

South Africa

Country Conditions Report

Created by the Sexual Orientation and Gender Identity Working Group International Human Rights Program

University of Toronto

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# Introduction

Though domestic laws regarding same-sex marriage and LGBTQ+ persons are progressive at first glance, South Africa fails to enforce these laws. There is **continued stigma against LGBTQ+ persons**, and many have lack of access to legal marriages.

There are international and media concerns about the **discrimination of LGBTQ+ persons**, **especially by police and other State forces**. **Prison conditions** in South Africa also continue to face critique from the UN for breaching international conventions against torture.

The **HIV/AIDS pandemic** continues to be a major concern regarding stigma towards LGBTQ+ persons. Persecution and discrimination create barriers to accessing proper medical treatment.

There are concerns about **gender-based and sexual violence** in South Africa, especially against women and girls. Rates of domestic violence and femicide are concerning, as well as the continued practices of ukuthwala (bride kidnapping), virginity testing, and other harmful or discriminatory practices.

**There have been refugee claims based on LGBTQ+ identification from South Africa** made in Canada. However, the Immigration and Refugee Board (IRB) has a history of rejecting these claims due to the IRB finding a lack of fear of persecution in South Africa.

# Legislation

To access the full text of the South African constitution and South African legislation, see: <https://www.gov.za/>

1. *Constitution of the Republic of South Africa, 1996.[[1]](#footnote-1)*
* **As a constitutional democracy, South Africa’s Constitution is the supreme law of the land. No other government action can supersede the provisions of the Constitution.**
* **Sexual orientation and gender are included as classes protected against discrimination from the state.**
* **This introduces universal protections against discrimination on the basis of gender and sexual orientation into South Africa’s domestic law.**
* ***Bill of Rights*, section 9 (3).**
	+ **“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.”**
1. *The Civil Union Act 17 of 2006.[[2]](#footnote-2)*
* **Same-sex marriage is legalized. It is explicitly noted in the South African constitution that the Constitution did not provide same-sex couples with the same status, benefits and responsibilities that marriage accords to opposite sex couples.**
* **A marriage officer may object to solemnising a same-sex civil union on the ground of conscience, religion, and belief.**
* **Gender neutral terms such as “partners” are used.**
1. *2002 Constitutional Court Ruling on Joint Adoption by Same-Sex Couples.[[3]](#footnote-3)*
* **Child Care Act 74 of 1983 revised to have same-sex inclusive language.**
* **Guardianship Act 192 of 1993 revised to have same-sex inclusive language.**
* **This included a statement of acknowledgement of the legitimacy and value of same-sex permanent life partnerships.**
1. *Section 27(2)(c)(i) of the Basic Conditions of Employment Act 75 of 1997.[[4]](#footnote-4)*
* **Family responsibility leave in the event of death revised to spouse or life partner, in order to be inclusive of same sex couples.**

# Canadian Jurisprudence

***Immigration and Refugee Board of Canada Decisions***

The IRB does not have a history of granting South African claimants convention refugee status. They always find that the claimant does not have a fear of prosecution in South Africa.

1. *X (Re*), 2020 CanLII 124730 (CA IRB)
* **(Minor Appellant) Found that she does not face a serious possibility of persecution in South Africa.**
1. *X (Re),* 2019 CanLII 144013 (CA IRB)
* **Claim was rejected as there was no convincing evidence that he would face persecution based on his father’s previous activities as an activist campaigning for the LGBTI youth in South Africa. His mom and half-sister live in South Africa unharmed.**
1. *X (Re),* 2021 CanLII 121248 (CA IRB),
* **Claim was rejected because Appellant’s testimony was not consistent and establishing the Appellant’s sexual orientation on a balance of probabilities was a material aspect of her claim. Since she could not, she should return to South Africa.**

