

SOUTH AFRICA

LGBT+ Business Climate Score

Out Leadership's snapshot of the current state of affairs for LGBT+ people, through the lens of international business.

The business Climate Score rating is out of ten possible points, and is based on ten independently verifiable indicators of the legal, cultural and business context for LGBT+ people.



How to Use This Brief

As a business leader, you have the opportunity to create change for LGBT+ people around the world – both within your organizations and in the countries where you do business. This brief provides valuable information to inform your conversations with:

Internal Staff: Ensure that staff at your company who do business in-country are aware of the laws and other regulations that impact LGBT+ people there, and that they've adopted the appropriate internal policies for their location.

Government Leaders: In your meetings with government leaders, particularly those focused on business expansion or diplomacy, we encourage you to bring up the information shared in this brief in an appropriate way, and help them understand how LGBT+ inclusive policies are part of your company's best practices, and acknowledged as global standards. You are the best person to judge whether you have the ability to have such a conversation with a local leader in an appropriate way. Your Government Affairs officer, Diversity & Inclusion head, or equivalent may be appropriate to include in these conversations.

In-country Business Partners: In conversations with business partners, when appropriate, ask them what they're doing to address LGBT+ inclusion, and help explain why inclusion positively impacts your ability to conduct business there.

Talking Points

"There's a big gap between the legal situation for LGBT+ people in South Africa and their lived experience – violence and discrimination is still commonplace, and attitudes toward sexual and gender difference are still quite split, despite the fact that discrimination against LGBT+ people is banned constitutionally."

"If cultural attitudes toward LGBT+ people improved in South Africa, it would improve my ability to send diverse talent there, and otherwise invest in the economy."

"Employers in South Africa have a legal responsibility under the Employment Equity Act to remove all forms of discrimination experienced by LGBT+ employees in their workplace and, under the Occupational Health Act, to create a safe working environment."

"But those protections don't extend beyond the workplace: 35% of hate crimes in South Africa are reported by LGBT+ people, according to a report by the Hate Crimes Working Group spanning 2013-2017. Violence including "corrective rape" and assault is common. Cultural homophobia must be addressed to make it feasible for me to ask top LGBT+ talent to relocate there."

"Recent estimates show that the "Pink Rand" – LGBT+ buying power in South Africa – is around \$11 billion."

"Assuming conservative estimates that 4-6% of the general population identifies as LGBT, there are between 2.2 million and 3.4 million LGBT+ people in South Africa. If the government cracks down on cultural homophobia and hate crimes, millions of LGBT people will be able to participate more fully and openly in the economy."



Current Legal Status of LGBT+ People

Legal Status of the Lesbian, Gay, and Bisexual Community

The Employment Equity Act 198 forbids discrimination and harassment in employment based upon sexual orientation, and sexual orientation-based discrimination has been constitutionally illegal since 1997.

Conversion therapy is not prohibited in South Africa, even though the South African Society of Psychiatrists opposes it. Extreme methods have been reported there: owners of a camp an hour south of the capital which claimed to offer a "gay cure" were convicted in 2013 of murder, child abuse and assault with intent to do grievous bodily harm after 15-year-old Raymond Buys died while enrolled in 2011.

Legal Status of the Transgender and Gender-Diverse Communities

Although gender markers reflected in the South African ID database can be changed, there is no 'third option' to reflect something other than a binary gender marker. However, a nonbinary movement is gaining momentum – a modeling agency created there in 2015 specifically seeks out nonbinary models.

A law passed in 2003 allows transgender people to apply to the Department of Home Affairs to have their gender marker legally changed, whether or not they've had gender affirmation surgery. (Intersex people can also apply.) However, there are reports that officials of The Department of Home Affairs may be discriminating against transgender and intersex people by refusing to issue them with the necessary identity documents that recognize their gender status.

In 2017, three transgender women who married men before their gender transitions sued the Department of Home Affairs for refusing to change gender markers on the population register. Same-sex marriage was legalized in 2006, but it's categorized under a different part of the law than heterosexual marriages are. So the Department argued that the amendments to the register could not be made since it would require recognizing their marriages under a different legal status. The Court ruled that The Department of Home Affairs' failure to deal with their applications to change their gender status was unlawful.



Current Legal Status of LGBT+ People

Government Statements and Actions

In June 2018, the Equality Court ruled that religion isn't a valid defense for homophobic hate speech.

