu was sentenced to life in prison for the April 2008 gang rape, robbery and murder of Eudy Simelane, a former player on the national women's soccer team and well-known lesbian activist. Khumbulani Magagula and Johannes Mahlangu, who were arrested with Mvuba, were acquitted based on testimony that the two were present but did not participate. The fourth accused, Thato Mphiti, was sentenced on February 13 to 32 years in prison for murder, robbery, and being an accomplice to rape.

The trial of seven men accused of the 2006 murder of Zoliswa Nkonyana, a lesbian, in Cape Town, was postponed several times during the year; there were no further developments." (United States Department of State (11 March 2010) *2009 Country Reports on Human Rights Practices: South Africa*)

Under the heading 'Sexual Orientation and Gender Identity', the January 2010 *Human Rights Watch World Report for South Africa* notes:

"Although South Africa's constitution outlaws discrimination based on sexual orientation, and same-sex marriage has been legalized, gay and lesbian people remain vulnerable. In particular, incidents of violence against black lesbian women, and "corrective rape" in particular, continue to be reported with growing frequency. The South African Human Rights Commission and other NGOs have recommended that the criminal justice system needs to take concerted action to deal with hate crimes in the country, something that the government has yet to do." (Human Rights Watch (20 January 2010) *World Report 2010 - South Africa*)

The introduction of a March 2003 *Human Rights Watch* report states:

"In the mid-1990s, South Africa emerged from decades of oppression, during which equality had been both a rallying cry and a remote dream, and wrestled with the question of how to turn the slogan into a reality for its peoples.

At the same time, politicians elsewhere in southern Africa?facing shrinking public support and the threat of electoral defeat?began exploring how to make inequality a

powerful slogan in itself. One leader discovered a potential target and a vituperative language that struck a responsive chord among his people. Others followed suit. They have echoed and reinforced one another across borders and over time?scapegoating one group of people for their countries' difficulties, and explicitly excluding "homosexuals" from constitutional protections granted to their other citizens.

Southern Africa is burdened by poverty and political uncertainty, and devastated by higher rates of HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) infection than any other region in the world. Yet in some countries, politicians, instead of directly addressing those issues, have made calls to persecute and cast out homosexuals (or "gays and lesbians," "sodomists," or "sexual perverts") commonplace. Robert Mugabe, president of Zimbabwe, popularized those calls through widely publicized statements, reiterated regularly since 1995. "We don't believe they [gay men and lesbians] have any rights at all," he said, "It cannot be right for human rights groups to dehumanize us to the status of beasts." Mugabe justifies his intolerance with the claim that homosexuality is "un-African," describing it as a disease "coming from so-called developed nations." (Human Rights Watch (14 March 2003) *More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa*)

References:

Freedom House (31 May 2010) *Freedom in the World – South Africa (2010)*
<http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7920>
(Accessed 10 September 2010)

Human Rights Watch (20 January 2010) *World Report 2010 - South Africa*
<http://www.hrw.org/en/node/87452>
(Accessed 10 September 2010)

Human Rights Watch (14 March 2003) *More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa*
<http://www.hrw.org/en/reports/2003/05/13/more-name-0>
(Accessed 10 September 2010)

IRIN News (8 April 2010) *South Africa: A gay lifestyle is okay, but being gay is not*
<http://www.irinnews.org/PrintReport.aspx?ReportId=88745>
(Accessed 10 September 2010)

United States Department of State (11 March 2010) *2009 Country Reports on Human Rights Practices: South Africa*
<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135977.htm>
(Accessed 10 September 2010)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

Sources consulted:

Amnesty International
BBC News
European Country of Origin Information Network
Freedom House
Human Rights Watch
International Crisis Group
International Federation for Human Rights (FIDH)
Immigration and Refugee Board of Canada
IRIN News
Lexis Nexis
Refugee Documentation Centre Query Database
United Kingdom: Home Office
UNHCR Refworld
UN News Service
United States Department of State