# International Law

***UN Treaties[[5]](#footnote-5)***

|  |  |  |
| --- | --- | --- |
| **Treaty** | **Date of Signature** | **Date of Ratification, Accession (a)** |
| *ICCPR* | 1994 | 1998 |
| *ICCPR – First OP* | N/A | 2002 (a) |
| *ICCPR – Second OP* | N/A | 2002 (a) |
| *ICESCR* | 1994 | 2015 |
| *ICESCR – First OP* | N/A | N/A |

|  |  |  |
| --- | --- | --- |
| *CAT* | 1993 | 1998 |
| *CAT – First OP* | 2996 | 2019 |

***Human Rights Committee***

1. The primary report is: “UN concluding observations on the initial report of South Africa”(2016).[[6]](#footnote-6)
* **The initial and most recent South Africa report to the Human Rights Committee was submitted in 2015, 14 years overdue.[[7]](#footnote-7)**
* **Violence and discrimination against LGBTQ+ individuals**
* **There is persisting stigma against persons based on their real or perceived sexual or gender orientation, gender identity or bodily diversity. Such persons are subject to harassment, acts of discrimination and sexual and physical violence. Gender-based and domestic violence also remains a serious problem. The conviction rate for such acts is low and there is a lack of disaggregated data.**
* **The State party should increase reporting, collection of data, investigation, and access to justice for gender-based violence and violence and discrimination against LGBTQ+ individuals. It also recommends additional training for law enforcement and health service personnel with respect to LGBTQ+ individuals.[[8]](#footnote-8)**
* **Despite efforts invested by the State, violence, and discrimination against LGBTQ+ persons are still Committee concerns. Positive developments include the launch in 2014 of the National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex Sector is noted as a positive development.**
* **LGBTQ+ activists face police abuse and lack of protection**
* **There are reports of: threats, intimidation, harassment, excessive use of force and physical attacks, some resulting in death. These acts have been committed by both private individuals and police forces against LGBTQ+ human rights defenders and HIV activists. There is a lack of due diligence of law enforcement with respect to registering and investigating allegations of human rights violations as well as accountability for such violations.[[9]](#footnote-9)**
* **Individuals living with HIV/AIDS continue to face discrimination.**
* **There is inequality of access to medical care for individuals living with HIV/AIDS, particularly for women and individuals in poor or rural areas.[[10]](#footnote-10)**

***Committee on Economic, Social and Cultural Rights***

1. “Concluding observations on the initial report of South Africa”(2018)[[11]](#footnote-11)
* **South Africa’s initial report to the ICESCR was submitted in 2018. The Committee’s observations do not make specific reference to issues LGBTQ+ issues, but it lists the following concerns:[[12]](#footnote-12)**
* **Human rights defenders face threats and harassment. The broad and vague definition of “public violence” may have a deterrent effect on participants in peaceful protests. There is a high number of rejections of protest applications due to deliberate restrictions by public officials.**
* **Lack of rights for sex workers, most of whom are women, and the criminalization of the sale of sex. The Committee is concerned about frequent harassment, arbitrary arrest, and detention. In addition, concerns about sex workers being coerced into free sex and the giving of bribes by the police, due to the criminalization of the sale of sex.**
* **Harmful practices against girls, including the practice of virginity testing of children above the age of 16 if the child has given consent and after proper counselling. The Committee is also concerned at the recent resurgence of the practice of ukuthwala in the Eastern Cape and KwaZulu-Natal Provinces. In the absence of the consent of the girl concerned, this practice is considered as a form of trafficking, and may be prosecuted as such (arts. 3 and 10).**
* **Lack of access to adequate healthcare: a significant number of HIV patients still do not have access to antiretroviral treatment.**
* **Lack of access to abortion, despite the Choice on Termination of Pregnancy Act (no. 92) of 1996 allowing for abortion under certain conditions, only 7 per cent of health-care centres provide abortion services.**
* **"Information received from South Africa on follow-up to the concluding observations on its initial report” (2021).[[13]](#footnote-13) The most recent follow-up report does not address any of the concerns noted above.**

