



# TRANSILIENCE

The realities of violence against  
transgender women in  
South Africa





**Research Report for Transilience Project on Violence against Transgender Women 2014**

**This Research Report was compiled**

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## **Table of Contents**

<b><u>1. EXECUTIVE SUMMARY.....</u></b>	<b><u>9</u></b>
<b><u>2. DEFINITION OF TERMS.....</u></b>	<b><u>11</u></b>
<b><u>3. INTRODUCTION.....</u></b>	<b><u>13</u></b>
<b><u>3.1 SOUTH AFRICA’S LEGAL OBLIGATIONS .....</u></b>	<b><u>13</u></b>
<b><u>3.1.1 DOMESTIC LEGAL FRAMEWORK.....</u></b>	<b><u>21</u></b>
<b><u>4. BACKGROUND .....</u></b>	<b><u>24</u></b>
<b><u>5. METHODOLOGY.....</u></b>	<b><u>27</u></b>
<b><u>6. DESCRIPTION OF THE SAMPLE .....</u></b>	<b><u>28</u></b>
<b><u>6.1 PERSONAL DEMOGRAPHICS .....</u></b>	<b><u>28</u></b>
<b><u>6.1.1. SOCIAL IDENTITY .....</u></b>	<b><u>28</u></b>
<b><u>6.1.2. AGE AND RACE.....</u></b>	<b><u>33</u></b>
<b><u>6.1.3 SOCIO-ECONOMIC, CULTURAL &amp; RELIGIOUS ISSUES .....</u></b>	<b><u>35</u></b>
<b><u>6.1.3.1 Education .....</u></b>	<b><u>35</u></b>
<b><u>6.1.3.2 Employment.....</u></b>	<b><u>38</u></b>
<b><u>6.1.3.3 Living Conditions .....</u></b>	<b><u>39</u></b>
<b><u>6.1.3.4 Religion &amp; Culture.....</u></b>	<b><u>41</u></b>
<b><u>7. MAJOR FINDINGS .....</u></b>	<b><u>42</u></b>
<b><u>7.1 HEALTH &amp; WELLBEING .....</u></b>	<b><u>42</u></b>
<b><u>7.2 ACCESS TO TREATMENT.....</u></b>	<b><u>45</u></b>
<b><u>7.3 VIOLENCE, DISCRIMINATION AND HARASSMENT.....</u></b>	<b><u>47</u></b>
<b><u>7.4 NATURE OF VIOLENCE .....</u></b>	<b><u>49</u></b>
<b><u>7.5 EFFECTS OF VIOLENCE.....</u></b>	<b><u>51</u></b>
<b><u>7.5.1 SOCIAL EFFECTS.....</u></b>	<b><u>52</u></b>
<b><u>7.5.2 EMOTIONAL EFFECTS.....</u></b>	<b><u>53</u></b>
<b><u>7.6 PERCEPTION OF TRANSGENDER WOMEN.....</u></b>	<b><u>54</u></b>
<b><u>7.7 ACCESS TO JUSTICE .....</u></b>	<b><u>56</u></b>
<b><u>7.8 LEGAL &amp; SECURITY MECHANISMS.....</u></b>	<b><u>57</u></b>
<b><u>8. CONCLUSION .....</u></b>	<b><u>61</u></b>
<b><u>9. RECOMMENDATIONS.....</u></b>	<b><u>63</u></b>



## **Transilience Project on Violence against Transgender Women 2014**

### **Foreword**

The Social, Health and Empowerment Feminist Collective of Transgender Women of Africa (S.H.E.) *Transilience Project on Violence against Transgender Women* provides timely and relevant, mostly qualitative, data on this seriously under-researched topic.

The report offers a useful contribution to our understanding of the discrimination and violence faced by the transgender community in different parts of society today. This is vital for the development of policies and programmes that respond appropriately to this community's unique needs and experiences.

The status of human rights in South Africa's transgender community is a serious and timely subject. Today, globally, transgender issues are more visible than ever, but transgender women still face multiple and intersecting forms of discrimination when it comes to social acceptance and the full realization of their human rights.

Despite laws and commitments to equality, discriminatory attitudes remain pervasive in every region of the world. We have a long way to go before the spirit of the Universal Declaration of Human Rights is translated into substantive equality and real change.

We must confront discriminatory social norms in the domestic and community spheres as well as transform the structures that constrain sexual minorities' voice and agency at the political and structural levels. The findings of S.H.E.'s research are a reminder that gender bias remains deeply entrenched in the minds of individuals, institutions and society and of the responsibility that we all have to stand up for everyone's equal value and rights in our daily lives.

It is my sincere hope these findings will be a useful tool for practitioners and advocates working to realize the human rights of transgender people in South Africa, and around the world. It is critical that we continue to research and collect data on the multiple challenges facing transgender women.

Let us continue developing critical research and accountability mechanisms on transgender issues and move closer to equality for everyone.

A handwritten signature in black ink, appearing to read "Phumzile Mlambo-Ngcuka".

Phumzile Mlambo-Ngcuka  
Executive Director of UN Women



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All those who have contributed to this process, through attending meetings, research, writing, commenting on the many drafts and importantly, engaging in rigorous discussions and debate. To all the organizations and individuals who contributed to the editing and review of this report, we extend our sincerest appreciation; without their contribution we would not have developed a forward-looking, comprehensive and responsive report.

We would also like to acknowledge all our funders for their ongoing support.



## List of Abbreviations or Acronyms

<b>ACHPR:</b>	African Charter on Human and Peoples' Rights (adopted acronym and meaning in this study)
<b>ACHPR:</b>	African Commission on Human and Peoples' Rights (adopted acronym and meaning in this study)
<b>BPA:</b>	Beijing Platform for Action
<b>CEDAW:</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CESCR:</b>	Committee on Economic, Social and Cultural Rights
<b>CRC:</b>	Committee on the Rights of the Child
<b>DoJ &amp; CD:</b>	Department of Justice and Constitutional Development
<b>HCWG:</b>	Hate Crimes Working Group
<b>HIV:</b>	Human Immune Virus
<b>ICCPR:</b>	International Covenant on Civil and Political Rights
<b>ILO:</b>	International Labour Organization
<b>LGBTI:</b>	Lesbian, Gay, Bisexual, Transgender and Intersex
<b>MDA:</b>	Millennium Development Goals
<b>NEPAD:</b>	New Partnership for Africa's Development
<b>NGO's</b>	Non Governmental Organizations
<b>NPA:</b>	National Prosecuting Authority
<b>OHCHR:</b>	Office of the United Nations High Commissioner for Human Rights
<b>PEPUDA:</b>	Promotion of Equality and the Prevention of Unfair Discrimination Act
<b>SAPS:</b>	South African Police Service
<b>S.H.E:</b>	Social, Health and Empowerment Feminist Collective of Transgender Women of Africa
<b>UDHR:</b>	Universal Declaration of Human Rights
<b>UNHRC:</b>	The United Nations Human Rights Committee (adopted acronym and meaning in this study)
<b>UNHRC:</b>	United Nations Human Rights Council (adopted acronym and meaning in this study)
<b>VEP:</b>	Victim Empowerment Programme
<b>WPATH:</b>	World Professional Association for Transgender Health



## 1. Executive Summary

This report is the result of a one year Transilience Research Project on violence against transgender women. The main objective of the project was to highlight and understand this violence against transgender women in South Africa. The study adopted a qualitative and quantitative approach. Focus group interviews and surveys were conducted to collect the data. The study also relies on secondary data such as a review of literature and other related documents and reports to get insight on violence against transgender women.

Various findings emerged from the research. The research indicated that transwomen suffer violation in health and well being. They are being refused medical care at an alarming rate despite the international obligations that everyone has the right to enjoy the highest attainable standard of physical and mental health. The research noted that it is not easy for transwomen to access hormones, contraceptives and other health related needs due to their gender identity. The stakeholders interviewed expressed concern over a lack of access to health for transwomen. This causes distress for transwomen and often leads to health problems that feed into other risky behaviors, such as sex work, substance abuse and lack of condom use. The research also highlighted that an overwhelming majority of transgender women have survived an incident of physical, psychological and emotional violence. The majority of research respondents did not report violence to the authorities with only a few noted to have reported. Other stakeholders interviewed are of the view that transgender women do not report the violence simply because they are scared of being discriminated and humiliated, so they end up not reporting. They are also afraid of secondary victimization by the system being it the police, family or community.

The research also proved that violence against transgender women comes in a variety of forms. The majority of the research respondents indicated that they experience violence through the community or institutions. The most common violence reported in the study is physical violence, which is initiated by the family and community. Lack of access to health is another form of violence also experienced by transgender women. Another finding shows that the majority of respondents are aware of transgender women experiences. It has also come out clear in the study that the violence against transgender women has a lot of devastating consequences on trans women's short and long-term health and wellbeing. There is an immediate physical effect in the form of injuries sustained due to violence. Most respondents stated that trans women experience trauma, depression and anxiety, showing the emotional impact of violence. Social effect of violence was also reported for it comes through exclusion and discrimination within the family and community settings.

Most transgender women expressed concern over negative attitude of community towards them. The trans women reported that the community has failed to protect them and bring the perpetrators of violence against trans women to justice. They expressed concern over a lack of access to justice and equality before the law. The research also indicated that the majority of the respondents are not aware of any laws or policies that protect the rights of transgender women. The majority of research respondents view current legislation as non-existent, poor and average. However, most civil society sector respondents indicated the need for government to run information campaigns and to educate the masses on various pieces of legislation relevant to transgender women such as the Sexual Offences Act 32 of 2007 and the Domestic Violence Act 116 of 1998 amongst others. It is proposed that South Africa has a more progressive constitution and the rights of transgender women should be upheld. This is through protection and prevention by the state and non-state actors who must work in collaboration to eliminate any form of discrimination and violence against transgender women.





## 2. Definition of Terms

*The following definitions have been adopted for this study:*

**Gender expression** describes aspects of a person's physical appearance, personality and behaviour which are defined culturally or socially to be either male or female. In other words, every society has its own assumptions about how biological women and men should feel, dress, act and work.

**Gender identity** is one's basic sense of being male or female or another gender. It usually, but not always, matches the sex based assigned at birth.

**Sex** is commonly understood as the classification of a person as male or female at birth. This is based on bodily characteristics such as chromosomes, hormones, internal reproductive organs, and genitalia.

**Sexual orientation** describes who you are intimately attracted to. Western society tends to think of sexual orientation as expressing itself in three forms: homosexual (gay or lesbian), hetero- sexual (sometimes referred to as 'straight') or bisexual (having both homosexual and heterosexual feelings). People also identify as queer (refusing to fit into any category) and asexual (not being sexually attracted to people). Sexual orientation is not the same as gender identity. For example, a trans-woman can be attracted to woman (and identify as a lesbian), to men (and identify as straight), or to both sexes (and identify as bisexual).

**Transgender and gender nonconforming** people are those who: (a) Have a gender identity that is different from the sex they were assigned at birth (b) Express gender in ways that contradict what society expects from a man or from a woman. These umbrella terms include cross-dressers, drag kings/queens, transsexuals, people who are androgynous, as well as people who do not identify with any labels (gender queer people).

**Transition:** 'Transitioning' refers to the process trans people undergo to live in their gender identity (for example, as male, female or as a third gender). Many of the steps aim to change how others perceive gender identity. These are sometimes called 'social gender recognition' and may involve changes to outward appearance, mannerisms or the name someone uses in everyday interactions. Other aspects of transitioning focus on legal recognition, and often centre on changing name and sex details on official identification documents. There are often overlaps, particularly in countries where it is difficult for people to informally change their name without going through a legal process. Transitioning may also involve medical steps such as hormone treatment and surgeries.

**Transphobia** is an irrational fear of, and/or hostility towards, people who are transgender or who otherwise transgress traditional gender norms.

**Transsexual** is a medical term mostly used to describe people who (may) seek medical and surgical treatment to align their body with their sex and gender identity.

**Transwomen** are assigned 'male' at birth, but identify as female. Another term used to describe them is 'Male-to-Female'.