Former President Jacob Zuma reportedly made hostile comments against LGBT+ people. He is quoted as saying, "When I was growing up, *unqingili* (a gay person) would not have stood in front of me. I would knock him out." Zuma also described same-sex marriage as a "disgrace," though he later apologized for the remark.

Current President Cyril Ramaphosa seeks to send the opposite message to LGBT+ South Africans; he sent a pre-recorded message to a 2017 event celebrating the LGBT+ community: "We are all born the way we are. We need to support, embrace and respect each other. When we treat each other with dignity, we are all more dignified. When we treat each other with respect, we are all more respected."

Socio-cultural Environment of LGBT+ People

Status of LGBT+ Organizing and Community

A spate of violence against lesbians in 2017 and early 2018 shook the nation. Deaths included Joey and Anisha van Niekerk, who were raped and murdered in December 2017, Nonkie Smous, who was raped, murdered, and set on fire in April 2017, and Noxolo Xakeka, who was stabbed on New Years Day 2018.

Only half of black LGBT+ people are completely open about their sexuality.

The Cape Town Pride Festival, held annually, draws local business sponsors. But the event is not without its internal tensions. During the 2018 festival, black LGBT+ South Africans protested the lack of recognition for two lesbians in the community who had been murdered in recent months. The factions compromised with 15 minutes of silence in honor of the victims.

Cultural Views of the LGBT+ Community

Six of 10 South Africans agree that being LGBT+ should not be a crime, but only 51% of South Africans agree that the constitution should provide protections for lesbian and gay people. There is a major divide between existing laws and lived reality there.

According to a new report by the Centre for Risk Analysis at the South African Institute of Race Relations (IRR) on LGBT+ South Africans, there is "a growing trend" of tolerance and "open-mindedness": a slim majority of South Africans (50.6%) either agree or strongly agree that gay and lesbian citizens should have the same human rights as the rest of the population.

However, four out of 10 LGBT+ South Africans know of someone who has been murdered because of their sexual orientation or gender identity – and black LGBT+ South Africans are twice as likely to report knowing about someone who has been murdered for their sexuality or gender identity.

Earlier this year, cinemas in South Africa canceled screenings of the groundbreaking LGBT+ film *Inxeba* (The Wound) after state regulators classified the film as pornography. The film told the story of same-sex love during a Xhosa manhood initiation ritual that some deemed culturally insensitive.

South African commentator Darin Graham has remarked on the duplicity at force in South African society when it comes to acknowledging and advocating for gay people: "Though South Africa has progressive laws for LGBT+ people – what's on paper doesn't speak for the reality of how things are." He also noted: "...what's really sad is that because of the advanced legal frameworks, some LGBT+ Africans facing unprecedented violence in their countries come to South Africa seeking refuge only to find that in many communities in the country – homophobia is rife and support is almost non-existent."

Impact of LGBT Discrimination on Business & Talent

1 • NO RISK

2 • LOW RISK

3 • MODERATE RISK

4 • NOTABLE RISK

5 • HIGH RISK

BRAND RISK **NONE**

There is little to no brand risk to operating in South Africa, where LGBT+ rights are firmly enshrined into law.

CLIENT RISK **LOW**

There is little client risk to operating in South Africa, unless an LGBT+ oriented client is especially attuned to the recent rise in homophobic violence in the country.

TALENT RISK **MODERATE**

Entrenched homophobia could be a turnoff to local or relocated talent, especially LGBT+ employees.

MARKETING RISK **LOW**

The country's pervasive homophobia doesn't stop marketing targeting the LGBT+ community.

Local Leaders Advocating for LGBT Equality

There are many openly LGBT+ activists and experts in South Africa. Out Leadership recommends that you contact:

Luke Andrews

Project Coordinator, South African
Workplace Equality Index

Purpose

Multinational companies face operational and reputational risk when they do business in countries where the legal and/or social atmosphere makes it difficult for LGBT+ people to live openly. Discrimination against LGBT+ people creates serious challenges for talent mobility, retention, and development.

Out Leadership's LGBT+ CEO Business Briefs seek to help C-Suite leaders understand and respond to these risks. Secondly, these Briefs seek to inform and empower corporate executives to engage in conversations with trade officials and other local stakeholders about why discrimination against LGBT+ people negatively impacts their ability to do business.



Additional Resources

2016 International Gay and Lesbian Association State Sponsored Homophobia Report

This report contains a country-by-country analysis of anti-LGBT laws and policies around the world.

2016 Human Rights Watch World Report

This report contains a country-by-country analysis of human rights concerns for 2014, and includes specific information pertinent to LGBT issues.

Special Thanks

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