***Committee against Torture***

1. “List of issues prior to the submission of the third periodic report of South Africa” (2022).[[14]](#footnote-14)
* **Article 11, regarding the treatment of prisoners and those held in custody. The committee requests information about State efforts and protocols to meet the specific needs of women, minors as well as LGBTQ+ persons.**
* **There is a lack of disaggregated data separated by sex, age, and nationality for prisoners and asylum-seekers.**
1. “Concluding observations on the second periodic report of South Africa” (2019).[[15]](#footnote-15)
* **There is a continuing prevalence of all forms of violence, including gender-based and domestic violence, primarily against women and girls, which encompasses murder, attempted murder and sexual offences that may be committed at the instigation, or with the support, of State actors.**

***Universal Periodic Review by the Human Rights Council***

1. “National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21”(2022).[[16]](#footnote-16)
* **UN Observations and Recommendations:[[17]](#footnote-17)**
	+ **Continue development and finalization of a new Marriage Policy to ensure and enable LGBTQ+ persons to conclude legal marriages without discrimination.**
	+ **Continue implementation of measures to eradicate cultural practices harmful to women and girls such as ukuthwala, virginity testing, widow’s rituals, ukungena, breast sweeping/ironing, and other discriminatory or harmful practices.**
	+ **Continue public awareness and community projects on gender-based and sexual violence including LGBTQ+ cases.**
	+ **Pursue actions under the Presidential Summit Declaration against Gender-Based Violence and Femicide (GBVF) launched in March 2019.**
* **The National Task Team (NTT) on LGBTI Rights in 2011 was intended to counter the continued discrimination and violence perpetrated against people on the basis of their sexual orientation, gender identity, expression and sex characteristics (SOGIESC). The Committee calls this a successful partnership between government and civil society.**
* **A survey of attitudes towards homosexuality and gender non-conformity in South Africa, produced by The Other Foundation and the Human Sciences Research Council found that 51 per cent of South Africans believe that gay people “should have the same human rights as other people, even though 72 per cent hold the view that same-sex activity is “morally wrong”.[[18]](#footnote-18)**

***Regional Treaties and Monitoring Bodies***

1. **African Commission on Human and Peoples’ Rights**: Ratified by South Africa in 1996.[[19]](#footnote-19) They have 3 overdue reports.[[20]](#footnote-20)
2. “Concluding Observations and Recommendations - South Africa: Second Periodic Report, 2003-2014” (2016)[[21]](#footnote-21)
* **Concerns:[[22]](#footnote-22)**
	+ **Challenges faced by public health sector to deliver services to about 80% of the population and shortage of medical personnel to deal with diseases such as HIV and Tuberculosis.**
	+ **Discrimination, homophobia, and prejudice against LGTBQ+ persons resulting in murder and violence against them despite the existence of legal frameworks.**
	+ **High prevalence of HIV/AIDS as well as stigma and discrimination that continue to present challenges in the management of HIV/AIDS particularly in healthcare settings.**
	+ **Lack of information on the promotion of the rights of human rights defenders**

# Government Reports

***Canada***

The Immigration and Refugee Board of Canada does not currently have any reports about sexual minorities in South Africa. However, they have compiled reports from other sources.

1. **A Survey of Laws Impacting the Human Rights of Lesbian, Gay, Bisexual and Transgender Persons in Selected Southern African Countries[[23]](#footnote-23)**

South Africa was first in the world to outlaw discrimination based on sexual orientation constitutionally. Recently, South Africa voted in favour of the Resolution on Human Rights, Sexual Orientation and Gender Identity adopted by the 27th Session of the Human Rights Council. This has been classified as a significant step forward in the fight against violence and discrimination based on sexual orientation and identity.