### 3. Introduction

All human beings are born free and equal in dignity and rights.<sup>1</sup> Transgender women have these same human rights. The legal obligation of States is to safeguard the human rights of transgender women as established in international human rights law. The Universal Declaration of Human Rights (UDHR) (1948) is the premier instrument setting out the rights of all human beings. “Human beings” is inclusive of transgender women, but the UDHR does not explicitly name transgender persons (or any group defined by sexual orientation). South Africa has obligations to ensure that all of those living within its jurisdiction are able to enjoy their full range of rights as guaranteed under South African and binding and non-binding international instruments, without fear of their sexual orientation and gender expression being a factor in denying such enjoyment. In addition to a strong rights-based Constitution, with its explicit Bill of Rights, South Africa is a party to several key international and regional treaties that underpin its international legal obligations to respect, protect, and fulfill the human rights of all persons regardless of their sexual orientation or gender identity. This includes the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples’ Rights (ACHPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol).<sup>2</sup> In addition, implementation of South African legal obligations should be informed by the Yogyakarta Principles, principles adopted by independent experts that codify the status of international human rights law as it applies to sexual orientation and gender identity.<sup>3</sup>

#### 3.1 South Africa’s Legal Obligations

The South African constitution of 1996 provides that the state is obliged to “respect, protect, promote and fulfill” the rights enshrined in the Bill of Rights. Central to the Bill of Rights is the Equality Clause in section 9, prohibiting discrimination on many grounds including gender, sex, and sexual orientation; and the guarantee in section 10 that everyone has inherent dignity and the right to have their dignity respected and protected. The rights enumerated in the Bill of Rights include the right to life (Section 11), rights to freedom of expression and association (sections 16 and 18), and freedom of movement (section 21). Section 12 guarantees security of the person, including the right “to be free from all forms of violence from either public or private sources,” the right “to security in and control over their body,” and the right “not to be treated or punished in a cruel, inhuman or degrading way.” Section 29 guarantees the right to basic education for all. Section 34 of the South African Bill of Rights guarantees access to courts and section 38 speaks of enforcement of rights, which guarantees “appropriate relief” from the courts in instances of the violation of any of the rights contained in the Bill of Rights.

<sup>1</sup> Universal Declaration of Human Rights (Article 1)

<sup>2</sup> ICCPR, 999 U.N.T.S. 171, entered into force March 23, 1976 and acceded to by South Africa on March 10, 1999; African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 and acceded to by South Africa on July 9, 1996; CEDAW, G.A. Res. 34/180, U.N. Doc. A/34/46, entered into force September 3, 1981 and acceded to by South Africa on January 9, 1999; Protocol to the African Charter on Human and Peoples’ Rights on The Rights of Women in Africa (the Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/Leg/66.6, entered into force November 25, 2005, art. 16. The Maputo Protocol was ratified by South Africa December 17, 2004. (ICCPR)

<sup>3</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007, <http://www.yogyakartaprinciples.org> (accessed November 22, 2011).

The Bill of Rights is chapter two of the South African constitution and enshrines the socio-economic, civil, and political rights enjoyed by all people in the Republic of South Africa; it came into effect in 1996, when the constitution was enacted.



In Article 2, the International Covenant on Civil and Political Rights (ICCPR) provides that each state has an obligation to “ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” It also has an obligation to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity...” The rights guaranteed under the ICCPR include everyone’s “inherent right to life” (Article 6) the right to liberty and security of person (Article 9), freedom of expression and the right to “seek, receive and impart information and ideas of all kinds” (Article 19), and the right to freedom of assembly and association (Articles 21 and 22). Further to the non-discrimination provisions in Article 2, Article 3 of the ICCPR stipulates “the equal right of men and women to the enjoyment of all civil and political rights.” Article 26 declares: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In 1994 the United Nations Human Rights Committee (UNHRC) in determining a case before it, confirmed that “the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”

There are several pieces of instruments relating to gender-based rights, although only as it relates to women. These are most comprehensively elaborated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-1979). It codifies women’s rights to non-discrimination on the basis of sex, together with equality, as self-standing norms in international law. It also establishes that women and men are entitled, on a basis of equality, to the enjoyment and exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.<sup>5</sup> CEDAW was ground-breaking in that it created an International Bill of Rights for Women and established the principle of equality through civil and political rights, including sexual and reproductive rights and rights affected by cultural factors.

CEDAW defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. Upon ratifying CEDAW in 1995, the South African Government committed itself to eradicating, and protecting women against violence. This includes sexual violence, abuses in the family and sexual harassment in the workplace. Avenues for doing so include the creation of an enabling legislation for the elimination of all forms of discrimination, and providing support services to women who are the victims of aggression or abuses.<sup>5</sup> CEDAW recommends that state parties should take effective measures to overcome all forms of gender-based violence including transgender women, whether public or private.

The Beijing Platform for Action (BPA) complements CEDAW. The platform addresses 12 critical areas of action for women’s development, with violence against women being one. Other significant steps have been the Millennium Declaration and the adoption the Millennium Development Goals (MDG) in 2000.

In the Millennium Declaration, 191 governments resolved to promote gender equality and the empowerment of women as effective ways to combat poverty, hunger, and disease, and to stimulate development that is sustainable; combat all forms of violence against women; and implement CEDAW.

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<sup>5</sup> CEDAW (Article 16) 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:



The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (the Yogyakarta Principles), were launched on March 26, 2007, in Geneva, having been adopted by representatives from 25 countries from all geographic regions.<sup>6</sup> There are 29 principles. The rapporteur for the development of the Yogyakarta Principles has described the principles as breaking down as follows:

1. Principles 1 to 3 set out the principles of the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law.
2. Principles 4 to 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention.
3. Principles 12 to 18 set out the importance of non-discrimination in the enjoyment of economic, social and cultural rights, including employment, accommodation, social security, education, and health.
4. Principles 19 to 21 emphasize the importance of the freedom to express oneself, one's identity, and one's sexuality without State interference based on sexual orientation or gender identity, including the rights to participate peaceably in public assemblies and events and otherwise associate in community with others.
5. Principles 22 and 23 highlight the rights of persons to seek asylum from persecution based on sexual orientation or gender identity.
6. Principles 24 to 26 address the rights of persons to participate in family life, public affairs, and the cultural life of their community, without discrimination based on sexual orientation or gender identity.
7. Principle 27 recognizes the right to defend and promote human rights without discrimination based on sexual orientation and gender identity, and the obligation of States to ensure the protection of human rights defenders working in these areas.
8. Principles 28 and 29 affirm the importance of holding rights violators accountable, and ensuring appropriate redress for those who face rights violations.<sup>7</sup>

Councilor Nkele Ntingane, speaker of the Johannesburg Municipal Council, at a Gender and Sexuality Conference in 2007, called on conference participants to ensure that “both the Constitution and the Yogyakarta Principles become accepted by all members of our Increasingly diverse communities”.<sup>8</sup>

The African Charter imposes obligations to protect and ensure respect for a broad range of civil, political, economic, social, and cultural rights central to the experiences of lesbians and transgender men. These include:

1. the right to life and the integrity of the person (Article 4);
2. the right to security (Article 6);
3. the right to freedom of association and freedom of movement (Articles 10 and 12 respectively);
4. the right to access to justice (Article 7);
5. the right to enjoy the best attainable state of physical and mental health (Article 16); and the right to education (Article 17).



Article 4 of the African Charter declares that “human beings are inviolable” and Article 5 guarantees to all “the right to the respect of the dignity inherent in a human being.” Article 25 imposes a duty on state parties to “promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present African Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.”<sup>9</sup>

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<sup>6</sup> They included one former UN High Commissioner for Human Rights (Mary Robinson, also a former head of state), 13 current or former UN human rights special mechanism office holders or treaty body members, two serving judges of domestic courts, including Edwin Cameron, Justice, Supreme Court of Appeal, Bloemfontein, South Africa; and a number of academics and

<sup>7</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007.

<sup>8</sup> The Conference was the Opening Ceremony for International Dialogue on Gender, Sexuality and HIV/AIDS, Johannesburg, December 6, 2007, p. 244, fn. 174.

<sup>9</sup> African Charter on Human and People’s Rights

The Maputo Protocol requires states “combat all forms of discrimination against women through appropriate legislative, institutional and other measures.” It further requires states to “take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist.” Article 3 of the Maputo Protocol declares: “Every woman shall have the right to respect as a person and to the free development of her personality.”<sup>10</sup> CEDAW Article 5(a) of the convention requires states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Article 13 requires that the state eliminate discrimination in “areas of economic and social life” and article 14(2) (h) seeks to ensure for all women “adequate living conditions, particularly in relation to housing”.<sup>11</sup>

The Committee on the Elimination of All Forms of Discrimination against Women recently considered South Africa’s periodic report submitted as part of the government’s obligations as a state party. The committee concluded: While noting that based on a multi-sectoral approach at the operational level a number of policy, legislative, administrative, victims empowerment and other measures have been put in place to combat violence against women in the country, the committee expresses its serious concern at the inordinately high prevalence of sexual violence against women and girls and widespread domestic violence. The committee is also concerned that such violence appears to be socially normalized, legitimized and accompanied by a culture of silence and impunity. It is further concerned at the low levels of prosecutions and conviction. The Committee regrets the lack of information on the impact of the measures and programmes in place to reduce incidences of all forms of violence against women and girls.” Speaking specifically of sexual orientation, the committee expressed “grave concern about reported sexual offences and murder committed against women on account of their sexual orientation” and called on the South African government to “abide by its Constitutional provisions and to provide effective protection from violence and discrimination against women based on their sexual orientation.”



South Africa has played a leading role in furthering transgender rights on the international stage. On June 17, 2011, South Africa submitted a request to the UNHRC requesting the United Nations High Commissioner for Human Rights to draft a report detailing the situation of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) citizens worldwide to follow up the implementation of the 1993 Vienna Declaration and Programme of Action (which reaffirms the universality and centrality of human rights). The resolution passed 23 to 19 with the three abstentions being Burkina Faso, China, and Zambia. It was the first such resolution and was hailed as “historic”. The report, published in December 2011, documented violations of the rights of LGBTI people, including hate crime, criminalization of homosexuality, and discrimination. The then High Commissioner Navi Pillay called for the repeal of laws criminalizing homosexuality; equitable ages of consent; comprehensive laws against discrimination based on sexual orientation; prompt investigation and recording of hate crime incidents; and other measures to ensure the protection of LGBTI rights. It also established a formal United Nations (UN) process to document human rights abuses against gays, including discriminatory laws and acts of violence.<sup>12</sup>

South Africa voted in favor of the SOGI resolution that was adopted by the UN in September 2014 and the Department of Justice and Constitutional Development (DoJ&CD) launched an LGBTI programme that aims to address hate crimes against the LGBTI community that have shocked the country in recent years. It is therefore imperative that civil society, government and the private sector invest in more effective and efficient ways of monitoring violence against transgender people and in findings ways to prevent the continued discrimination, harassment and attacks on transgender bodies.<sup>12</sup>

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<sup>10</sup> Maputo Protocol Article 3 declares: “Every woman shall have the right to respect as a person and to the free development of her personality

<sup>11</sup> CEDAW (Article 16) 15(a) requires states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” Article 13 requires that the state eliminate discrimination in “areas of economic and social life” and article 14(2) (h) seeks to ensure for all women “adequate living conditions, particularly in relation to housing.”

<sup>12</sup> We are proud that the South African Government remains committed to upholding the human rights contained in the Constitution. Ambassador Abdul Minty’s statement on why South Africa voted yes to SOGI Resolution 2014.



### 3.1.1 Domestic Legal Framework

South Africa does have a number of mechanisms to address discrimination, including the Promotion of Equality and the Prevention of Unfair Discrimination Act (PEPUDA). However, these are not effective means of addressing actual crimes motivated by prejudice. To some extent, prosecutors can draw on aspects of the common law and PEPUDA to argue that discrimination played a role in an offence and therefore argue for aggravated sentences. PEPUDA focuses specifically on discrimination based on race, disability and gender but does not include nationality or sexual orientation. In this way, PEPUDA creates a “hierarchy of hate” by prioritizing some forms of discrimination over others. The Criminal Law Amendment Act of 1997 makes provision for minimum sentencing for particular categories of crimes. This is a possible mechanism that could be adapted following specific hate crimes legislation to provide for minimum sentencing for hate crimes in terms of the Criminal Procedure Act. Some legal practitioners in South Africa have reported significant difficulties in the prosecution of suspected hate crimes. Such difficulties have included the willingness of prosecutors to prosecute, as well as the ability of prosecutors to persuade magistrates to recognize the prejudice motive underlying a hate crime.<sup>13</sup>

<sup>13</sup> <http://dailymaverick.co.za/article/2012-06-27-sas-gay-hate-crimes-an-epidemic-of-violence-less-recognised>, 27 June 2012

The Hate Crimes Working Group was set up at the end of 2009, involving 26 civil society groups, to muster a co-ordinated response to the issue of hate crimes and engage government on the problem. They are currently undertaking a research project in five provinces to get a better sense of the scale and impact of hate crimes, and have created a monitoring form to be filled out by victims, recording details like the nature of the crime and its treatment by authorities.<sup>14</sup> The National Task Team was launched on 24 October 2011, and carries the official mandate from the Ministry of Justice and Constitutional Development to develop the National Intervention Strategy on LGBTI crime-related issues.

