



The Lesbian and Gay **EQUALITY** Project

HATE CRIMES



Hate crimes and violence against lesbian and gay people

Lesbian, gay, bisexual and transgender people face violence at home, in our schools, communities, clubs, churches and streets. For many of us this violence has become a way of life. It hurts our bodies, our minds and our families. The violence against lesbian and gay people hurts because it is kept invisible. Discrimination against lesbian and gay people remains strong in many communities. Violence and discrimination go together. But such conduct is not allowed by the Constitution.

What does the Constitution say?

Section 12(1)(c) of the Constitution reads as follows:

“Everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources.”

Section 10 of the Constitution reads as follows:

“Everyone has inherent dignity and the right to have their dignity respected and protected”

Like much of the world, South Africa is a very homophobic place. Homophobia not only leads to the perpetuation of myths and stereotypes about lesbian and gay people, but more importantly, to the creation of an environment in which lesbian and gay people feel vulnerable and unsafe. Such an environment has resulted in gays and lesbians

- Feeling that they have to hide that they are lesbian or gay at all costs;
- Being beaten up or kicked out of home just because they are gay or lesbian; or
- Often feeling that they deserve to be treated in such a way.

The law does not recognise a separate category of hate crimes. Hate crimes are those which are committed because of hatred and prejudice. Hate crimes are committed because of problems such as racism, sexism, homophobia, religious intolerance and xenophobia (the irrational fear of foreigners). While the law does not yet recognise the specific offence of hate crimes, the motive behind an attack is important when it comes to sentencing the nature of the crime may result in a harsher sentence.

The Constitution talks about certain categories of hate speech – this is in the section dealing with freedom of expression. The Constitution recognises that such speech may lead to violence, and in such cases would be prohibited. However, hate speech on the basis of sexual orientation is not yet recognised as one of the prohibited grounds.

What can lesbian and gay people do about hate crimes?

Anyone can be a target of hate crimes. Even straight women and men can be the targets of “queer bashing” if they are perceived to be lesbian or gay. All attacks on lesbian and gay people, or people thought to be lesbian or gay, can be regarded as different forms of assault common assault, assault with intent to do grievous bodily harm, indecent assault or rape.



What needs to be considered before laying such a charge?

It is vital to report such matters to the police an advice worker should make a survivor of violence aware of the potential problems he or she might face at a police station, and look for ways to deal with them. One way might be to accompany the complainant to the police station.

In cases where the attacker is known, such as a work colleague or member of the community, there are other concerns. There is always the danger of the attacker becoming more violent, which may result in even more serious abuse. The survivor of violence is the best person to know how the attacker would react to the laying of such a charge.

But it is important to lay charges. The reason why criminals are punished is not just for the purpose of retribution (revenge), but also to prevent such crimes from being repeated. As long as the police are allowed to act in such a manner, the fewer the number of hate crimes that will be reported. This will only result in fewer convictions and the police believing that hate crimes are not really happening. The police have a duty to protect the rights of all citizens, whether lesbian, gay or straight. We have the right to insist that they perform their duty diligently.

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