South Africa’s cultural attitudes lag behind the country’s post-apartheid constitution. Violence against LGBTI+ population is rampant. Many lesbians and bisexual women experienced physical, sexual, social violence, and discrimination in multiple spaces.[[24]](#footnote-24) There are instances of physical attacks against LGBTI+ people, including ‘corrective rape’ where men rape lesbians claiming they can change the victim’s sexual orientation.[[25]](#footnote-25)

Most of the population does not experience the freedoms described on paper because of economic inequality, social isolation, and cultural exclusion. The Human Rights Committee expressed concern about reports of threats, intimidation, harassment, excessive use of force and physical attacks by police force against human rights defenders working on LGBTI and HIV issues.[[26]](#footnote-26) Law enforcements were not demonstrating due diligence to ensure accountability for such violations.[[27]](#footnote-27)

South Africa constitutes the larges HIV epidemic in the world at about 12% of the country’s population living with HIV or AIDS. South Africa has established the South African National AIDS Council (SANAC) which aims to enhance the country’s response to STIs and HIV among other things. SANAC has established an LGBTI sector that consists of service providers with experience in LGBTI advocacy and treatment. They build government relationships and advocacy within the National Department of Health.

***United States of America***

1. **US Department of State: 2020 Country Reports on Human Rights Practices: South Africa (March 30, 2021).[[28]](#footnote-28)**

South Africa’s constitution prohibits discrimination based on sexual orientation. Laws surrounding housing, employment, nationality, and access to government services also prohibit discrimination against LGBT identifying individuals. However, despite these laws attempting to prevent discrimination, there are reports of officials mistreating people based on their sexual orientation or gender identity. Anti-LGBTI attitudes among the community and police makes them vulnerable.

* **Security force members raping LGBTI during arrest.**
* **University of Cape Town Report: Secondary victimization of lesbians – police harassed, ridiculed, and assaulted victims of sexual and GBV who reported abuse (2018).**
* **HIV and AIDS:**
	+ Stigma and discrimination in employment, housing, and access to education and health care (especially in rural communities).
	+ There are about 250,000 new HIV infections annually.

# Reports from International Agencies and Non-Governmental Organizations

1. Letter to South African Authorities Regarding LGBTI Murders and Assaults [[29]](#footnote-29)
* **In the Committee on the Elimination of Discrimination against Women’s fifth periodic report on South Africa, the Committee expressed grave concern about the “particularly high levels of gender-based violence of women and girls facing intersecting forms of discrimination [including] LBTI women.**
* **In particular, the Committee noted with concern information received on the situation of women and girls facing intersecting forms of discrimination, including LBTI 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 women from gender-based violence.**
1. South Africa: Broken Promises to Aid Gender-Based Violence Survivors [[30]](#footnote-30)
* **The South African government has acknowledged high rates of gender-based violence both during and before the pandemic. But South African experts told Human Rights Watch that despite promises – including in a National Strategic Plan – to address gender-based violence and femicide, the government has still failed to provide necessary funding for shelters and other services. Efforts should be made to improve access for marginalized people, including sex workers; lesbian, gay, bisexual, and transgender (LGBT) people; and undocumented survivors.**
* **Shelters vary in whether they accept undocumented migrant survivors. South African law prohibits sheltering immigrants without documentation but allows for emergency humanitarian support for undocumented people. The exception is not clearly defined, and some shelters fear liability for violating the law.**
* **South Africa has one shelter designed for LGBT survivors, the Pride Shelter in Cape Town. Though other shelters accept them in theory, experts said that more funding, training, and skills building is needed to counter discrimination and bias in the shelter space, provide tailored services, and raise awareness about availability of shelter services among marginalized populations.**
* **Inconsistent government support for the shelters is not a new problem. The shelters are “chronically underfunded,” and that funding is also highly variable between and within provinces.**
* **Human Rights Watch found that shelters differed in whom they accepted as clients. Undocumented migrants, LGBT people, and women with older male children were sometimes excluded, for reasons that range from lack of private family facilities to concern about running afoul of the immigration law, or not being able to pay expenses the government would not reimburse for non-nationals.**
1. South Africa, Events of 2021.[[31]](#footnote-31)
* **The National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (NAP), recognizes LGBTI individuals as a priority group. There are inadequacies in the current system which don’t cater for changes in gender/sex attribute of the identity system. The Human Rights Watch filed a submission in 2021 with the Department of Justice and Constitutional Development on their Draft National Intervention Strategy (NIS), that provides the framework to counter violence and discrimination based on sexual orientation, gender identity, gender expression and sex characteristics.**