This strategy is mainly aimed at crafting ways to end all transphobic crimes. The constitution of the National Task Team draws representation from members of the cluster government departments and 10 representatives of Non Governmental Organizations (NGOs) and civil society organizations in the LGBTI sector. Although there is no mechanism for reporting or recording hate crimes in a way that distinguishes them from any other crimes, it is significant that South Africa has employed a rights-based approach to all victims of crime through the Victims Charter. However, there remains the dependency on fair and equitable administration of justice and access to further rights to support LGBTI victims of crimes in South Africa.

(DoJ&CD) strategic plan (2012-2017) sets out its policy priorities, programmes and project plans for the current five-year planning cycle, within the scope of available resources. It also indicates its commitment to the following, among others: Ensuring that everyone in South Africa is and feels safe. Developing policies for protecting the rights of vulnerable groups and victims in our society.<sup>15</sup>

<sup>14</sup> [http://www.issafrica.org/crimehub/uploads/Hate\\_Crimes\\_Memo\\_for\\_DoJCD\\_final.pdf](http://www.issafrica.org/crimehub/uploads/Hate_Crimes_Memo_for_DoJCD_final.pdf), Memo for the Department of Justice and Constitutional Development on Hate Crimes in South Africa

<sup>15</sup> Speech By Deputy Minister For Justice And Constitutional Development, Mr. Andries Nel, MP on the occasion of the official opening of the First Working Session of the National Task Team on LGBTI Crime-Related Issues: 24 October 2011 .



**In the Annual Report of 2012/13, the Honourable Minister Jeff Radebe said:**

*“The department will improve access to justice services, specifically to people living in townships and rural areas, improve the quality of services provided, and redefine magisterial districts and align them with municipal boundaries. The department will also continue to promote and implement a variety of initiatives to promote and protect the rights of all vulnerable groups, as well as departmental and cluster initiatives in implementing, among others, legislation such as the Child Justice Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act are supported through the development and implementation of national policy frameworks.”*

Traditionally, the justice process is geared towards establishing the guilt or innocence of the perpetrator. The Victim Empowerment Programme (VEP) in contrast, focuses on the experience of the victim in an effort to respect and support the rights of the vulnerable person or group. As part of VEP, the National Policy Guidelines for Victim Empowerment and the Victims’ Charter (2004) were developed. There are also National Policy Guidelines for Victims of Sexual Offences (DoJ&CD, 1998). However, all of these mechanisms are guidelines only, and there are no monitoring mechanisms to ensure effective implementation at sites within the cluster.

The Victims’ Charter is an important instrument for promoting justice for all. Minimum Standards on Services for Victims of Crime have also been developed to give the Victims’ Charter effect. The Victims’ Charter is compliant with the spirit of the South African Constitution and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985 GA/RES/40/34), as well as the provisions of Section 234 of the Constitution. Since 1994, in keeping with the cultivation of a human rights culture, the focus has been gradually shifting from an adversarial and retributive criminal justice system to a restorative one. There has been a shift in the approach to crime towards viewing it as something that is not only an offence to the state, but an injury or wrong to another person. The Victims’ Charter was accordingly developed in line with the National Crime Prevention Strategy’s victim-centered vision for the criminal justice system. The ultimate goal is victim empowerment through meeting victims’ needs, be they material or emotional. The Victims’ Charter and the Minimum Standards document are important instruments elaborating and consolidating rights and obligations relating to services applicable to victims and survivors of crime in South Africa.

The Victims’ Charter resorts under the VEP, which aims to provide services that, will enable victims to deal with the traumatic effects of crime. While the VEP clearly articulates the legal framework within which victims can assert their rights under the criminal justice system, the Victims’ Charter seeks to provide a comprehensive and integrated response to victims of crime. Its aims are to eliminate secondary victimization in the criminal justice process, clarify the service standards that can be expected by, and are accorded to, victims whenever they come into contact with the criminal justice system and provide recourse to victims when standards are not met.<sup>16</sup>





## 4. Background

This research was commissioned at a time of growing homophobia and transphobia in South Africa, a trend which has included increased violent crime against transgender women. It is abundantly clear, though, that even with legislation, policies and procedures at to address unfair treatment; the country has been slow to ensure respect for the constitutional rights of trans-women are met. Over the past decade, activists in South Africa have recorded and analyzed dozens of incidents of sexual and physical violence against transgender women, including rape and murder. The issue came to a head in the mid-to-late 2000s, when several incidents of physical and sexual assault and murder based on sexual orientation and gender expression occurred in close succession. Between April and July 2007 alone, there were three separate instances of sexual assault and murder of known transgender people. At least eight separate instances of violence against lesbians were recorded in 2008, of which three were cases of sexual assault and murder. The state of attacks indicated increasing levels of violence or increased reporting, or both, and heightened the pressure on local activists to address the problem.<sup>17</sup>

The Human Rights Watch report *We'll Show You You're a Woman: Violence and Discrimination against Black Lesbians and Transgender Men in South Africa* reveals that there is still widespread ignorance on the issue of minority sexualities, and rampant bigotry and discrimination against LGBT individuals. The majority of those interviewed by Human Rights Watch attested that a heavy sense of terror characterized their daily lives, as they have to perpetually confront the possibility of being assaulted, raped, or even murdered. Furthermore, almost all of the LGBT individuals interviewed confessed that they were hesitant to seek protection from police because they had often faced disdain and institutionalized homophobia and transphobia from the law enforcement agents.<sup>18</sup>

If one takes the violence of transgender women into account, in particular the murders of Eudy Simelane, Zoliswa Nkonyana and the rape of Millicent Gayika, one must also look at the broader context where other transgender people are being murdered because of their sexual orientation. These crimes function to reinforce existing inequalities based on sexual orientation, gender and gender identity, but also race and socio-economic conditions, and it widens the gap between rights as they are written in our Constitution and rights as they are lived.<sup>18</sup>

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<sup>16</sup> Victim's Charter, Department of Justice and Constitutional Development

<sup>17</sup> Ditsie Bev Foreword, *The Country we want to live in: Hate Crimes and Homophobia in the lives of black lesbian South Africans*, HSRC, 2010.

<sup>18</sup> Human Rights Watch Report, *We'll Show You you're a Woman: Violence and Discrimination against Black Lesbians and Transgender Men in South Africa*, 2011.



Prominent religious leaders have voiced their support for the South African LGBTI community. Archbishop Desmond Tutu and Dr. Allan Boesak are vocal supporters of human rights for LGBTI people in South Africa. Even the conservative Dutch reformed church ruled that transgender members should not be discriminated against and could hold certain positions within the church and society.<sup>19</sup>

This is consistent with a previous independent study conducted by Leigh Ann van der Merwe. Respondents provided a range of varying perceptions regarding transgender women's participation in traditional Xhosa rituals. The Xhosa culture is predominantly found in South Africa. In general, there seems to be a constant negotiation of identity within Xhosa society for transgender women. The inclusion of transgender women in cultural events is an implied negotiation from context to context, and location to location.<sup>20</sup> Some participants agreed that they are accommodated in women's spaces at Xhosa events, in stating,

*“As trans women, we are accommodated on the women side, for example in cultural events”. Those who choose to go to the men's side, can do so but most of us go to the women's side. We perform all the tasks that are performed by the other women. We are taken as women along with the other women.”*

In contrast, other participants expressed a definite exclusion from Xhosa rituals based on their diverse gender expression, by stating,

*“Transgender people in the black community are not included because they do not live lives that are appropriate for black cultural events. Black trans people are not included in cultural events. They are treated as guys who live as women”.*

It would seem that the agreement to include or exclude transgender women from cultural events is influenced by cultural and gender roles, with one participant stating:

*“The only time they (transgender women) are welcome is if they are going to help with the cooking, washing dishes and serving the other guests.”*

Some participants stated it is possible for transgender women to form their own groups during Xhosa rituals, because they do not typically fit with the men or the women.

*“During gender segregated cultural events, it is possible for trans women to create their own group or join the girls”.*

Finally, two other important issues surfaced in the participants' response to the positioning of transgender women in cultural events: violence, and migration from family homes. One participant stated:

*“Personally, I experienced being threatened and discriminated against. The expectation is to satisfy family expectations and not to express our own identities in cultural spaces, as transwomen”.*

What this reveals is an ever-widening gap between the provisions of the law and what happens in reality insofar as transgender rights are concerned. Although the law is important, it has to be recognized that there is still a lot of work to be done to curtail transphobia and discrimination against transgender individuals and groups.



## 5. Methodology

Our motivation for this project was to contribute to the body of research on transgender women's experiences of marginalization, discrimination, and harassment. The research adopted both qualitative and quantitative methods. The key concepts of this research, the body, transition, the gendered self, sexuality and health needs can hardly be captured by abstract inferential quantitative methods, which are "based on probabilities derived from the study of large numbers of randomly selected cases". These phenomena require qualitative methodology with its interpretive approach, feminist and critical sensibility and special attention to case study, interviewing and participant observation. Qualitative methods are useful when there is a need to emphasize the socially constructed nature of reality since they can be employed to "seek answers to questions that stress how social experience is created and given meaning".<sup>21</sup>

Three focus groups were conducted in KwaZulu-Natal, Eastern Cape Province and Western Cape Province. Focus groups were conducted to illuminate the lived realities of transgender women and generated both quantitative and qualitative data. The criterion for participating in the focus group was that the person identifies as transgender. Individual surveys were also administered with individuals in the community to get a more holistic picture of the violence against transgender women. A sample of more than one hundred was utilized for the purposes of this study. The data was recorded using video, audio recording, as well as flipchart notes. The inclusion criteria for our one-on-one interviews conducted with government and civil society professionals was that the individual has had previous experience with transgender clients. This study also analyzes literature on transgender experiences, governmental reports and legislation as well as international human rights instruments and policies. Data extrapolated from the aforementioned documents was triangulated with focus groups and survey findings to offer recommendations for future development of policy and legislation that protect and promote the rights of transgender women.

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<sup>19</sup> Ditsie Bev Foreword, *The Country we want to live in: Hate Crimes and Homophobia in the lives of black lesbian South Africans*, HSRC, 2010.

<sup>20</sup> Leigh Ann van der Merwe: *Traditional Circumcision among Transgender Women from the Amakhosa Culture in the Eastern Cape*.

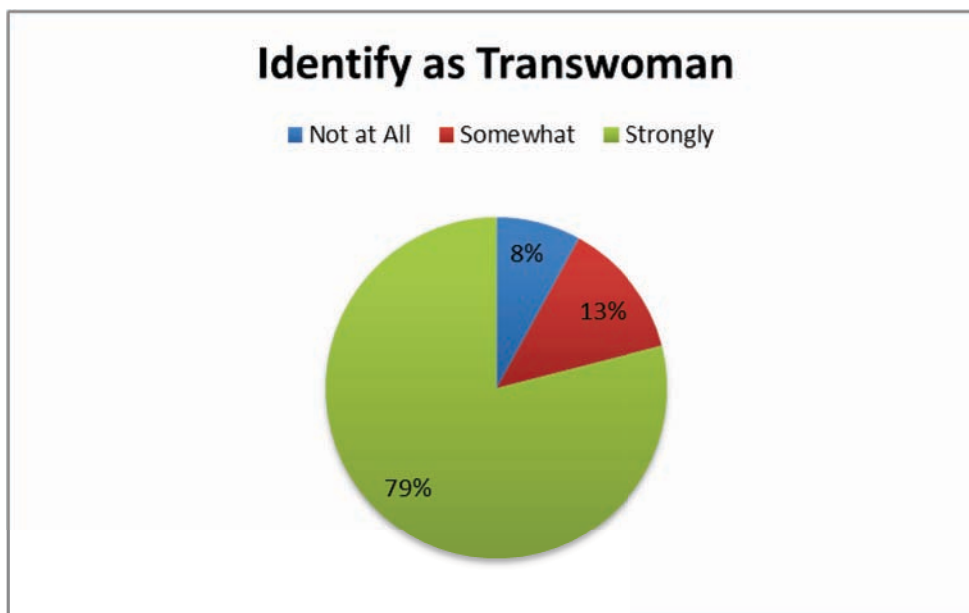
<sup>21</sup> Denzin N & Lincoln Y (Ed) (2000) *Handbook of Qualitative Research*. SAGE Publications, Thousand Oaks, London.