# Media Reports and Local Expertise

1. South Africa still hasn’t won LGBTQ+ equality. Here are 5 reasons why.[[32]](#footnote-32)
* **South Africa was the first country in the world to protect against discrimination based on sexual orientation and the fifth to legalize same-sex marriage.**
* **The Constitutional Court’s ruling on Minister of Home Affairs vs Fourie established that the government was constitutionally obliged to allow same-sex marriage, leading to the Civil Union Act.**
* **However, legal protection preceded public acceptance in the country. The deep-seated tendency towards the marginalisation of gay people in South Africa remains.**
* **According to a survey done by Progressive Prudes, 51% of South Africans believe that gay people should have the same human rights, but a staggering 72% feel that same-sex activity is morally wrong.**
1. The Unfulfilled Promise of LGBTQ Rights in South Africa..[[33]](#footnote-33)
* **South Africa now has some of the most progressive LGBTQ laws in the world, including full constitutional protections against discrimination.**
* **However, there is a wide gulf between the legal promise of protection and the lived reality of LGBTQ individuals. The country has yet to live up to its queer-friendly reputation.**
* **According to LGBTQ-rights activists Nigel Patel, “the law jumped miles ahead of society.” For the most part, South Africa remains morally conservative and often profoundly violent.**
* **Based on a survey conducted by Out, among 2000 LGBTQ+ respondents over the span of two years:**
	+ **39% had been verbally insulted.**
	+ **20% had been threatened with harm.**
	+ **17% had been “chased or followed”.**
	+ **10% had been physically attacked.**
* **In recent decades, South Africa has offered asylum to people being persecuted for their sexual orientation in the continent. However, the system is deeply flawed. Local non-profits have noted that there are “systemic problems and inefficiencies” in the application process.**
* **The officials are often prejudicial, demanding “proof” that the applicant is gay. As a result, the country failed to protect many victims of sexual violence and prosecution. Based on a** [**report**](http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf) **by the national Department of Home Affairs, more than 90 percent of these applications are rejected.**
1. In South Africa, LGBTQ bigotry raises concern of ‘corrective’ rape.[[34]](#footnote-34)
* **Rates of rape are extremely high in South Africa, and LGBTQ women are sometimes targeted for what is known as “corrective” rape.**
* **Corrective rape refers to a form of hate crime where the perpetrator sexually assaults a LGBTQ individual, mostly commonly a Black lesbian, with the alleged intention of changing their sexuality.**
* **Victim blaming is common among the media coverage of violence against LGBTQ people in South Africa. Female victims are often presented as “luring” a man under false pretenses. Moreover, the lack of understanding of LGBTQ communities further contributes to harmful media coverage.**
* **Despite the constitutional protection afforded to LGBTQ communities, there is a difference between “what is on paper and what people believe.” The general hostility and ignorance toward LGBTQ communities continue to lead to pervasive gender-based violence.**
1. The World’s Largest HIV Epidemic in Crisis: HIV in South Africa.[[35]](#footnote-35)
* **South Africa remains the epicenter of the HIV pandemic as the largest AIDS epidemic in the world—20 percent of all people living with HIV are in South Africa, and 20 percent of new HIV infections occur there too.**
* **Of the estimated 7.2 million South Africans living with HIV, nearly 60 percent are women over the age of 15.**
* **HIV prevalence in other key populations—female sex workers, men who have sex with men, transgender women, and people who inject drugs—remains unacceptably high, in some cases double the** [**national prevalence rate of approximately 19 percent**](http://aidsinfo.unaids.org/)**.**
* **After the early years of denial, the South African government now finance** [**close to 80**](https://www.hfgproject.org/consolidated-spending-on-hiv-and-tb-in-south-africa_aug2018/)[**percent**](https://www.hfgproject.org/consolidated-spending-on-hiv-and-tb-in-south-africa_aug2018/) **of the HIV response, an unparalleled commitment in sub-Saharan Africa, and provides more than 4 million people with life-prolonging anti-retroviral treatment (ART).**
* **The problem facing South Africa’s HIV response is that treatment scale-up has stalled, and while** [**new infections have gone down by 42 percent,**](http://aidsinfo.unaids.org/) **the rate is not fast enough to bend the curve of the epidemic. New infections in young men and women remain alarmingly high (nearly 87 percent of the total) and viral suppression rates, a key to preventing those living with the virus from passing it on, are under 50 percent for those 15-24 years old.**
* **The critical between policy and implementation. While the government is committed to supporting the national HIV treatment program and has issued enabling guidelines, it faces significant challenges to effective implementation.**
* **It lacks the resources for an overhaul of the public health infrastructure and to scale up and increase coverage of prevention programs like PrEP.**
* **The decentralized health system requires political will at the provincial and district levels to implement services effectively.**

# Scholarship

1. Realisation or oversight of a constitutional mandate? Corrective rape of black African Lesbians in South Africa.[[36]](#footnote-36)
* **The article focuses on how South Africa balances its constitutional mandate in relation to black African lesbians affected by corrective rape.**
* **Corrective rape is a form of sexual punishment by men towards lesbians in order to cure them of their sexual orientation.**
* **Black African lesbians, particularly those who are seen to challenge patriarchal gender norms, are often victims of corrective rape,**
* **Despite the formal protection against discrimination in the Constitution, gender-based violence such as corrective rape violates the substantive equality of LGBTQ groups.**
* **It is important to note the difference between formal as opposed to substantive equality. Formal equality refers to sameness of treatment whereby individuals in similar circumstances are treated alike.**
* **Reliable statistics on incidents of corrective rape are hard to come by, which makes it difficult to determine the true extent of the problem and, in turn, to hold the perpetrators accountable.**
* **Most incidents go unreported, and those that are reported are not properly identified as homophobic attacks because of the sexual orientation of the victims.**
* **According to a 2004 study on rape and sexual abuse targeting (LGBTI) individuals in Gauteng:**
	+ **73 percent of the respondents contended that they did not report such victimisation as they feared they would not be taken seriously.**
	+ **43 percent feared abuse by the police.**
	+ **33 percent did not want the police to know their sexual orientation.**
* **Furthermore, corrective rape is not recognised as a separate crime category in South Africa. As a result, reliable statistics are hard to come by because the record makes no distinction between rape and corrective rape.**
* **According to the author, the South African justice system has failed the victims of corrective rape in three major ways:**
	+ **Due to systematic barriers, most incidents of corrective rape do have not gone to court for prosecution.**
	+ **The court places insufficient weight on the prejudice, intolerance, and discrimination that motivate corrective rape.**
	+ **No legislative provisions are specifically designed to address corrective rape. The guidelines for mandatory sentencing, which was created for sexual assaults in general, does not take into account the egregious nature of corrective rape.**
1. Homophobia and sexuality diversity in South African schools: A review.[[37]](#footnote-37)
* **LGBT youth in schools experience significant homophobia and transphobia in school environments.**
* **Peers, teachers, and school managers often express heterosexist prejudice and engage in discrimination.**
* **According to a national quantitative study conducted by OUT LGBT Well-being:**
	+ **55 per cent of the LGBTQ youth experienced verbal insults.**
	+ **35 per cent were threatened with physical violence.**
	+ **18 per cent had been punched, kicked, or beat.**
	+ **11 per cent had been sexually abused or raped.**
* **Various forms of social mistreatment, alongside the ill effects of internalized heterosexism, are well established in existing literature.**
* **Youth in South Africa do not have access to an LGBT-inclusive curriculum.**
1. A Political and Social History of HIV in South Africa.[[38]](#footnote-38)
* **South Africa now has an estimated 6.4 million people infected with HIV, with high rates of concomitant tuberculosis which will profoundly affect the country for decades to come**
* **For nearly 10 years, the South African government’s response to the HIV epidemic was denialist, which was estimated to have resulted in the deaths of 330,000 people because lifesaving antiretroviral therapy (ART) was not provided**
* **However, the HIV and AIDS response in South Africa has made significant progress.**
* **Since the introduction of ART in 2008, life expectancy increased dramatically from 57.1 in 2009 to 61.3 years in 2012, and child and infant mortality rates have decreased by 25**
* **% over the same period**
* **As of 2015, South Africa had close to 3 million people on ART.**
* **Nonetheless, huge challenges remain for the HIV response.**
* **HIV care provision requires a functional health service**
* **The failures of the primary health care system might sabotage the existing and further scale-up of antiretroviral care.**
* **Key populations, such as sex workers, men who have sex with men, truckers, adolescents and men in general, are not accessing services enough.**
* **Enablers such as poverty, unemployment, alcohol abuse, gender violence, teenage pregnancy and access to evidence-based interventions such as male circumcision and condoms need to be addressed.**
* **Monitoring systems are being strengthened to ensure that patients who are defaulting are rapidly found and restarted on treatment.**