## 6. Description of the Sample

### 6.1 Personal Demographics

#### 6.1.1. Social Identity

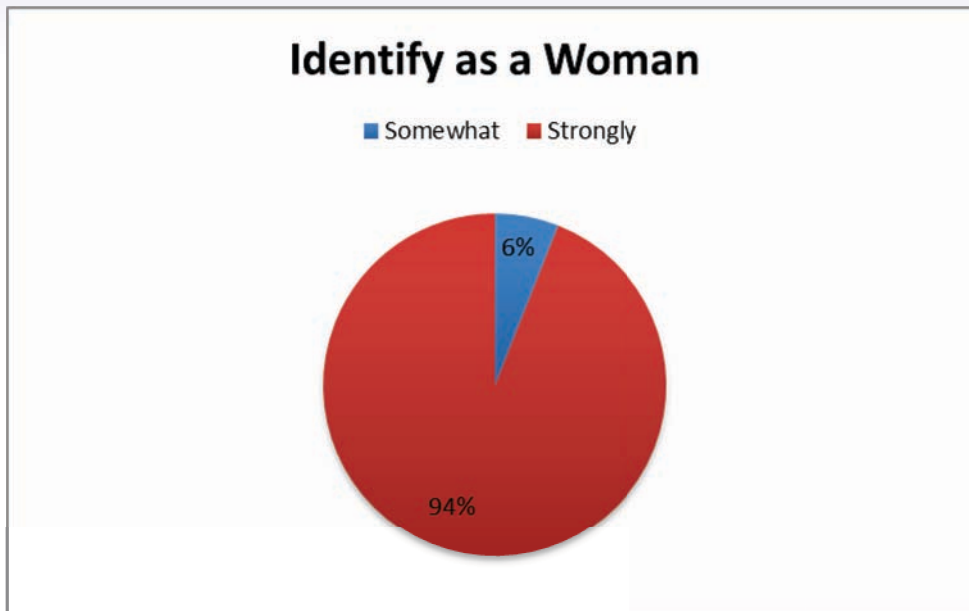
*“Know your identity as you would know your heart. In that you would know your place in your family, in your government, in your island and in the world.” —Shevon Matai, American Samoa*



**Figure 1: Identity as Transwomen**

This research indicates that all the transwomen interviewed are living in South Africa.<sup>22</sup> S.H.E. sought to interview mostly transwomen and most of the respondents were transwomen. South Africa has a complex history regarding transgender rights. The legal and social status of transgender people has been influenced by a combination of traditional South African mores, colonialism, and the lingering effects of apartheid and the human rights movement. The majority of the respondents identify strongly as transwomen indicating a gender identity different from the gender they were assigned at birth. Eight percent of the respondents did not identify themselves as transwomen because they were government representatives and other relevant stakeholders from the private and civil society sector.

<sup>22</sup> Transwomen- a person who was assigned male at birth but has a female gender identity.

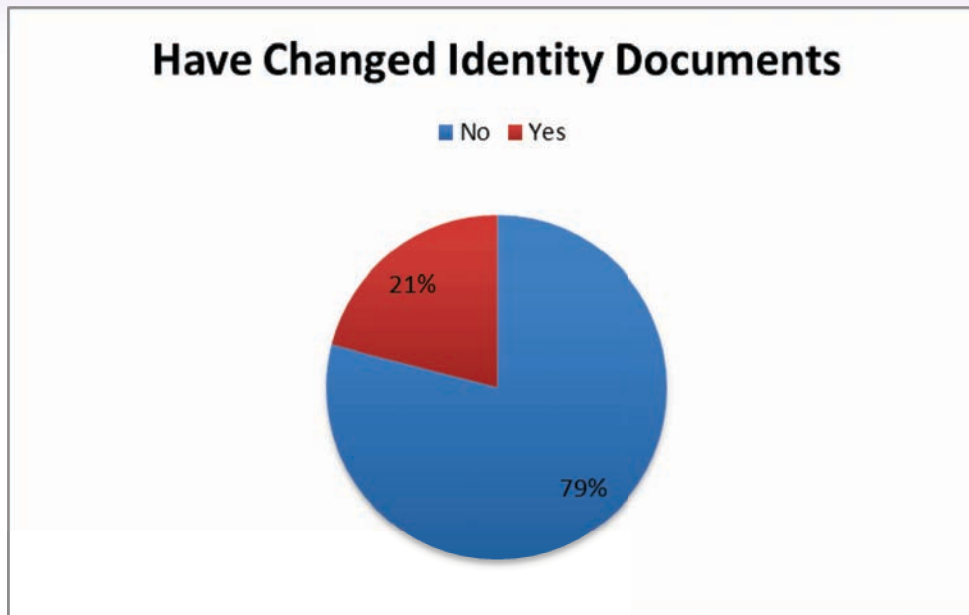


**Figure 2: Identify as Woman**

According to Leigh Ann van der Merwe, executive director of S.H.E, transgender people experience a gender identity that is different than their ascribed sex and may seek to alter their physical appearance to align with their authentic internal gender by undergoing medical and surgical procedures, using hormones, and/or changing their dress and social presentation. Some transgender people do not choose a medical or surgical transition; a context influenced by lack of access to such treatments, but rather expresses their gender identity through diverse presentations and behaviors.<sup>23</sup> As noted above 94 percent strongly identify themselves as women. This implies that transgender people they do put an identity in their own transition. They will understand who they are and how they view themselves as individuals despite what society thinks.

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<sup>23</sup>The social, health and empowerment coalition of transgender women in Africa (SHE), Email: [transfeminists@gmail.com](mailto:transfeminists@gmail.com) or [lvandermerwe@gmail.com](mailto:lvandermerwe@gmail.com), Department of Psychology, University of the Witwatersrand Corresponding author; [tidimalo.padi@wits.ac.za](mailto:tidimalo.padi@wits.ac.za)



**Figure 3: Change of Identity Documents**

Furthermore, to facilitate living in the preferred gender, many transgender people seek at some point to change the name and sex designation on their government issued identity documents. These documents include driver's licenses, birth certificates, passports, and social security records. Despite undertaking medical or social transition, 79 percent of these respondents' did not change their identity documents to reflect their newly affirmed gender as shown on figure 3 above.

Although 21 percent of the respondents have achieved a gender change on identity documents and others are still in process of doing it, the vast majority of respondents experience barriers to accessing hormones and surgery, which are critical to achieving medical documentation required for legal gender change. Identification is required for most activities in daily life. When transwomen's official documentation does not reflect their gender identity it typically causes significant impediments, often marginalizing them in the societies in which they live.<sup>24</sup> Transwomen face a number of obstacles when they are trying to change their identity documents. One transwomen said;

*'I have been to the Department of Home Affairs but did not get far in the system because the official said a male cannot have a female ID'.*

Another one states that;

*'I did not change my identity document because Home Affairs will not allow me to change my gender without papers from the doctor'*



This finding points to a need for transgender people to be afforded legal protection against discrimination and have the ability to obtain legal recognition of their acquired gender. This will usually involve the right to obtain a birth certificate in the acquired gender and subsequently a passport and other formal forms of identification. The right to recognition before the law is set out in core human rights treaties.<sup>25</sup> The UNHRC has urged States to “recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates,” citing the rights to privacy, equality and recognition before the law.<sup>26</sup> This was also supported by the UN High Commissioner for Human Rights who recommended that States facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.

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<sup>24</sup> Mallon G.P, Social Work Practice with Transgender and Gender Variant Youth Second edition, 2009.

<sup>25</sup> UDHR, Art. 6; ICCPR, Art. 16; CEDAW, Art. 15; CRC, Art. 8; American Convention, Art. 3; and African Charter, Art. 5.

Yogyakarta Principle 3 states that “Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basis aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person’s gender identity.”<sup>27</sup>

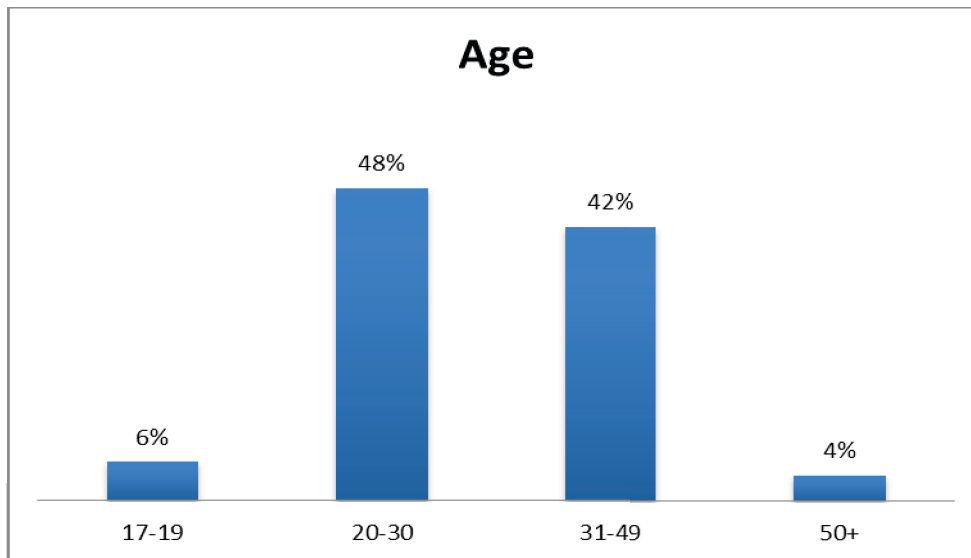
However past 1994, the South African Constitution sought to protect all native citizens of the country from discrimination. This did not explicitly mention transpeople but their protection was however, intrinsic in the Constitution. The Alteration of Sex Description and Sex Status Act, passed in 2003 (Act 49 of 2003) allowed for Trans people to modify their gender in identity documents.

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<sup>26</sup> Human Rights Committee, Concluding Observations (Ireland), UN Doc. CCPR/C/IRL/CO/3, 30 July 2008, para. The Committee cited articles 2, 16, 17 and 26 and also article 23 in terms of the ability of trans people to marry as their self-defined sex / gender identity 161 OHCHR (2011) para. 84.

<sup>27</sup> Yogyakarta Principle 3 states that “Everyone has the right to recognition everywhere as a person before the law

## 6.1.2. Age and Race

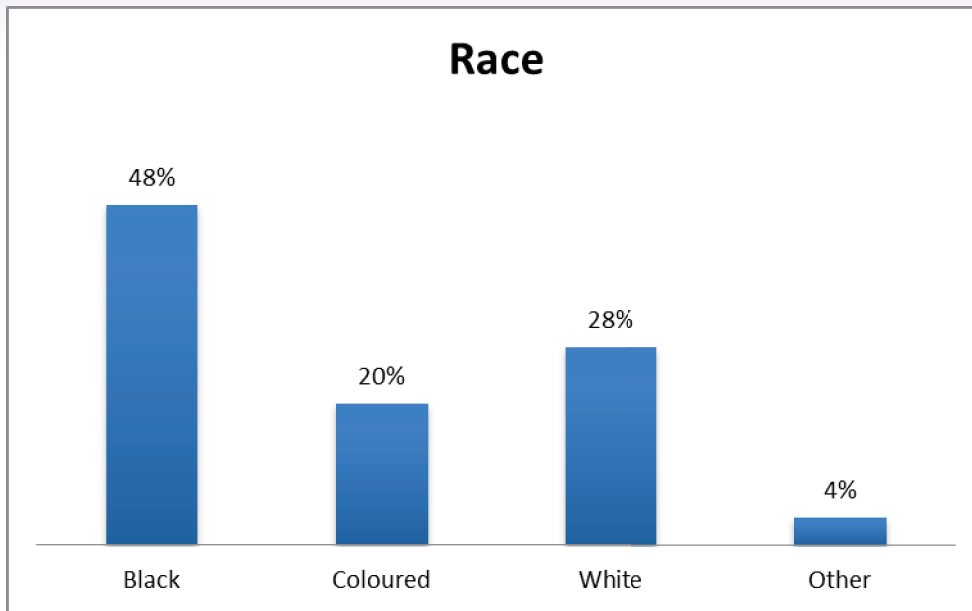


**Figure 4: Age of Respondents**

The majority of respondents are between 20-49 years. In this study, then, the majority of participants were in economically active age groups compared to other age groups. A few youths and senior adults are few. The majority of respondents from the case studies in Cape Town, East London and Durban shared that, they identified with a gender different from their sex assigned at birth from a young age. Coming out for trans youth begins with an increasing awareness that one is different, the sense that how one sees oneself in terms of gender and how others perceive one do not match up. In these early stages, trans individuals may be forced to compartmentalize their lives, to hide the true parts of them, to remain closeted at all costs to manage their gender. Coming out is a continuous process. While it begins with acknowledging the truth of one's identity to oneself, every trans individual finds themselves continually confronted with the risks and possibilities of coming out to family, friends, religious groups, teachers and classmates, employers and coworkers, and medical and mental health professionals.<sup>28</sup>

<sup>28</sup> Mallon, G.P., Social Work Practice with Transgender and Gender Variant Youth Second edition, 2009





**Figure 5: Race of Respondents**

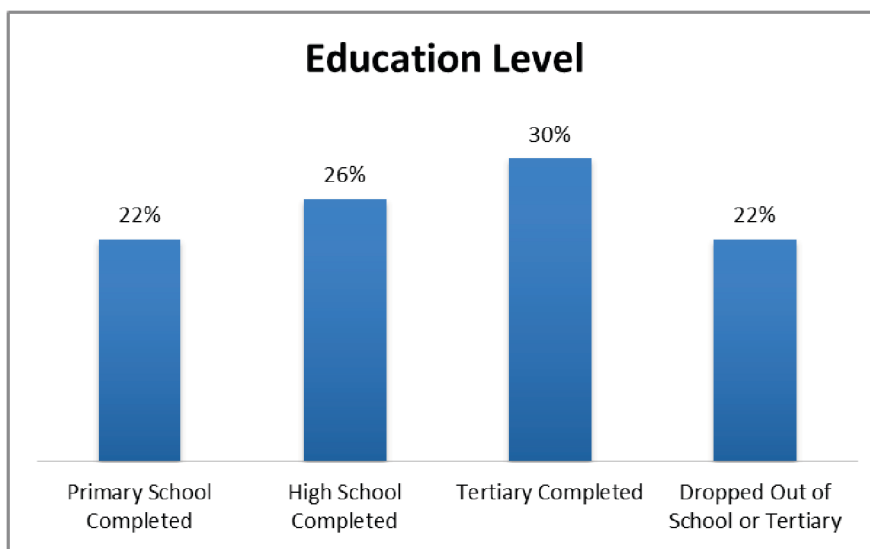
The issue of race is a contentious issue given South Africa's historical racial divide. When one looks at these issues through a feminist lens, you can't help but to analyze these issues in a context of gender diversity. The race of respondents is evenly balanced although the majority of respondents are Blacks. The diagram depicted that transgender women are found across all races.

## 6.1.3 Socio-Economic, Cultural & Religious Issues

### 6.1.3.1 Education

*“Discrimination in education makes many trans-people quit before they finish their schooling, and they end up in sex work.” –Kemal Ordek, Turkey<sup>29</sup>*

Education is essential for the development of human potential and realization of other human rights. The UNHRC, the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) have all expressed concern about discrimination against transgender students, and have called for measures to counter transphobic and homophobic attitudes in schools.<sup>30</sup> Still, many transgender women are unable to exercise their right to education due to stigma and discrimination. Before they even seek employment, lesbian and transgender youth can experience ridicule and abuse in school, from both teachers and fellow students. The South African Schools Act of 1996 pledged to create a new system of education that would combat “racism and sexism and all other forms of unfair discrimination and intolerance”; the 2008 implementation guidelines for the Department of Education’s intervention program, “Safe, Caring and Child-Friendly Schools” (SCCFS), mention the “six pillars” of the SCCFS framework, including “a rights-based and inclusive school,” “a safe, protective and supportive school,” and “a gender sensitive school that promotes equity and equality,” which are aimed at all levels, from school management authorities to the curriculum.<sup>31</sup>



**Figure 6: Education Level**

In the study 22 percent of the respondents indicated that they dropped out of school. Many cited family problems and others cited discrimination as one of the transwoman reported that,

*‘A female teacher was bullying me, she questioned me about the rumor that I was wearing dresses in the location and I felt very uncomfortable after that because they didn’t want me to express my gender’.*



The assertion implies that transgender young people are particularly vulnerable at school, where teachers' and students' attitudes typically define whether the school will be a safe and inclusive environment. It can also mean school records, uniforms, sports teams and facilities routinely fail to reasonably accommodate the needs of transgender students and their families. This results in high levels of bullying, violence, truancy and exclusion from school. High levels of harassment of transgender students are related to increased absenteeism, as well as decreased educational aspirations and lower academic performance.<sup>32</sup> Conversely, supportive teachers and peers play a significant role in affirming a trans-child's gender identity, enabling that child to focus on learning. When transgender students feel that they can trust school personnel and policymakers, they are more likely to succeed in school.<sup>33</sup>

Twenty-six percent of study participants completed secondary school and only 30 percent of study participants completed tertiary or college education. In fact, transgender women often confront barriers to education when they are unable to attend school safely under their preferred name and gender identity.<sup>33</sup>

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<sup>29</sup> New Zealand Human Rights Commission (2008) *To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People*, accessed 28 August 2013 at: [www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/15-Jan-2008\\_14-56-48\\_HRC\\_Transgender\\_FINAL.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf);

<sup>30</sup> UNESCO (2012) *Education Sector Responses to Homophobic Bullying*, pp. 18-22; Personal communication with Kate Cordova, STRAP, Philippines (July 2013);

<sup>31</sup> See South African School's Act, No. 84 of 1996, Preamble.

<sup>32</sup> Anderson, C., Toomey, R., & Russell, S. (2010). School climate for transgender youth: A mixed method investigation of student experiences and school responses. *Journal of Youth and Adolescence*, 39, 1175–1188.

<sup>33</sup> Human Rights Watch Report, 2011.



### 6.1.3.2 Employment

Forty-four percent of the respondents are employed in civil society organizations. Some expressed concern that it is difficult to get work in government due to discrimination. They find it difficult to work in government, the very institution that is supposed to uphold the Constitution. Transwomen find it easier to work in non-governmental organizations, most of which have a human rights element and they are able to fit in well.

One transwoman in East London states that transgender women face discrimination in the work place. The respondent states that,

*'I am doing nothing at the moment, I think people judge when it comes to employment'*

This is consistent with the human rights watch report which states that transgender people also felt that in practice they were known or perceived to be outcast and that their chances, for example, of finding or keeping employment were directly diminished.<sup>34</sup> Twenty-one percent said they are unemployed. Some of the transgender women are self-employed and they do engage in sex work for survival to generate income. In the case studies in Cape Town and East London it is the majority of transgender women who are sex workers, with limited or no rights or legal protection.

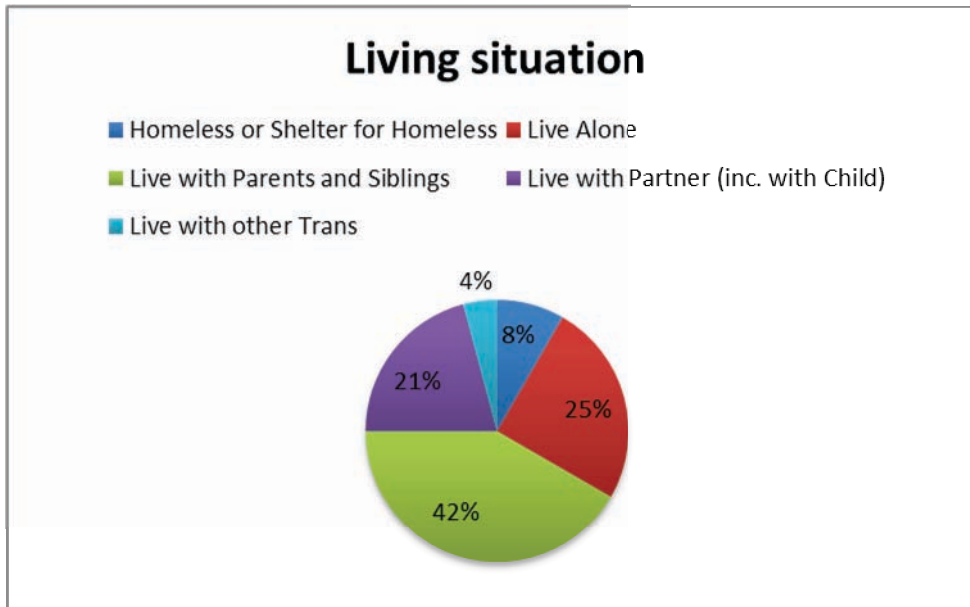
This shows that transgender women face discrimination and are subsequently excluded from many jobs because of their gender expression or required sex-segregated dress codes. In two recent court cases, the South African Labour Court upheld transgender women's employment rights, stating that the applicants had been unfairly dismissed because of their sex and gender.

This results in appalling living conditions.

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<sup>34</sup> Human Rights Watch Report, 2011.

### 6.1.3.3 Living Conditions



**Figure 7: Living Situation**

Many transgender women live with their parents and siblings. In the case studies in East London and Cape Town respondents cited security and protection as the main reasons for being with their immediate family. In a previous study, Leigh Ann van der Merwe indicated that Transwomen migrate to urban settings for various reasons. Transgender individuals often experience being kicked out of their house and thus tend to gravitate toward larger cities, as small communities are often unwelcoming of transgender people and large cities may offer greater anonymity as well as greater peer support.<sup>35</sup>

<sup>35</sup>The social, health and empowerment coalition of transgender women in Africa (SHE), Email: [transfeminists@gmail.com](mailto:transfeminists@gmail.com) or [lvandermerwe@gmail.com](mailto:lvandermerwe@gmail.com).



A transwoman from the Eastern Cape said,

“I have come to Cape Town for a gender transition. This is only known to my family. At home I am treated like a girl because they are aware of the fact that I have come to Cape Town for a gender transition. People in my village still see me as a gay man. They are not aware that I have come to Cape Town for this change”.

Transwomen need belonging and sense of security in a hostile society which harasses and discriminates against them. Forty-two percent of the respondents said they were staying with their families and siblings. Only 25 percent said they live alone due to job security and the need for self independence. Twenty –one percent said they were staying with their partners and only a few chose to stay with other transgender women for sense of belonging and social support. Eight percent are living in shelters for the homeless. This is consistent with a previous study by Mottet and Ohle (2003) which noted that transgender individuals are disproportionately represented within the homeless population. Transgender individuals face various difficulties in life that increase their prospects of homelessness, these include (but are not limited to): loss of family, whether by being kicked out of the family home or choosing to leave because of abuse, unemployment due to discrimination, and denial of housing due to discrimination on the basis of their identity.<sup>36</sup> Living conditions of most transgender women remain appalling due to lack of income and societal prejudices. Opportunities for personal development, social and economic security as noted in discussions above are at low levels.

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<sup>36</sup>Mottet and Ohle (2003) in Shelter Access by Transgender Individuals in Cape Town, South Africa, A report published by Gender Dynamix, July 2013.



#### 6.1.3.4 Religion & Culture

“We are part of our culture. We have been for centuries and have successfully managed to carve out a harmonious existence with our people.”<sup>37</sup>

Throughout history and across cultures, there have been people whose gender identity and expression differ from the cultural expectations associated with the sex they were assigned at birth. Some people born in male bodies lived as women; some born in female bodies lived as men. Culture and religion can be key parts of a transgender person’s identity. The relationship between gender expression and religion varies widely around the world. Views within a single religion can vary considerably. South Africa has a complex and diverse history regarding transgender people’s rights. Although in some parts of society transgender people face rejection, some Christian denominations accept transgender people as members and clergy.<sup>38</sup>

In this study, 67 percent of respondents identify as Christians and the rest do not go to church and only 2 percent identify as Muslim. Most transwomen belong to a religious tradition, and most of them say religion is “very important” in their lives and there is no conflict between their religious beliefs and their sexual orientation or gender identity. These sentiments are in contrast with the general public’s view that transgender people are in conflict with their religious beliefs.