1. *Constitution of the Republic of South Africa,* 1996, online: <http://www.thehda.co.za/uploads/files/unpan005172.pdf>. [↑](#footnote-ref-1)
2. *The Civil Union Act 17,* 2006, online: <https://www.gov.za/sites/default/files/gcis_document/201409/a17-061.pdf>. [↑](#footnote-ref-2)
3. Du Toit and De Vos v The Minister for Welfare and Population Development, The Minister of Justice and Constitutional Development, The Commissioner of Child Welfare Pretoria, The Lesbian and Gay Equality Project, [2002] Case CCT 40/01, online: <http://www.saflii.org/za/cases/ZACC/2002/20.pdf>. [↑](#footnote-ref-3)
4. *Basic Conditions of Employment Act 75,* 1997, online: <https://www.gov.za/sites/default/files/gcis_document/201409/a75-97.pdf>. [↑](#footnote-ref-4)
5. “UN Treaty Body Database” (accessed 11 November 2022), *United Nations Human Rights Office of the High Commissioner* online:

<<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=162&Lang=EN>>. [↑](#footnote-ref-5)
6. Human Rights Committee, Concluding observations on the initial report of South Africa, UNOHCHROR, UN Doc CCPR/C/ZAF/CO/1 (2016) online: < https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fZAF%2fCO

%2f1&Lang=en>. [↑](#footnote-ref-6)
7. *Ibid.* [↑](#footnote-ref-7)
8. *Ibid* at paras 20-21. [↑](#footnote-ref-8)
9. *Ibid* at para 40. [↑](#footnote-ref-9)
10. *Ibid* at paras 16-17. [↑](#footnote-ref-10)
11. Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of South Africa, UNOHCHROR, UN Doc E/C.12/ZAF/CO/1 (2018) online:

<https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FZAF%2FC O%2F1&Lang=en>. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Committee on Economic, Social and Cultural Rights, Information received from South Africa on follow-up to the concluding observations on its initial report, UNOHCHROR, UN Doc E/C.12/ZAF/FCO/1 (2021) online: < https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fZAF%2fFCO

%2f1&Lang=en>. [↑](#footnote-ref-13)
14. Committee Against Torture, List of issues prior to submission of the third periodic report of South Africa, UNOHCHROR, UN Doc CAT/C/ZAF/QPR/3 (2022) online:

<https://tbinternet.ohchr.org/\_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en>. [↑](#footnote-ref-14)
15. Committee Against Torture, Concluding observations on the second periodic report of South Africa, UNOHCHROR, UN Doc CAT/C/ZAF/CO/2 (2019) online: <

https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FZAF%2FCO

%2F2&Lang=en>. [↑](#footnote-ref-15)
16. Human Rights Council, National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21,

UNHRCOR, 41 Sess, UN Doc A/HRC/WG.6/41/ZAF/1 (2022) online:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/468/07/PDF/G2246807.pdf?OpenElement>. [↑](#footnote-ref-16)
17. Ibid at paras 61-83. [↑](#footnote-ref-17)
18. Ibid at para 83, citing “Progressive Prudes - A survey of attitudes towards homosexuality & gender non-conformity in South Africa”, 2016. [↑](#footnote-ref-18)
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