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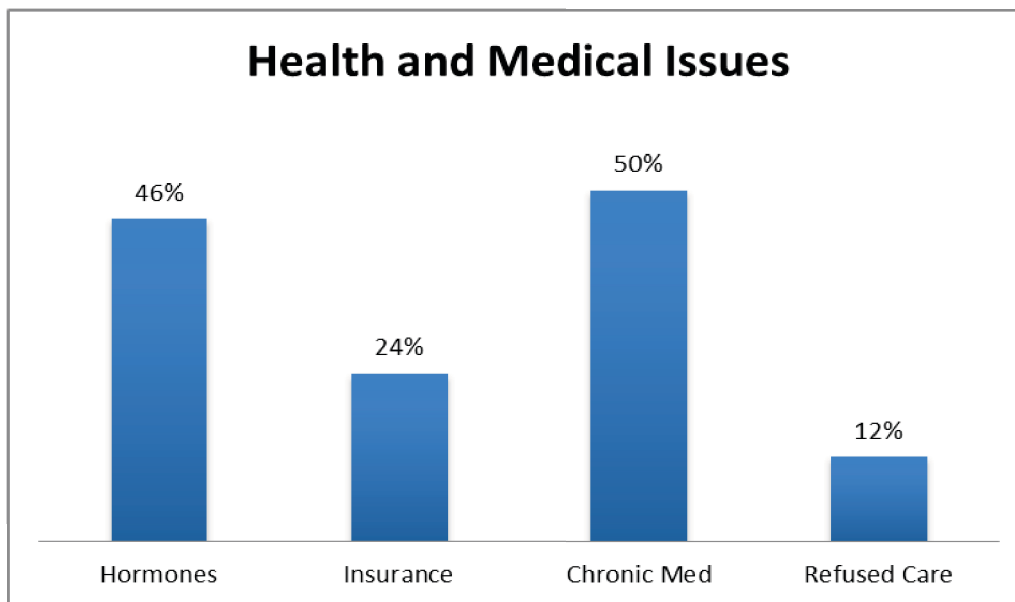
<sup>37</sup>Ymania Brown, Samoa

<sup>38</sup>Desmond Tutu: “Homophobia equals apartheid”, Afro News. 7 July. Retrieved 28 July 2013.

## 7. Major Findings

### 7.1 Health & Wellbeing

Everyone has the right to enjoy the highest attainable standard of physical and mental health.<sup>39</sup> The right to health requires health services to be accessible, available, acceptable and of good quality. States are required to progressively realize the right to health, to the maximum of their available resources. The reality for transwomen around the world routinely falls far short of these requirements, both when attempting to access general health services or when required to medically transition.<sup>40</sup>



**Figure 8: Health and Medical Issues**

<sup>39</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12(1).

<sup>40</sup> D'Augelli, A. R., Grossman, A. H., & Starks, M. T. (2006). Childhood gender typicality, victimization and PTSD among lesbian, gay, and bisexual youth. *Journal of Interpersonal Violence*, 21, 1462–1482.

The diagram above indicates that transwomen are being refused medical care at an alarming rate. A transwoman reported that;

*'I was raped and I went to the police station. They would not take my case and I could not access rape services as a result of them not wanting to take my case. The police thought that I was male'*





Transgender youth experience pervasive victimization, mental and physical health disparities, and difficulties accessing helpful resources. Along with experiencing outright refusal in medical setting, other studies confirm that transwomen are often treated with contempt in medical setting. This is because people typically bear most of the costs of obtaining such a medical diagnosis or undergoing these medical procedures.

The UN Committee on the Elimination of Discrimination against Women has expressed concern about transgender, intersex, lesbian and bisexual women as “victims of abuses and mistreatment by health service providers”.<sup>41</sup> For the vast majority of transwomen, a physical examination will disclose their gender identity. Health records also routinely disclose this information. This makes transwomen highly vulnerable to ignorance or prejudice, including fear of violent reprisals if health professionals breach confidentiality. Only 24 percent of the study respondents are on medical insurance and the majority of transwomen do not afford medical insurance because they are unemployed and it is expensive. Lack of insurance means transwomen cannot afford the procedures needed for medical transition.

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<sup>41</sup> Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), Para. 40. 113 A/HRC/14/20, Para. 21.

Given these barriers, many transwomen fail to seek or receive vital health services. They also face many barriers to controlling their own sexual and reproductive lives. As noted in the study 50 percent of respondents takes chronic medication and majority of them from public hospitals or clinics. Human Immune Virus (HIV) prevalence is significantly higher among transgender women than in the general population.<sup>42</sup> Transgender is a social identity, more associated with psychosocial risks for HIV. These risks are well researched and well understood. Furthermore, global studies have shown that transgender people are particularly susceptible to HIV infection and report high rates of HIV infection among male to female transgender persons.<sup>43</sup>

Furthermore, transgender women reported lower levels of condom use at last intercourse and were more likely to have had transactional sex in the previous three months.<sup>44</sup> Methods of prevention, which may include circumcision and education, are important to discuss in order to reduce risk level among this population.

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<sup>42</sup> Jobson, G. (n.d.). HIV risk among transgender women in Cape Town. Lecture presented at Africa Regional Trans Health & Advocacy Conference, Cape Town.

<sup>7</sup> Open Society Foundations (2013).

<sup>43</sup> Clements-Noelle, K., Marx, R., Gutzman, R., & Katz, M. (2001). HIV prevalence, risk behaviors, health care use, and mental health status of transgender persons: Implications for public health intervention. *American Journal of Public Health*, 91(6), 15-21. Retrieved from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446468/>

<sup>44</sup> Pisani, E., Girault, P., Gultom, M., Sukartini, N., Kumalawati, J., Jazan, S., & Donegan, E. (2004). HIV, syphilis infection, and sexual practices among transgender, male sex workers, and other men who have sex with men in Jakarta, Indonesia. *Sexually Transmitted Infections*, 80, 536-540. Retrieved from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1744942/>



## 7.2 Access to treatment

Among study participants 46 percent of respondents take hormones and 54 percent do not. Those who access hormones get them from pharmacies, hospitals, or clinics and it's accessible. One transwoman said;

*'I get my hormones From the Pharmacy once a month'*

Healthcare access is a major site of vulnerability for all transwomen and particularly those, such as youth, with other characteristics that locate them in relative positions of powerlessness. Often gender recognition laws or policies require evidence of a mental health diagnosis of Gender Identity Disorder or gender dysphoria, and surgeries or hormone treatment that result in sterilization. This compromises transwomen's ability to decide whether to have such procedures based solely on their clinical necessity or desirability, without having to factor in the legal consequences.<sup>45</sup>

Another transwoman said:

*'I receive treatment through Steve Biko Academic Hospital. Part of my hormones is government funded; the rest I have to pay'.*

One respondent from the 54 percent who do not take hormones said;

*'It is hard in this province to get feminizing hormones because I cannot afford to pay the doctor'.*

From the assertions above, it is clear that access to hormone treatment is a pivotal health concern for many transwomen. Hormones affect secondary sex characteristics such as body shape and body hair, as well as the masculinization of vocal chords. These embodiments, along with the absence or presence of breasts or an Adam's apple, are perceived and analyzed by others to support assumptions about another's gender. They have a significant impact on whether a person is recognized as male, female or neither or other.<sup>46</sup>

While many transgender people do not want or need surgery to be comfortable in their gender identity, and expression, the World Professional Association for Transgender Health (WPATH) Standards of Care version 7 (SOC7) note that "for many others surgery is essential and medically necessary." For transgender men, often the most pressing surgery is chest reconstruction to create a male chest. For transwomen, the most important initial surgical procedures may be those that feminize outward appearances, such as breast augmentation, facial feminization or body contouring. Facial feminization is not available in South Africa, however different facial plastic surgery procedures like nose work can be done in SA, but not in the way as internationally done. While genital reconstructive surgery is vital for some transgender people, others may not find it as important for their daily lives.<sup>47</sup>

The right to health requires health services that are accessible, available, acceptable, culturally competent and of good quality.<sup>48</sup> The fact that this rights is not fully realized cause distress for transgender persons and leads to a myriad of health problems that feed into other risky behaviors, such as sex work, substance abuse and lack of condom use.<sup>49</sup>

<sup>45</sup> Robert Garofalo, Joanne Deleon, Overlooked, misunderstood and at-risk: Exploring the lives and HIVrisk of ethnic minority male-to-female transgender youth

<sup>46</sup> Coleman, E. et al. (2011) 'The standards of care for the health of transsexual, transgender, and gender nonconforming people' in International Journal of Transgenderism, Volume 13.

<sup>47</sup> Open Society Foundations (2013).

<sup>48</sup> ICESCR, Article 2(1).

<sup>49</sup> Mizock, L. & Lewis, T.K (2008). Trauma in Transgender Populations: Risk, Resilience, and Clinical Care. Journal of Emotional Abuse. 8.3: 335-354.

### 7.3 Violence, Discrimination and Harassment

*The country I want to live in is one that recognizes my rights to live my life free of threats, discrimination, harassment, violence and fear. The country that I live in is one that will do whatever is possible to not only ensure my rights but to protect these rights and prosecute those who attempt to infringe on them.*<sup>50</sup>



**Figure 9: Experiences of Violence and Harassment**

Perhaps one of the most dramatic findings in the study is that an overwhelming majority of participants, 86%, have survived an incident of physical, psychological and emotional violence. Transgender people face violence because of their gender nonconformity.<sup>51</sup>

Only 14 percent indicated that they did not experience any form of violence. The majority of respondents did not report violence to the authorities with only 30 percent noted to have reported. It came out clearly from the case studies in Cape Town, East London and Durban, that many people failed to report due to lack of trust. One transgender woman said;

*‘I am not sure if I have someone that I could trust enough to tell the story of what had happened to me because when you go to the police station they either laugh at you or make fun of you’.*



Most stakeholders indicated that transgender women experience violence. One of the respondents states that:

*'Yes, when growing as a kid at school there was a transgender in our class and the other kids would always humiliate her wanting to see her private parts. Some would bully her and even beat her up just to see her private part'.*

Other stakeholders interviewed are of the view that transgender women do not report the violence simply because they are scared of being discriminated and humiliated, so they end up not reporting. They are also afraid of secondary victimization by the system being it the police or the clinic. One of the activists interviewed states that:

*'In many instances they do not report violence for fear of rejection, lack of support and assistance. I do not think they feel comfortable reporting it as police officers would make jokes about it and humiliate them more. And not do anything about it after'.*

Other respondents fear threats from their perpetrators. The abuse, violence and discrimination against women are widely tolerated and systematic. This implies that transwomen do not expect any protection from families and communities, including the authorities. The struggles with transgender women's rights are still being ignored and remain as a 'social epidemic'.<sup>26</sup>

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<sup>50</sup> Ditsie Bev. Foreword, *The Country we want to live in: Hate Crimes and Homophobia in the lives of black lesbian South Africans*, HSRC, 2010.

<sup>51</sup> Rebecca L. Stotzer *Violence against transgender people: A review of United States data*, 2009.



## 7.4 Nature of Violence

In the study, it was noted that violence against transgender women comes in a variety of forms. One stakeholder said;

*'Transgender women go through a life of trauma, starting from home at a young age, you are told who are you, and then you go to school and you are discriminated by students and teachers'*

This indicates that various agency of socialization perpetuates violence against transgender women. Within the transgender community it is common knowledge that interacting with authorities invites a certain level of possible victimization, or re-victimization for transgendered people.<sup>52</sup>The majority of respondents indicated that they experience violence through the community or institutions. One respondent states that;

*'Police are brutal and they do all these "fun" things. The police beat us when arresting us and in most instances we became victims of unlawful arrest'*

Another one in Cape Town states that;

*'Violence is a big thing, a few months ago two guys came and beat me, no police was there I was so bitter and I stabbed the guy and run away, no security can help you. With all violence going, people for public safety do not cater for us and they violate us instead of helping us'.*

All of this shows that institutional violence is rife in the community. The majority of respondents cited police brutality and lack of acceptance and protection from the police and security personnel, intimate partners and even their families. Some respondents expressed concern over what they call "lack of social systems", this implies that their gender identity is regarded as outside of societal norms and values.

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<sup>52</sup>Rebecca L. Stotzer Violence against transgender people: A review of United States data, 2009.



A transwoman reported;

*'We get violence from our partners and friends. They act like they understand when they are in front of us but do say bad things behind our backs. We even get violence from social networks, we get insulted because of the way we dress, speak and walk'.*

Another said;

*'We even get violence where we stay, from community and in traditional gatherings etc. we get beaten and insults'.*

The most common violence reported is physical violence which is initiated by the family and community. Sexual harassment in the work place or discrimination in access to work has also been cited as a major problem faced by transwomen. Lack of access to health is a form of violence on its own. Some respondents indicated that nurses refuse to give them contraceptives and others cited that they do not afford the cost of hormone treatment for their transition. This shows discrimination and violation of their basic human right that everyone must have access to health care and treatment.

Transphobia often take place in an environment where discrimination against particular groups, is socially accepted. Such violence may be physical (including murder, beatings, kidnappings, rape and sexual assault) or psychological (including threats, coercion and arbitrary deprivations of liberty).<sup>53</sup>

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<sup>53</sup> Smith, Hate Crimes and Violence, 2004



## 7.5 Effects of Violence

Violence against women has a myriad of devastating consequences on women's short and long-term health and wellbeing. Along with the immediate physical and emotional impacts of violence, women's overall quality of life can be adversely affected over an entire lifetime, which can, in turn, impact their participation and engagement in various aspects of life and society.<sup>54</sup> These consequences to the individual women, along with the violent act itself, can have ripple effects on society as a whole.<sup>55</sup> For instance, employers may experience lost productivity and output from their employees, while women's informal support networks, such as families and friends, may need to alter their daily activities to provide assistance to those affected by violence.<sup>56</sup> This is in addition to the broader societal costs associated with delivering and maintaining health care, social and justice-related services to victims of violent crime, as well as the costs related to the criminal justice response to accused persons.

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<sup>54</sup> Johnson, H., N. Ollus and S. Nevala. 2008. *Violence against Women: An International Perspective*. New York. Springer

<sup>55</sup> World Health Organization. 2011. "Violence against women: Intimate partner and sexual violence against women." Fact Sheet. No. 239.

<sup>56</sup> Reeves, C. and A.M. O'Leary-Kelly. 2007. "The effects and costs of intimate partner violence for work organizations." *Journal of Interpersonal Violence*. Vol. 22, No. 3. p. 327-344

### 7.5.1 Social Effects

Social isolation may be considered one of the most significant and dangerous aspects of a trans identity. The majority of study respondents are affected socially. One transwoman said;

*'I don't go out anymore. I am stuck at home and became totally ostracized by my entire family and ended up abandoned and alone ... left to face my fears, shame, guilt and nightmares day and night totally on my own'.*

This is consistent with a research study by Israel (1997) which proved that transgender people feel less safe in school and have higher levels of unexcused absences and dropout rates, less of a sense of school belongingness, more academic difficulties, and fewer plans to attend college than their non-LGBTI peers due to harassment.<sup>57</sup>

Furthermore, the family and friends of transwomen, who are often a source of informal support, may be adversely affected, as their daily activities may be altered or disrupted to provide some form of assistance to their abused children, sisters or friends.<sup>58</sup> Although a few respondents report their cases to police, the majority confides in families and friends who then became secondary or indirect victims, meaning they are psychologically affected by the victimization of their relative or friend.

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<sup>57</sup> Israel, G. and Tarver, D. E. (1997). *Transgender Care*. Philadelphia: Temple University Press

<sup>58</sup> Au Coin, K. and D. Beauchamp. 2007. "Impacts and consequences of victimization, GSS 2004." *Juristat*. Vol. 27, no. 1. Statistics Canada Catalogue no. 85-002.



## 7.5.2 Emotional Effects

The experiences of being a victim of violent victimization can elicit a range of emotional impacts.<sup>59</sup> Emotional effects are also noted from respondents. One transwoman said;

*'It affected me very negatively. It has left me angry. There is no justice where the South African Police are concerned'.*

Another one states that;

*'I became sheltered, withdrawn depressive and had anxiety or panic attacks whilst being in public'.*

The effects of violent crime on transgender women in general can be far-reaching. This is consistent with one study which noted that transgender youth are at risk for suicidal ideation and attempts, depression, anxiety, non suicidal self-injury, and being victimized by peers in person or online. Indirect exposure to violent crime can remind others in the community of their potential risk of victimization, which in turn, increases overall levels of fear.<sup>59</sup>

## 7.5.3 Physical Effects

Overall, emotional consequences were more likely when women sustained physical injury.

A respondent states that;

*'We are beaten in the community, community does not care, and it labels and insults us'.*

From the Cape Town case study one respondent alluded that;

*'A few months ago two guys came and beat me, no police was there I was so bitter and I stabbed the guy and run away, no security can help you'.*

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<sup>59</sup> Russell, S. T., McGuire, J. K., Lee, S. A., & Larriva, J. C. (2008). Adolescent perceptions of school safety for students with lesbian, gay, bisexual, and transgender parents. *Journal of LGBT Youth*, 5, 11–27.

This is a sign of retaliation from physical violence. Abused women often experience conflicting emotions such as fear, anger, shame, resentment, sadness and powerlessness. An abused woman lives in fear, unable to predict when the next attack will come. Abused women can develop post-traumatic stress which includes a range of symptoms: agitation and anxiety, depression, panic attacks, trouble sleeping or relaxing, numbness, sense of isolation, nightmares and so on.

This section has described some of the direct and indirect impacts of violence against transgender women. Not only do victims suffer emotional and physical harm, but their feelings of safety and perceptions of well-being are often affected by their victimization experiences. Violence against transgender women also has a range of negative impacts that extend beyond the victim. Family and friends can be indirectly or directly affected by the violence.





## 7.6 Perception of Transgender Women

The research indicates that 80 percent of the respondents interviewed from government and civil society are aware of transgender women in the communities they live. The data from the study suggests that transgender women face widespread prejudice and discrimination and as noted in the section above may be at heightened risk for violence because of their gender identities and expression. However, systematic research addressing public attitudes toward transgender people has been limited. By reviewing responses from this study, it is clear that transgender women commonly experience stigma and discrimination. Evidence indicates that this transphobia manifests in health care settings, school settings, work environment and families but few studies address the forms of mistreatment experienced in this context.

One of the civil society sector respondents said,

‘Most people do not like them at all and they do not even want them in their society and they want to do corrective brutal punishment. Some of the communities are not well educated about transgender people’.

Most transgender women respondents expressed concern over negative attitude of community towards transwomen:

*‘People in the community are not the same. Women tend to be more supportive while men are more discriminating against us. Some men feel they can just beat me up but it also depends on how you relate to your own community’.*

Others stated that;

*‘Some love us and others don’t. They think we are sick people. They don’t see us as women at all’.*

Transwomen are alienated by the community and whoever is seen in this gender identity, it is regarded “deviant”. In a previous independent study conducted by Leigh Ann van der Merwe, the transgender woman was born male bodied; she was forced to go to the mountain for cultural circumcision (this is mandated for young males). Some of the transgender women feel that it should be a personal choice for people and it is not acceptable for transgender women as they are females. One transgender woman said,

*“Circumcision should be a personal choice for people. Someone must go through the ritual if they feel it is necessary for them. I have never seen the need for me to get circumcised since I identify as a trans woman. It would just be a waste of money for me to go through the ritual. I have been encouraged to go through the ritual but my response has always been that I am girl and I just don’t see myself going through with it. I am ok even if I am not circumcised. I just really do not see the need for someone to circumcise if they see themselves as a girl. I don’t see it as something appropriate for someone to go through cultural circumcision and then have gender re-assignment surgery”.*

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<sup>60</sup> Leigh Ann van der Merwe & Natasha N. Graves, Traditional Circumcision Among Transgender Women from the amaXhosa Culture in the Eastern Cape of South Africa



Transgender women who do not go through cultural circumcision face being stigmatized or cast out of their communities; those who do so are then claimed in their communities as young men and may face an even more difficult path toward building their lives as women. This is but one of the many critical dilemmas transgirls and transwomen face in articulating and expressing their authentic gender while maintaining their place within their culture and communities.

## 7.7 Access to Justice

All the women in the case studies reflect the ways in which their families, the neighbors and friends, the police and the Criminal Justice System as a whole, failed to protect them and bring the perpetrators to justice. In East London and Cape Town case studies respondents expressed concern and stated that;

*'Police take you and keep you in the van the whole night, you are not allowed to make phone call'* others states that;

*'Police violates our rights; they ask how you can say you have been raped if you are a guy'*.

All stakeholders indicated that the police have the duty to protect transgender women from all forms of violence:

*'They do not because they have not been trained well enough to understand transgendered persons and their vulnerabilities. I don't think the police do their job in preventing the violence. I actually think they encourage the violence as they don't take the cases serious'*.

In addition, the respondents claim that at a deeper level the lack of access to justice is held in place by narrow cultural practices that mediate against the constitutionality of equality before the law. Most respondents shared their dissatisfaction with the legal system by noting that those who abuse and rape them have a way to get away with it. This shows a sign of lack of access to justice and equality before the law.

One of the underlying reasons that make transgender women a vulnerable group is that South Africa is slow to respond to what are considered issues of life and death for the transgender community. It is this perceived failure to investigate and prosecute cases involving transgender community. From a strategic visioning point of view, the findings direct us to believe that there is a general acceptance of the Constitution and its place in the new South Africa. There was also a strong sense that there should be equal access to justice rather than special treatment and that this is a more effective way to deal with secondary victimization.

## 7.8 Legal & Security Mechanisms

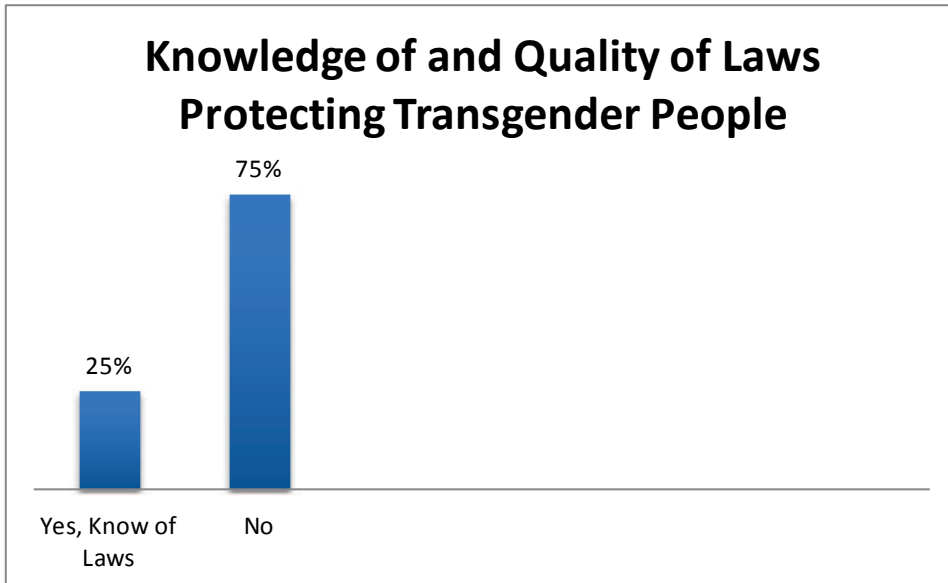


Figure 10: Knowledge of Laws Protecting Transgender People

“Discrimination is rampant, unreported, socially sanctioned and further encouraged by the absence of any anti-discriminatory laws to prevent human rights violations against transgender people.” —Satya Rai Nagpaul, India

The research indicates that the majority of the respondents are not aware of any laws or policies that protect the rights of transgender women. Twenty-five percent of respondents highlighted constitutional rights that are associated with every human being. They cited the constitution, which disallows discrimination of any sort. One transgender woman said;

*‘I have the right to gender expression and legal sexual identities representation in my documents. I have the freedom to gender expression in the constitution and freedom of expression’.*

Theoretically no-one is legally allowed to be subjected to any form of discrimination and legally everyone’s personal rights are protected by the constitution, and this includes all gender and gender related issues, but in society that really means very little. People are still and always will be abused because they are different, or don’t conform to society’s perception of “being normal”.<sup>61</sup>

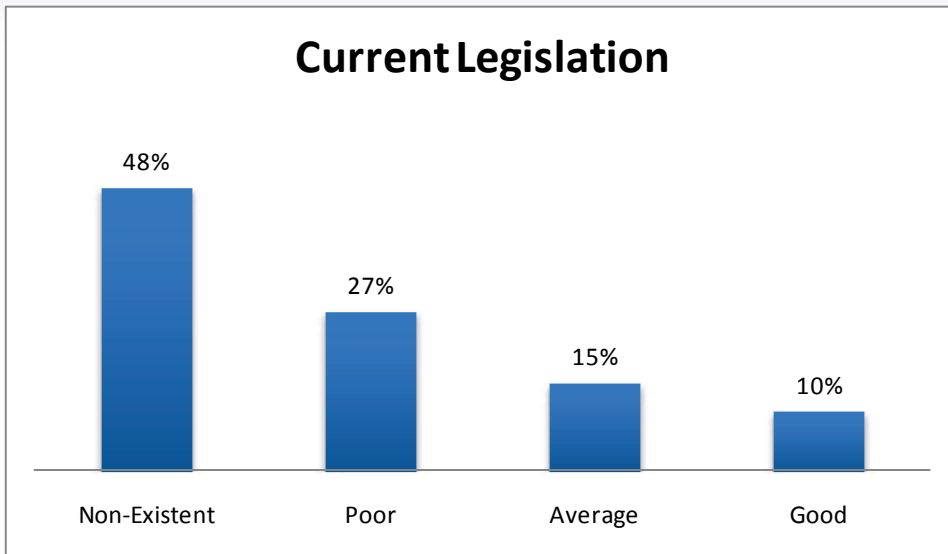


Figure 11: Rating of Current Legislation

Ninety percent view current legislation as non-existent, poor and average. One transwoman noted that;

*‘Policies pay lip-service to the adequate legislation and people’s attitudes is far behind the legislation’*

Another one states that;

*‘The South African legislation is not totally excluding transgender women. The challenge is that they speak about gender. In our context when people hear about gender they think it is only meant for people born with male or female genitals and not people that identify themselves different from the sex they were born in’.*

Most civil society sector respondents indicated the need for government to run information campaigns and to educate the massed on various pieces of legislation relevant to transgender women such as the Sexual Offences Act 32 of 2007 and the Domestic Violence Act 116 of 1998 amongst others, so the other departments are not working to prevent all the crimes/violence against transgender. There are also poor justice systems and prolonging of investigations on cases as some dockets are missing and unfair handling of transwomen cases.

Whereas only 10 percent thinks that the current legislation is effective to promote and protect the rights of transgender women. It does not specifically promote the rights of transgender women but disallows discrimination against them. It does promote and respect the rights of women, which, by implication of non-discrimination, including transgender women.



Since 1994, South Africa experienced significant changes in the legal framework for democratic governance as enshrined in the South Africa Constitution. The positive impact of this is neither understood nor experienced evenly across society as not everyone has been accepting a rights-based constitutional society where all human beings are seen as equal before the law, while many others remain disinterested in what are seen as legal rather than citizenship matters. Specifically, there is deep-seated resistance and many challenges to the rights for transgender women.<sup>62</sup>

An increasingly traumatized transgender sector is rising up and demanding that its voice be heard. While homophobia and transphobia is a universal phenomenon the fact that South Africa has a progressive and inclusive Constitution, from a formal equality perspective, bears testimony to the fact that being transgender cannot be classed as “un-African” – a popular argument invoked by those who fight against transgender rights. UN treaty bodies have raised concerns about transgender people exclusion from anti- discrimination legislation, and about inadequate efforts to combat such discrimination.<sup>62</sup> The links between inadequate legal protections, stigma and social exclusion of transgender women are clearly noted.

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<sup>61</sup>Human Rights Watch Report, 2012

<sup>62</sup> Human rights watch report, 2012



## 8. Conclusion

This study was critical given the well documented rising tide of violence and discrimination against transgender women in South Africa. The main objective of the project was to highlight and understand violence against transgender women in South Africa. The study adopted a qualitative and quantitative approach. Focus group interviews and surveys were conducted to collect the data. The study also relies on secondary data such as a review of literature and other related documents and reports to get insight on violence against transgender women.

Various findings emerged from the research. The research indicated that transwomen suffer violation in health and well being. They are being refused medical care at an alarming rate despite the international obligations that everyone has the right to enjoy the highest attainable standard of physical and mental health. The research noted that it is not easy for transwomen to access hormones, contraceptives and other health related need due to their gender identity. The stakeholders interviewed expressed concern over a lack of access to health for transwomen. This causes distress for transwomen and often leads to health problems that feed into other risky behaviors, such as sex work, substance abuse and lack of condom use. The research also highlighted that an overwhelming majority of transgender women have survived an incident of physical, psychological and emotional violence. The majority of research respondents did not report violence to the authorities with only a few noted to have reported. Other stakeholders interviewed are of the view that transgender women do not report the violence simply because they are scared of being discriminated and humiliated, so they end up not reporting. They are also afraid of secondary victimization by the system being it the police, family or community.

The research also proved that violence against transgender women comes in a variety of forms. The majority of the research respondents indicated that they experience violence through the community or institutions. The most common violence reported in the study is physical violence, which is initiated by the family and community. Lack of access to health is another form of violence also experienced by transgender women. Another finding shows that the majority of respondents are aware of transgender women experiences. It has also come out clear in the study that the violence against transgender women has a lot of devastating consequences on transwomen's short and long-term health and wellbeing. There is immediate physical effect in the form of injuries sustained due to violence. Most respondents stated that transwomen experience trauma, depression and anxiety, showing the emotional impact of violence. Social effect of violence was also reported for it comes through exclusion and discrimination within the family and community settings.

Most transgender women expressed concern over negative attitude of community towards them. The transwomen reported that the community has failed to protect them and bring the perpetrators of violence against transwomen to justice. They expressed concern over a lack of access to justice and equality before the law. The research also indicated that the majority of the respondents are not aware of any laws or policies that protect the rights of transgender women.



The majority of research respondents view current legislation as non-existent, poor and average. However, most civil society sector respondents indicated the need for government to run information campaigns and to educate the masses on various pieces of legislation relevant to transgender women such as the Sexual Offences Act 32 of 2007 and the Domestic Violence Act 116 of 1998 amongst others.

It is proposed that South Africa has a more progressive constitution and the rights of transgender women should be upheld. The government should engage with various stakeholders such as leaders of communities, NGOs, and religious organizations in an effort to harmonize approaches to eliminate all forms of discrimination against individuals and groups. I

n the face of virulent prejudices as described above, it is the prerogative of the government, together with civil society organizations and other concerned parties, to advance a culture of respecting human rights at the grassroots level.



## 9. Recommendations

The following recommendations emerge from the research findings. Most respondents put emphasis on the recommendations below:

- The need for Gender recognition policy
  - Transgender women in some jurisdictions are afforded legal protection against discrimination and have the ability to obtain legal recognition of their acquired gender. If this is applied to South Africa, this will usually involve the right to obtain a birth certificate in the acquired gender and subsequently a passport and other formal forms of identification.
- The need to monitor the implementation of policies and guidelines on victims of violence. From the study the Victims' Charter resorts under the VEP, which aims to provide services that will enable victims to deal with the traumatic effects of crime.
- There is need for research to focus specifically on transgender women and HIV risk.
- To have laws that protects the transgender women and legal mechanisms to be accessible.
- The need for stakeholder capacity building
  - There is a need to meet with different stakeholder's community, police, and centres' of gender equality to educate community on transgender issues.
  - The stakeholders felt the need for law enforcers (Police and the whole justice system to be trained and educated about transgender persons, their rights and remedies. should also undergo sensitivity training in order to understand the issues within which transgender persons grapple with.
  - NGO's and CBO'S working closely with transgender persons should also undergo sensitivity training in order to eliminate the perpetration of violence at a community level.
  - Huge mass campaign to inform people about transwomen and giving out the valid information about the stigma and discrimination on transwomen.





## **BIBLIOGRAPHY**

Anderson, C., Toomey, R., & Russell, School climate for transgender youth: A mixed method investigation of student experiences and school responses, *Journal of Youth and Adolescence*, 39, 1175–1188, 2010.

Au Coin, K. and Beauchamp D., “[Impacts and consequences of victimization, GSS 2004.](#)” *Juristat*. Vol. 27, no. 1. Statistics Canada Catalogue no. 85-002, 2007.

Clements-Noelle, K., Marx, R., Gutzman, R., & Katz, M., HIV prevalence, risk behaviors, health care use, and mental health status of transgender persons: Implications for public health intervention. *American Journal of Public Health*, 91(6), 15-21, 2001.

Coleman, E. et al., ‘The standards of care for the health of transsexual, transgender, and gender nonconforming people’ in *International Journal of Transgenderism*, Volume 13, 2011.

D’Augelli, A. R., Grossman, A. H., & Starks, M. T., Childhood gender typicality, victimization and PTSD among lesbian, gay, and bisexual youth. *Journal of Interpersonal Violence*, 21, 1462–1482, 2006.

Denzin, N & Lincoln Y., *Handbook of Qualitative Research*. SAGE Publications, Thousand Oaks, London, 2000.

[Desmond T., “Homophobia equals apartheid”](#)”, *Afro News*. 7 July. Retrieved 28 July 2013.

Ditsie, B., *The Country we want to live in: Hate Crimes and Homophobia in the lives of black lesbian South Africans*, HSRC, 2010.

Human Rights Watch Report, *We’ll Show You You’re a Woman: Violence and Discrimination against Black Lesbians and Transgender Men in South Africa*, 2011.

Israel, G. and Tarver, D. E., *Transgender Care*. Philadelphia: Temple, University Press, 1997.

Jobson, G., HIV risk among transgender women in Cape Town. Lecture presented at Africa Regional Trans Health & Advocacy Conference, Cape Town.

Open Society Foundations, 2013.

Johnson, H., N. Ollus and S. Nevala, *Violence against Women: An International Perspective*. New York. Springer, 2008.

Leigh Ann van der Merwe: *Traditional Circumcision among Transgender Women from the Amakhosa Culture in the Eastern Cape*.

Mallon, G.P., *Social Work Practice with Transgender and Gender Variant Youth* Second edition, 2009.



Mizock, L. & Lewis, T.K., Trauma in Transgender Populations: Risk, Resilience, and Clinical Care. *Journal of Emotional Abuse*. 8.3: 335-354, 2008.

Mottet and Ohle., Shelter Access by Transgender Individuals in Cape Town, South Africa, A report published by Gender Dynamix, July 2013.

New Zealand Human Rights Commission (2008) To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People, accessed 28 August 2013

Open Society Foundations, 2013.

Pisani, E., & Donegan, E.,(2004). HIV, syphilis infection, and sexual practices among transgender, male sex workers, and other men who have sex with men in Jakarta, Indonesia. *Sexually Transmitted Infections*, 80, 536–540. Retrieved from

Rebecca L. Stotzer: Violence against transgender people: A review of United States data, 2009.

Reeves, C. and A.M. O’Leary-Kelly. “The effects and costs of intimate partner violence for work organizations.” *Journal of Interpersonal Violence*. Vol. 22, No. 3. p. 327-344, 2007.

Robert G, and Joanne D., Overlooked, misunderstood and at-risk: Exploring the lives and HIV

Risk of ethnic minority male-to-female transgender youth

Russell, S. T., McGuire, J. K., Lee, S. A., & Larriva, J. C., Adolescent perceptions

of school safety for students with lesbian, gay, bisexual, and transgender parents. *Journal of LGBT Youth*, 5, 11–27, 2008.

Smith, Hate Crimes and Violence, 2004.

UNESCO, Education Sector Responses to Homophobic Bullying, pp. 18-22; Personal communication with Kate Cordova, STRAP, Philippines, July 2013.

World Health Organization. “[Violence against women: Intimate partner and sexual violence against women.](#)” Fact Sheet. No. 239, 2011.



## List of Statutes

African Charter on Human and Peoples' Rights

Beijing Platform for Action

Convention on the Elimination of All Forms of Discrimination Against Women

Committee on Economic, Social and Cultural Rights

Committee on the Rights of the Child

Department of Justice and Constitutional Development Annual Report of 2012/13

Domestic Violence Act 116 of 1998

Human Rights Watch Report, 2011

Human Rights Watch Report, 2012

Human Rights Committee, Concluding Observations (Ireland), UN Doc. CCPR/C/IRL/CO/3, 30 July 2008

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 12(1).OHCHR:

Promotion of Equality and the Prevention of Unfair Discrimination Act

Sexual Offences Act 32 of 2007

Sexual Orientation and Gender Identity, March 2007

South African School's Act, No. 84 of 1996

The South African Constitution of 1996

Universal Declaration of Human Rights

Victim's Charter, Department of Justice and Constitutional Development

Yogyakarta Principles on the Application of International Human Rights Law



## Electronic Sources

<http://dailymaverick.co.za/article/2012-06-27-sas-gay-hate-crimes-an-epidemic-of-violence-less-recognised>

[www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/15-Jan-2008](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Jan-2008)

[http://www.issafrica.org/crimehub/uploads/Hate\\_Crimes\\_Memo\\_for\\_DoJCD\\_](http://www.issafrica.org/crimehub/uploads/Hate_Crimes_Memo_for_DoJCD_)

final <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446468/>

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1744942/www.transfeminists.org>

<http://www.yogyakartaprinciples.org>





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